



RAILEX, LLC FREIGHT TARIFF

RAILEX CONDITIONS OF CARRIAGE

RULES AND RELATED PROVISIONS
ON
TRANSPORTATION OF COMMODITIES
MOVING IN INTERSTATE AND INTRASTATE COMMERCE

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Scope of the Tariff

This Tariff applies to all shipments tendered to Railex as "freight prepaid", "freight collect", and "bill to third party" when Shipper or its agent is named as the payor of the charges, within the contiguous 48 United States.

Railex reserves the right to unilaterally amend, modify or supplement this Tariff without prior notice.

Any failure by Railex, to apply or enforce a provision of this Tariff shall not constitute a waiver of that provision by Railex, and shall not deprive Railex, of the right to subsequently apply or enforce that provision.

As used here, the following terms shall have the meanings set forth below:

- A "shipment" means all pallets and loads tendered to Railex for transportation under one bill of lading. A shipment may be carried by any mode of transportation that Railex chooses, including rail, road or any carrier.
- A "bill of lading" shall include any bill of lading or consignment note and shall incorporate Railex's Terms and Conditions of Service.
- To the extent that any conflict exists between this Tariff and any bill of lading, this Tariff shall prevail.
- This Tariff shall be maintained at Railex's principal place of business. A copy of this Tariff shall be provided to any shipper on request.

Rules and Regulations Governing Transport of Shipments

Governing Publications

The following Governing Publications are hereby incorporated herein by reference:

- (1) PC*Miler, Version 21, practical mileage (for mileage rates).
- (2) Uniform Straight Bill of Lading as set forth in NMFC 100-AG, effective December 30, 2006.

Business Days/Legal Holidays Observed

- A business day within the United States means Monday through Friday, except for any state or national holiday.
- Official U.S. holidays observed by Railex: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.



Undeliverable Shipments

- If a receiver refuses delivery, or refuses to pay for the shipment, or if the shipment is deemed to be unacceptable, or the receiver cannot be reasonably identified or located, the shipment shall be **rejected** back to Shipper. In such events if Railex does not receive written instructions within twenty-four hours of the attempted delivery, the shipment may be released and/or disposed of by Railex without incurring any liability whatsoever to the shipper or anyone else, with the proceeds applied against freight charges, storage charges and related administrative costs incurred by Railex, and the balance of the proceeds of a sale to be returned to the shipper.

Packaging

- The shipper is solely responsible for proper packaging of all shipments. Railex does not offer or provide packaging services nor will Railex be liable for any loss or damage resulting from the shipper's failure to properly pack a shipment so as to ensure safe transportation by rail or truck with ordinary care in handling.
- All product(s) shall meet or exceed US#1 standard or will be rejected prior to Railex receiving such shipments into the origination Railex facility
- It is the shipper's responsibility to accurately describe the contents or nature of each shipment tendered to Railex for transport.

Receipts and Bills of Lading

- Each shipment received by Railex shall be evidenced by a bill of lading or receipt in a form agreed to by the parties, showing the kind, quantity and condition of commodities received by Railex. Such bill of lading or receipt shall be evidence of receipt of such commodities by Railex in apparent good order and condition unless such commodities are not readily observable (contents and condition of contents of packages unknown) or as may be otherwise noted on the face of such receipt. If shipments are tendered on pallets or slip sheets, and are shrink-wrapped or stretch wrapped, Railex may sign for pallet count and shall not be required to sign for piece count.
- Railex will use reasonable efforts to obtain an acknowledgement of delivery from the consignee for all shipments by notation on the bill of lading or a delivery receipt and will provide copies to Shipper upon request.
- The bill of lading, Railex's Terms and Conditions of Carriage, and the provisions of this Tariff represent the contract between Railex and the shipper.
- No term or condition contained on any Railex Bill of Lading or printed here may be modified unless the modification is in writing and signed by an authorized officer of Railex. No agent or employee of Railex or the shipper may modify these terms and conditions.



Billing and Payment

A. Invoices and Payment.

Railex shall invoice Shipper for all agreed to freight and accessorial charges, and Shipper shall pay Railex within fourteen (14) days net from date of invoice. If invoices remain unpaid for more than thirty (30) from date of invoice, Railex may assess a finance charge at the rate of one and one-half (1.5%) percent per month on the unpaid balance; said finance charge shall accrue and be calculated from the date that the outstanding invoice was originally issued.

