



## Governing Rules & Provisions

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**CD-1-009**

**201139**

Proprietary Information

**TRADEMARK®**  
*Ride Easy. Rest Assured.*

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## **Governing Rules & Provisions**

This document explains the services provided by Trademark Transportation and the terms, conditions, restrictions and requirements under which those services will be rendered. These terms, conditions, restrictions and requirements have been incorporated through reference on Trademark Transportation, Inc's offering to the public via its website, and through its documents, including but not limited to the Credit Agreement, Rate Tables, Rate Quotes, Bills of Lading, shipment confirmations, Invoices, Shipping Orders and service orders, where applicable.

Though effort has been made to present a uniform and consistent statement of the terms and conditions of service for Trademark Transportation, Inc, to the extent that any conflict exists or arises between the terms and conditions of the shipping, warehousing or other documents, the provisions of this Tariff shall control. To the extent applicable, and allowable by law, those provisions of the Interstate Commerce Act which are inconsistent with the terms and conditions of this Tariff are expressly waived.

If any portion of these Service Guidelines is found unenforceable by the courts or by any other agency having jurisdiction over the parties, terms and conditions, such portions shall be deemed stricken, however, the rest of the Service Guidelines will remain valid and enforceable.

### **STATEMENT OF OPERATING AUTHORITY**

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Provisions named in herein or as amended, are limited in their application on interstate or foreign commerce to the extent of the operating rights set forth below.

#### **TRADEMARK TRANSPORTATION, INC**

FREIGHT FORWARDER:

FHA FF 1666 sub 1 P

General commodities between points in the United States.

### **ACCESS BY MOTOR VEHICLE**

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The Forwarder will pickup or deliver freight at any point at where operations permit and where access is practical, safe and legally permitted for its over the road drivers and equipment.

### **ADVANCING CHARGES**

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When expenses are required that pass through Trademark to the customer, they will be subject to a 15% administration charge. (Example: interline costs.)

### **APPLICATION OF GOVERNING RULES AND PROVISIONS**

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These Rules and Provisions will be in effect continuously, as amended, when in use. Rates, rules and provisions shall be amended from time to time. The latest and more recent date of issue will take precedence over those issued previously whether in the possession of the customer or not. Any rights and privileges, stated or implied, for the benefit of the account will expire 30 days from the date of the last shipment provided to the forwarder. Rates, rules and provisions for a specific, named account shall apply to that customer only. Collect or third party shipments may be subject to different rates, rules and provisions. Unless otherwise specified, forwarder shall provide the transportation services as a Freight Forwarder. Such forwarding service shall not be substituted without the prior knowledge of the party requesting transportation services.

### **APPLICATION OF RATES – ALTERNATE APPLICATION OF RATES & WEIGHTS**

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In no case shall the charge for any shipment be greater than the charge for a greater quantity of a like kind of freight.

### **ASSESSORIAL CHARGES, SPECIAL SERVICE CHARGES**

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Assessorial charges include any expense not otherwise specifically included in the transportation rate. When the forwarder is requested to make a delivery to terminal markets, piers, or warehouses or any other location where an entry fee or gate fee is required, and when timely and effective transportation necessitates the use of interlines, storage, driver load, unload, lumper services or results in an assessorial service and expense, the Forwarder will advance the assessed fees or charges. Unless otherwise stated, assessorial charges are applied per occurrence, per shipment. They are in addition to all other applicable charges. They are not subject to prior notice or approval. They are due and payable by the party responsible for the regular freight charges.

### **BILL OF LADING & PROOF OF DELIVERY COPIES**

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A bill of lading copy will be issued with the transportation invoice when requested in advance and when the shipper has provided a minimum of 3 copies of the bill of lading or shipping order with the shipment. The Forwarder reserves the right to issue its bill of lading contract for transportation services rendered. Proof of delivery shall only be submitted upon special request at a rate of \$3.00 each. A proof of delivery shall not be issued as a condition for payment. A signed photocopy of a delivery receipt will serve as reasonable evidence of delivery.

### **CANADIAN TRANSACTION FEE**

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Canadian customers, or others drawing funds from Canadian banks, will be charged an additional processing fee of \$25.00 per invoice.

## **CAPACITY LOADS – TRAILERS LOADED TO FULL VISIBLE CAPACITY**

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Except as otherwise provided, when the Forwarder furnishes a trailer for loading, and that trailer is loaded to full visible capacity by the consignor or its agent(s) or the Forwarder at the consignor's direction, the highest applicable charge provided for the shipment will be assessed, subject to the following provisions:

Application of rates under this rule will apply only where multiple minimum quantities are published for the shipment. Where such multiple minimum quantities are provided, the highest applicable minimum will be applied only in the event the Forwarder can legally transport a quantity in excess of that loaded upon the trailer subject to applicable Federal, State and Local Laws governing the maximum allowable quantity of the combined power unit and trailer furnished.

