

ADDITIONAL BILL OF LADING TERMS AND CONDITIONS

In addition to the terms and conditions set forth on the face of the bill of lading governing the subject shipment, the following additional terms and conditions, which are incorporated therein, shall apply.

- Carrier Liability.** The carrier of any of the goods described in this bill shall be liable for any and all loss thereof, damage thereto or delay thereof, except that, the carrier shall not be liable for any loss, damage or delay to the goods when, without any fault of the carrier, caused by an Act of God, the public enemy, the public authority, the inherent vice or nature of the goods, the act or default of the shipper, and/or the act or default of the customer. The burden to prove freedom from fault and liability is on the carrier.
- Cargo Damages.** The carrier will be liable for the actual value of the goods, including the freight, insurance costs and other charges, and no limitation of liability will apply with respect to the carrier's liability for losses, damages or delay to the goods. The "actual value of the goods" shall be understood as the purchase or invoice price, not merely the manufacture price.
- Transportation Services.** The carrier shall perform all services hereunder in a professional and workmanlike manner, in accordance herewith and all applicable laws, regulations, ordinances and rules. The carrier is solely responsible for and shall provide all personnel and equipment necessary to timely, suitably, legally and safely perform such services. The carrier shall at all times have exclusive control over all such personnel and equipment, as well as all in transit aspects of the shipment (such as the route, speed, weight, securement, documentation, and hours of operation). The carrier shall obtain signed receipts for all goods transported and delivered hereunder, evidencing the proper delivery thereof in the same condition and volume as the goods are received at the point of origin stated on the bill.
- Subcontracted Carriers.** All contracted or subcontracted carriers or other third parties engaged by the carrier ("Subcontractors") to perform any portion of the services hereunder shall be properly trained and qualified to perform the required services and be bound by the terms hereof. No contracting or subcontracting shall relieve the carrier of any of its obligations hereunder, and the carrier shall be fully responsible and liable, jointly and severally, for all acts and omissions of Subcontractors and of all persons directly or indirectly employed, contracted, subcontracted or controlled by them. It shall be the sole responsibility and liability of the carrier to pay any Subcontractors, and the carrier shall obtain their written agreement to comply with the terms and conditions hereof and to look exclusively to the carrier for payment. St. Marys and its customer shall have no obligation to pay anything to any Subcontractors or any persons employed, contracted, subcontracted or controlled by them.
- Loss Instructions.** In any instances of loss, damage or delay, (i) where the goods are marked for "Customer Pickup" or equivalent, or the customer or its agent arranges for the carrier pickup and transport, the carrier shall immediately advise the customer of such instances and follow the customer's instructions with respect thereto, and (ii) where St. Marys arranges for transport, the carrier shall immediately advise St. Marys of such instances and follow St. Marys' instructions with respect thereto.
- Return of Damaged Goods.** Where St. Marys arranges for transport, the carrier shall have no right to salvage of goods damaged during transport or otherwise rejected or refused by the customer. Unless otherwise instructed by St. Marys, such goods shall be returned to the point of origin for further inspection and testing. The carrier shall not be entitled to any credit or allowance for the value of such damaged or otherwise rejected or refused goods not salvaged. St. Marys shall not be responsible for any return freight charges or other costs unless the carrier proves freedom from fault and liability.
- Self-Loaded Goods.** St. Marys shall have no responsibility or liability for loading of the goods when the carrier chooses the Self Loading Service or equivalent, and in such event the carrier assumes full responsibility and liability for such loading, including all processes, information, weight, securement and documentation related thereto, and all damages or liabilities resulting therefrom.
- Notice of Claims.** (a) For transportation within Canada or for bills issued in Canada, the carrier is not liable for loss, damage or delay to any goods carried hereunder unless written notice thereof setting out particulars of the origin, destination and date of shipment of the goods and the estimated amount claimed in respect of such loss, damage or delay is given to the originating carrier or the delivering carrier within sixty (60) days after the delivery of the goods, or, in the case of failure to make delivery, within nine (9) months from the date of shipment. The final statement of the claim must be filed within (nine) 9 months from the date of shipment together with a copy of the paid freight bill, if any. (b) For transportation within the U.S.A. or bills issued in the U.S.A., written notice of claim against the carrier shall be provided to the carrier within nine (9) months of delivery, except that notice of claim for failure of delivery shall be provided within nine (9) months of the latest reasonably estimated delivery date. Suit against the carrier for loss, damage or delay to goods shall be commenced no later than two (2) years and one day (i) after delivery or (ii) after written notice is provided by the carrier to the claimant that the carrier has disallowed the claim or any part(s) thereof, whichever is later. Providing notice of claim is not a prerequisite to filing suit. The claimant's failure to provide notice and/or file suit in accordance with this section shall result in waiver of such claim as against the carrier.
- Right to Set-Off.** St. Marys may set off claims for loss, damage, delay, overcharge or duplicate payment against other charges owed to the carrier at any time. The carrier has no right to set off against St. Marys or its customer.
- Freight Payment Responsibility.** The carrier waives any claim for freight charges against the customer where St. Marys arranges for transport, and the carrier agrees to look exclusively to St. Marys for payment. The carrier waives any claim for freight charges against St. Marys where goods are marked for "Customer Pickup" or equivalent, or the customer or its agent arranges for the carrier pickup and transport, and the carrier agrees to look exclusively to the customer for payment.