B. Additional or Amended Rates.

Rates and charges, including accessorial services, may be established or amended by a written Rate Quotation. The relevant terms and conditions of the Rate Quotation shall be issued to Shipper by fax or e-mail. In the absence of a written acceptance by shipper the tender of goods for transportation shall constitute acceptance of the terms and conditions of service by Shipper. All Rate Quotations shall constitute an addendum to, and become part of, the Agreement between the parties.

C. Lien for Charges.

Railex shall have a lien on freight for all sums due and payable to Railex, not limited to the charges for the shipment(s) being transported. In the event of non-payment, shipment may be held by Railex and be subject to storage charges or be disposed of at public or private sale, without notice to Shipper or Consignee. After paying out of the proceeds of sale all sums due and payable to Railex, any balance shall be remitted to Shipper and Shipper shall have no further liability to Railex. When shipped "collect" such charges shall be collected from consignee provided, however, in the event that Railex is unable to collect such charges from consignee, Shipper shall remain liable to Railex for such charges.

D. No Set off.

Shipper shall not set off claims for loss, damage, or delay, or claims for overcharge or duplicate payment, against freight or other charges owed to Railex.

E. Overcharge Claims.

Claims for overcharges must be filed in writing with Railex within sixty (60) days of the date of the original invoice, or will be deemed waived. All overcharges, unidentified and duplicate payment claims shall be processed by Railex in accordance with 49 CFR Part 378.

F. Suits for Undercharges & Overcharges.

Any civil action by Railex to recover charges for transportation or service provided, or by Shipper to recover overcharges, must be commenced within one (1) year from the date of the original invoice.

G. The shipper and the consignee are jointly and separately liable for all unpaid charges relating to the shipment. The shipper shall be billed for all such charges if not paid by the consignee.



Delayed Shipments

Railex will make every reasonable effort to deliver the shipment according to Railex's regular delivery schedules, but these delivery schedules are not guaranteed and do not form part of the contract. Railex is not liable for any damages or loss caused by delays (*see No Consequential Damages*).

Hold for Pickup Service/Storage

Any shipment that is to be held at a Railex destination station for pickup will be held for five (5) business days from the date of arrival. If not picked up within this period, storage fees shall be assessed and unless Railex receives written instructions from shipper the shipment may be considered undeliverable at Railex's sole discretion (*see Undeliverable Packages*).

Fees and Charges

Standard Transportation Rate

The Base Transportation Rate (not otherwise negotiated and confirmed in writing) for Ramp to Ramp services (West Coast to East Coast and East Coast to West Coast between Railex facilities) is: \$7,000.00 plus a fuel surcharge per legal weight trailer load. Standard Base Transportation Rate includes five (5) day storage on each end of transit between Railex facilities, but does not include the fuel surcharge.

Rates provided by Railex are estimates only, and other shipping charges, surcharges or value-added service charges will apply based on your shipper characteristics and the characteristics of, and services requested for, shipments actually tendered to Railex.

Delivery Area Service Fee

After the first pickup and/or drop-off, additional pickups and/or drop-offs are subject to a standard surcharge of \$100.00 for each additional pickup, within appropriate zone.

Any shipment destined to zip code outside Railex's direct delivery area will be subject to a destination area surcharge of \$100.00. To determine if this fee applies to your shipment contact a Railex Representative.

Redelivery: \$250.00 Min or \$2.00 / mile plus drops and fees, whichever is greater.

Emergency Surcharges

Railex reserves the right to assess temporary surcharges to recover costs associated with emergency situations. Emergency surcharges will be assessed on Railex's general customer base, listed separately and in addition to negotiated rates. Shippers will receive a fifteen (15) day written notice via our website of any pending emergency situations requiring a temporary surcharge.



Pallets

There are no pallet exchanges. A charge of \$20.00 each will be assessed for damaged pallets (includes restacking labor).

Warehouse Handling and Storage Fee(s)

Shipments that require exceptional additional handling (due to their size, shape or packaging) will be assessed a fee of \$20.00 per pallet, as determined at Railex's discretion. Warehouse storage rates of \$20.00 per pallet or 50 cents per 50 wt./weekly will be assessed starting on the 6th day.

Fuel Surcharge

Railex reserves the right to assess a fuel surcharge on all shipments without prior notice. This surcharge is subject to adjustment on a monthly basis and is based on the National U.S. Average On-Highway Diesel Fuel Prices reported by the U.S. Department of Energy. For information regarding the fuel surcharge presently in effect, go to www.railexusa.com.

