



**RAILEX, LLC  
TERMS AND CONDITIONS OF CARRIAGE  
("Terms and Conditions")**

**IMPORTANT NOTICE - When ordering Railex's services you, as "Shipper", are agreeing, on your behalf and on behalf of anyone else with an interest in the Shipment that the Terms and Conditions shall apply from the time that Railex accepts the Shipment unless otherwise agreed in writing by an authorized officer of Railex. Your statutory rights and entitlements under any defined service feature (for which additional payment has been made) are not affected.**

**"Shipment" means all pallets or goods that travel under one waybill and may be carried by any means Railex chooses, including rail, road or any other carrier. A "bill of lading" shall include any bill of lading, waybill, receipt or consignment note and shall incorporate these Terms and Conditions. Every Shipment is transported on a limited liability basis as provided herein. If Shipper requires greater protection, then Excess Valuation protection may be arranged at an additional cost. (Please see below for further information).**

**1. Services**

Railex may perform any of the following activities on Shipper's behalf in order to provide its services to Shipper: (1) complete and transmit (manually or electronically) any documents, amend product or service codes, and pay any fees or taxes required under applicable laws and regulations, and (2) redirect the Shipment to Receiver's agent or other address upon request by any person who Railex believes in its reasonable opinion to be authorized.

**2. Unacceptable Shipments**

Shipper agrees that its Shipment is acceptable for transportation and is deemed unacceptable if:

- Railex decides it cannot transport an item safely or legally.

**3. Deliveries & Undeliverables**

If Receiver refuses delivery or to pay for delivery, or the Shipment is deemed to be unacceptable, or Receiver cannot be reasonably identified or located, Railex shall be released from incurring any liability whatsoever to Shipper or anyone else and granted the authority to dispose of or sell the Shipment, with the proceeds applied against service charges and related administrative costs and the balance of the proceeds of a sale to be returned to Shipper.

**4. Inspection**

Railex has the right to open and inspect a Shipment without prior notice to Shipper.

**5. Shipment Charges & Billing**

Shipper shall pay or reimburse Railex for all Shipment charges, storage charges, fees and taxes owed for services provided by Railex or incurred by Railex on Shipper's or Receiver's or any third party's behalf and all claims, damages, fines and expenses incurred if the Shipment is deemed unacceptable for transport as described in Section 2, within 14 days of date of invoice. 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.



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

#### **6. Railex's Liability**

**Railex's liability is strictly limited to direct loss only and to the per lb. limits in this Section 6. Shipper shall not have the right to procure substitute goods in the event of loss or damage ("Cover"). If Shipper regards these limits as insufficient it must make a special declaration of value and request excess valuation protection as described in section 8 ("Excess Valuation") or make its own insurance arrangements. All other types of loss or damage are excluded (including but not limited to lost profits, income, interest, future business), whether such loss or damage is special or indirect, and even if the risk of such loss or damage was brought to Railex's attention before or after acceptance of the Shipment since special risks can be insured by Shipper. If a Shipment combines carriage by rail, road or other mode of transport, it shall be presumed that any loss or damage occurred during the rail period of such carriage unless proven otherwise. Railex's liability in respect of any one Shipment transported, without prejudice to Sections 7-11, is limited to its actual cash value and shall not exceed the greater of:**

**\$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.**

#### **7. Claims**

Claims are limited to one claim per Shipment, settlement of which will be full and final settlement for all loss or damage in connection therewith.

As a condition precedent to recovery: i) Shipper shall notify Railex of all actual or potential trouble within eight (8) business hours of delivery and file a formal claim, including but not limited to, a timely USDA Federal Inspection or Canadian Food Agency Inspection, as applicable, in writing to Railex within ten (10) days from the date of delivery for all agricultural and/or other perishable commodities; and ii) for non-perishable commodities, Railex shall be notified of all actual or potential cargo damage(s) in writing within 10 days of delivery (or the date it was suppose to be delivered in the case of loss) 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). Failure to timely notify Railex of a claim or to timely file a formal claim will act as a bar to any claim or lawsuit and release Railex from all liability whatsoever. All claims will be processed by Forwarder in accordance with 49 CFR Part 370 (claim regulations).