- St. Marys' Point of Origin Site.** The carrier acknowledges that St. Marys' point of origin sites may include heavy industrial activity or other hazardous conditions. The carrier must, when on St. Marys' site or when handling the goods, comply with all applicable laws, regulations, ordinances and rules, including those regarding safety, and, to the extent they are more restrictive, all of St. Marys' rules, policies and instructions. The carrier will ensure that all of its drivers, employees, subcontractors and agents entering St. Marys' site are properly qualified and wear all required safety apparel. At a minimum, this shall include an up-to-date and operative hardhat with reflective stripes on all fours, safety boots, safety glasses, ear protection, gloves, dust mask, personal lockout equipment and, where necessary, personal fall prevention/arrest equipment. Additionally, in the event of any condition which may place any person in an unsafe position, the carrier shall immediately cease what it is doing and report such condition to St. Marys. St. Marys reserves the right to refuse entry to its site of any vehicle or person it deems unsafe. *Notwithstanding the foregoing, the carrier acknowledges that the point of origin site may include heavy industrial activity, and the carrier agrees to be responsible for, and knowingly and voluntarily assumes all risk of injury and damage to, the carrier, its drivers, employees, subcontractors and agents, and its and all of their property, except for such injury or damage caused by the willful misconduct of St. Marys.*
- Compliance with Laws.** All drivers used by the carrier for performing services hereunder shall have the qualifications and licenses required by applicable laws, regulations, ordinances and rules, including the Federal Motor Carrier Safety Administration rules and regulations (as applicable in U.S.A.). The carrier shall not use an unqualified or disqualified driver for any services hereunder under any circumstances. The carrier agrees to, at its sole cost, expense and liability, comply with all applicable laws, regulations, ordinances, rules and other requirements or obligations regarding its employees, independent contractors and agents, including, but not limited to, the payment of wages, taxation of wages, payment and provision of employee benefits, including any union benefits, unemployment compensation, workers' compensation and disability.
- Independent Parties.** Under no circumstances shall the carrier or Subcontractor or any of their drivers, employees or agents represent themselves to be the driver, employee or agent of St. Marys or have any authority to bind St. Marys by any agreements, warranties or representations, and none of them shall be considered or deemed to be employees, independent contractors or agents of St. Marys unless expressly acknowledged in writing by St. Marys. St. Marys shall not be bound by any agreements, warranties or representations made by any other party to any third party.
- Governing Law and Forum.** This bill shall be governed by the laws of the applicable province/state in which the point of origin is located, without regard for choice of law or conflict of law principles. The exclusive fora for resolution of any disputes arising hereunder or in connection herewith shall be the federal, state and provincial courts in which the point of origin sits, and all parties expressly consent to jurisdiction in such fora for resolution of such disputes.
- Limitation of St. Marys' Liability.** In no event shall St. Marys be liable to the carrier arising out of or in connection with this bill, whether in contract, tort, breach of statutory duty or otherwise for any loss of profit, loss of revenue, loss of contracts, loss of business opportunity, loss of good will or any other indirect, incidental or consequential loss or damages of any kind or any liquidated, penal or punitive damages, even if St. Marys has been put on notice of the possibility of such damages. Any damages recoverable by the carrier against St. Marys are limited to the agreed-upon rate for the particular service at issue.
- Indemnification.** The carrier shall protect, defend, indemnify and hold harmless St. Marys, including its officers, directors, employees, agents, contractors, insurers, affiliates, successors and assigns ("Indemnitees"), from and against all liabilities, losses, costs, charges, damages, penalties, fines, taxes, expenses, claims and attorneys' fees of any kind or nature whatsoever imposed upon or claimed against any Indemnitee, whether incurred directly or indirectly by such Indemnitee, by virtue of, in connection with or arising out of any: (i) failure by the carrier to maintain required licenses, qualifications or comply with applicable laws, regulations, ordinances or rules; (ii) failure by any employee, subcontractor or agent of the carrier to comply with any of St. Marys' safety policies or instructions; (iii) claim made by any driver or employee, subcontractor or agent of the carrier related to the services hereunder, including any claim that such persons are employed by any Indemnitee; or (iv) property damage or personal injury (including death) relating to the services hereunder, the carrier's negligence, gross negligence or willful misconduct, or the carrier's breach of its obligations under this bill; provided, however, that such indemnification obligations shall not extend to the extent such damages are caused by St. Marys' willful misconduct. No limitation of liability shall apply to the carrier's indemnification obligations hereunder.
- Miscellaneous.** This bill constitutes the entire agreement between the parties and supersedes all prior agreements, understandings and representations concerning the subject matter hereof. In the event any term of this bill is inconsistent or conflicts with the term of any bills of lading, receipts or other transportation documents prepared by the carrier, a Subcontractor, the customer or any third party, or any of their agents, this bill shall control and take precedence. Any term of this bill held to be invalid or unenforceable shall be ineffective only to the extent of such invalidity or unenforceability, without rendering invalid or unenforceable the remaining terms hereof or affecting the validity or enforceability of any of the terms in any other jurisdiction. No right of any party hereunder shall be waived by any failure of such party to exercise any right in any prior instance. Time is of the essence.