Rebill Fee

A customer may request reassignment of transportation charges to a different billing account number. The customer request can be accommodated at the rate of \$1.00 per box assessed against requesting party. The rebill fee will be included with the transportation charges on the invoice to the revised payer.

Special Handling

Handling fees for customized services not otherwise defined may be agreed upon on a case-by-case basis with the local Railex Facility.

Spill Fee

A fee will be assessed for shipment spills and leaks of contents on any Railex property where cleaning is necessary (\$100.00 for small spills, \$1000.00 for large spills).

Product Recall

In the event of a product recall, all cost and expenses incurred by Railex associated with such an event shall be paid by the Shipper and shall shipper shall indemnify Railex from all claims and actions that may arise as a result of a product recall.

Rate Quotes



Rate quote(s) expire within 48 hours of the date of offer unless accepted in writing or P.O. (Purchase Order) is accepted by Railex.

Claims and Liability

Limits of Liability

Railex agrees that, in the transportation of all goods tendered, it assumes the liability of a common carrier for actual loss, such liability to commence upon actual receipt of said goods by Railex and to end upon delivery or tender of delivery to the consignee. Railex's liability for loss, damage, or delay shall be limited to \$0.10 per pound per shipment and/or \$2.00 per case, the lesser of the two, and further subject to a maximum liability of \$100,000 for all shipments carried in any one rail car or \$20,000 for all shipments carried in any one truck or trailer.

Measure of Damages

The measure of damages for loss or damage shall be the direct loss only and for the actual cash value of the shipment and/or commodity at Origin or the per lb. limits set forth above. No claims shall be made if value is less than \$250.00.

Excess Valuation

If the Shipment has an actual value greater than the liability limits listed above in the Limits of Liability paragraph, Railex can arrange excess valuation protection for Shipper covering the actual cash value in respect of loss of or physical damage to the Shipment provided Shipper makes the request in writing and pays the applicable premium. Excess Valuation does not cover indirect loss or damage, or loss or damage caused by delays. If Shipper does not declare a value for carriage and pay the appropriate charge, Shipper assumes all risks of loss or damage over the amount of Railex's liability as stated above in the Limits of Liability paragraph. Excess value coverage will become applicable only when acknowledged by Railex in writing.

Special or Consequential Damages

In no event shall Railex be liable for incidental, special or consequential damages, including but not limited to market decline, loss of income or profits, whether resulting from loss, damage or delay, and whether or not Railex had knowledge that such damages might be incurred.

Claims

1. Claims; Time Limits for Filing

As a condition precedent to recovery, Shipper shall notify Railex of all actual or potential cargo claim(s) in writing within 10 days of delivery (or the date it was suppose to be delivered in the case of loss or delay) and file a formal claim, including all supporting documentation, in writing to Railex within thirty (30) days from the date of delivery (or the date it was suppose to be delivered in the case of loss or



delay). Failure to timely notify Railex of a claim or to timely file a formal claim will act as a bar to any claim or law suit and release Railex from all liability whatsoever.

2. Claims: Time Limits for Suit

Suits against Railex to recover on a claim shall be commenced within two (2) year and a day from the date written notice is given by Railex that the claim has been disallowed in whole or in part. Where notice of claims and formal claims are not filed or suits are not commenced within the time limits specified herein, Railex shall not be liable and claims will not be paid.

3. Documentation

All claims must include the following documentation:

- A demand for payment of a specific amount
- Information identifying the rail or truck shipment including equipment initials and number, shipper and receiver's name, shipping date, origin and destination locations and commodity.
- Origin records or certification as to the condition and quantity of the commodity at the time tendered to Railex. If shortage is involved, Origin and destination seal records must be furnished.
- Destination records as to the condition and quantity of the commodity at time received at destination of Railex. If shortage is involved, Origin and destination seal records must be furnished.
- Verification of the amount claimed such as certified invoices, repair bills, account of sales and labor and material records.
- Evidence as to the disposition of the damaged commodity, e.g. documentation or invoice reflecting disposition of damage commodity, including the name of purchaser, payment received by Customer, and any associated costs or expenses related to the disposable commodity.
- Evidence that commodity was loaded in compliance with Railex Packaging requirements set forth above.
- Complete records of all installed temperature and/or humidity recording devices.
- On fresh fruits and vegetables, origin and destination USDA inspections or Canadian Food Inspection Agency, as applicable, must be furnished.