All of the original shipping cartons, pallets, packing and contents must be made available for Railex's and/or federal inspectors and retained until the claim is concluded, as applicable. On all agricultural and/or other perishable commodities, origin and destination timely USDA inspections or other equivalent government federal inspections, as reasonably approved by Railex, must be performed and provided to Railex. Railex is not obligated to act on any claim until all transportation charges have been received and paid.

#### **No Cover is allowed**



## **8. Excess Valuation**

If the Shipment has an actual value greater than the liability limits listed in Section 6, 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 in Section 6.

## **9. Delayed Shipments**

Railex will make every reasonable effort to deliver the Shipment according to Railex's regular delivery schedules, but these are **not guaranteed and do not form part of the contract**. Railex is not liable for any damages or loss caused by delays.

## **10. Circumstances Beyond Railex's Control**

Railex is not liable for any loss or damage arising out of circumstances beyond Railex's control. These include but are not limited to: "Act of God" - e.g. earthquake, cyclone, storm, flood, fog; "Force Majeure" - e.g. war, train crash, de-railment or embargo; any defect or characteristic related to the nature of the Shipment, even if known to Railex; riot or civil commotion; any act or omission by a person not employed or contracted by Railex, e.g. Shipper, Receiver, third party, government official; labor strike; and electrical or magnetic damage to, or erasure of, electronic or photographic images, data or recordings.

## **11. Shipper's Warranties and Indemnity**

Shipper shall indemnify and not hold Railex liable for any loss or damage arising out of Shipper's failure to comply with any applicable laws or regulations and for Shipper's breach of the following warranties and representations:

- all information provided by Shipper or its representatives is complete and accurate;
- Shipper protected the Shipment against unauthorized interference during preparation, storage and transportation to Railex;
- the Shipment is properly packed to ensure safe transportation with ordinary care in handling by rail;
- all applicable laws and regulations have been complied with; and
- the bill of lading has been signed by Shipper's authorized representative and the Terms and Conditions constitute binding and enforceable obligations of Shipper.

## **12. Railex's Warranties and Indemnity**

Railex shall not be liable for any loss, damage, delay or any failure to provide information, except such as may result from its sole negligence. Railex makes no warranties, express or implied, and expressly disclaims any and all warranties.

## **13. Routing**

Shipper agrees to all routing and diversion, including mode of transportation and the possibility that the Shipment may be carried via intermediate stopping places, which Railex deems appropriate.

## **14. Governing Law**

Any dispute arising under or in any way connected with these Terms and Conditions shall be subject to the non-exclusive jurisdiction of the state or federal court in the City of Riverhead, Suffolk County New York and governed by the laws of the State of New York. Shipper waives



any and all objections they may have to such venue for reasons of personal or subject matter jurisdiction and forum non conveniens.

#### **15. Accessorial Charges**

- Storage – After five days charges will accrue at \$20.00 per pallet or \$.50 per 50 weights per week, whichever is greater.
- Unloading - \$80.00 included in Standard and Delivered Rate, all additional unloading charges and fees will be billed back.
- No Pallet Exchange – However, unserviceable and/or damaged pallets will be charged a \$20 per pallet replacement fee (includes restacking labor).
- Additional Pick-Ups - \$100.00 per additional stop (initial stop is included).
- Additional Drop-Offs - \$100.00 per additional stop (initial stop is included).
- Overweight Trailer Loads – Loads exceeding legal trailer weights will be billed additional charges to cover LTL deliveries.
- Trucks Not Used – After dispatch due to customer's late cancellation will be charged \$250.
- Detention – Three hours free from appointment time then a charge of \$60.00 per hour with a cap of \$500.
- Cross Dock Handling Fee - \$20.00 per pallet or \$.50 per 50 weights, whichever is greater.
- Redelivery Charge - \$250.00 minimum or \$2.00 per mile plus additional drop fees, whichever is greater.
- Layovers - \$500.00 per day.
- Inspections In House - \$50.00 per shipment commodity.
- Inspections Federal - \$275.00 per shipment commodity.
- Re-Pack and Re-Grading – \$18.00/ man hour standard, \$36.00 / man hour premium, full cost of bags / boxes plus Dump Rate of \$3.00 per 50 pounds of waste
- Dumped Product at any Railex facility will be billed at \$3.00 per 50 weights or \$100.00 per pallet, whichever is greater.
- Additional Charges – As communicated by your Railex Sales Representative.



**15. Severability**

The invalidity or unenforceability of any provision shall not affect any other part of these Terms and Conditions.