All commodity loss and damage claims must be filed with Railex at:

**Railex Claims Department
889 Harrison Ave.
Riverhead, NY 11901**

Railex reserves the right to deny any and all claims submitted that do not contain all or part of the aforementioned documentation and/or until all transportation charges have been paid. If claimant cannot furnish these documents, a suitable bond of indemnity may be required.

Shipper's Warranties and Indemnity

Shipper shall indemnify and hold Railex harmless for any loss or damage arising out of the shipper's failure to comply with any applicable laws or regulations and for the shipper's breach of the following warranties and representations:



- All information provided by the shipper or its representatives is complete and accurate;
- The shipper protected the shipment against unauthorized interference during preparation, storage and transportation to Railex;
- All applicable laws and regulations have been complied with;
- The bill of lading has been signed by the shipper's authorized representative and the Terms and Conditions of Service stated thereon constitute binding and enforceable obligations of the shipper; and
- The materials constituting the shipment are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the DOT (Department of Transportation).

Violation of any of these warranties will excuse Railex from any liability whatsoever for loss of or damage to a shipment incurred as a result of the violation. Furthermore, the shipper shall be liable to Railex for all claims, fines, penalties, damages, attorneys' fees, and costs incurred by or imposed upon Railex as a result of a violation of these warranties.

Railex's Indemnity

Railex will indemnify Shipper and its directors, officers, employees, agents, subsidiaries and other affiliates for, and hold each of them harmless from and against, any and all Losses to the extent caused by or resulting from (1) the material breach of any covenant or agreement of Railex, or (2) any willful misconduct or negligence related to the performance of its obligations. Upon payment by Shipper to Railex of all applicable freight charges, Railex shall indemnify and hold Shipper harmless against any and all claims, demands, and suits by carriers or others seeking duplicate payment of freight charges from Shipper.

No Consequential Damages

- Railex will not, under any circumstances, be liable for delay in pickup, transportation, or delivery of any shipment, regardless of the cause of the delay.
- Railex shall not be liable, in any event, for any consequential or special damages or other indirect loss regardless of the cause of such damages and whether or not Railex had knowledge that such damages might be incurred, including, but not limited to, loss of income, profits, interests, utility or loss of market (*see Limits of Liability*).
- If a shipper has an extremely time-sensitive or valuable shipment, the loss or delay of which may result in consequential damages, the shipper must contact his own insurance agent or broker to insure against such risks, as Railex does not assume such liabilities. Railex does not provide and will not arrange for such insurance.
- No Cover is allowed: (The right to procure substitute goods in the event of loss or damage ("Cover")).



Right of Inspection

- Railex has the right to inspect a shipment without prior notice to shipper and has the right to inspect, weigh or reject shipments at origin, en route or at destination for noncompliance with the these provisions.
- Failure of Railex to inspect damaged cargo, for whatever reasons, will not relieve the burden of the claiming party to establish that cargo was not received in a damaged condition, nor will it be considered an admission of liability by Railex.
- Shippers and/or consignee must mitigate damage situations by accepting the damaged cargo unless it is without salvage value. Shippers and/or consignees may not abandon damaged or partially damaged shipments to Railex when the damaged shipments retain value.
- Product that is abandoned to Railex in an undamaged condition shall be disposed of for account of whom concerned and salvage proceeds only, less any salvaging expenses incurred, shall be remitted to the beneficial owner.

Exclusions

Railex is not liable for any loss or damage arising out of (i) acts of God, e.g., earthquake, cyclone, storm, flood, fog; (ii) force majeure events, e.g., war, plane crash or embargo; (iii) acts of the public enemy; (iv) acts of government; (v) acts of public authorities possessing actual or apparent authority; (vi) any defect, characteristic or vice inherent in the shipment; (vii) any act or default of the shipper, consignee or other party who claims an interest in the shipment; (viii) natural shrinkage; (ix) an act of default of the shipper owner or receiver or from shipments stopped and held in transit at the request of the shipper, beneficial owner or receiver; or (x) any other cause beyond Railex's control.

Railex is not liable for loss or damage caused by defective equipment when such equipment is not owned, or leased by Railex. Railex will not be responsible for interest or attorney fees.