For the purposes of this rule where the commodity(s) loaded require the interior circulation of air to maintain a specific temperature or range of temperatures in-transit, full visible capacity will include the allowance of a minimum of 2 inches free space between the front, rear and sides of interior of the trailer and a minimum of 9 inches between the top of the load and the interior roof of the trailer. Full visible capacity will also be deemed to have been reached when the primary commodity loaded uses the full usable trailer floor space, and the nature of the lading precludes the loading of other lading on top thereof which would result in damage from compression, crushing, and other types of damage, or if the primary lading specifically precludes such so-called top loading.

The provisions of this rule apply only where the shipment in question is tendered by one consignor, or on one bill of lading or a consolidation of bills of lading.

## **CHURCHES, SCHOOLS AND RESIDENTIAL DELIVERIES**

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When requested by the consignor or consignee, and operating conditions permit, the forwarder will move or arrange for shipments or portions of shipments to be moved to a position or place other than a truck dock suitable for loading and unloading the forwarder's vehicles.

- For the purposes of this item, driver loading, unloading, sorting and segregating are included. Driver and vehicle detention rules however, are not included and will apply in addition to inside delivery.
- The forwarder will, at its discretion, put such shipments into temporary storage for later delivery and, or interline such shipments, if such handling will result in a delay to the forwarder's operations.
- Deliveries to private residences, schools and churches will be subject to a charge of 150 cents per one hundred pounds, subject to a \$15.00 pallet minimum and \$30.00 shipment minimum.

### CIRCUITY

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Circuitry does not apply to shipments rated per mile. It applies to shipments billed by weight, piece, space utilized or flat amount. When the distance from origin to final destination, via all stops in transit exceeds the distance directly from origin to final destination the distance in excess shall be subject to an additional per mile charge as provided in the mileage rate tables herein.

### CLAIMS, LOSS & DAMAGE

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Except as otherwise indicated the provisions of this schedule shall be governed by 49 C.F.R. Sec. 370. Under any circumstances it is the obligation of every party to the transaction, including but not limited to the consignor, motor carrier, forwarder and consignee to mitigate all loss and damage. The consignor and consignee shall make every reasonable attempt to reduce the claim or loss to the Forwarder and carrier(s) performing the service.

- Claims for loss and damage shall be subject to the terms and conditions set forth in this Schedule including, but not limited to, provisions relating to Marking Shipments and Product, Packaging Requirements, Packing and Packaging Shortages and Protected Service. Overages, if refused, will be subject to the provision relating to Refused Shipments.
- In the event of a shortage, the shipper shall perform an itemized product inventory, recheck order filling tickets and take other necessary steps to determine if shortages are created by shipping errors.
- Fully receipted shipments will be considered complete and in good condition and shall not be subject to claims against the Forwarder regardless of any notations to the contrary on the delivery receipt.
- Damaged or off condition product shall be refused to the shipper in care of the Forwarder. Precise, factual notations must be made on the delivery receipt as to the nature of damage. Exact internal and external product temperatures and the number of shipping units affected shall be determined throughout the entire shipment and so noted. Temperature readings shall only be accepted when made by calibrated testing equipment indicating the actual core product temperature.
- Judgmental, speculative and incomplete notations will not be accepted without proper investigation.
- Product claim values shall be subject to the provisions concerning Forwarder Liability. Further, claims are accepted for actual manufactured cost of loss only, less prorated transportation costs paid to Forwarder. Claims are not subject to loss of sales, loss of market, costs to expedite reshipment or any other fees, fines or penalties.

### **COD (COLLECT ON DELIVERY) SHIPMENTS**

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Except as otherwise provided, Collect on Delivery shipments will be accepted subject to the following provisions and charges:

- C.O.D shipments will only be accepted for transportation and collection when requested, in advance and in writing then confirmed in writing by the Forwarder.
- Collection must be made before shipment is delivered to consignee.
- Collection will be made only in cash, or by certified check, money order, or cashier's check, unless otherwise specified by the shipper.
- The letters, "C.O.D." must be stamped, typed or written on the Bill of Lading or Shipping Order immediately before the name of the consignee. The name of the payee, if other than the consignor, must be shown. The Collect on Delivery amount must be clearly shown in the space provided for this purpose on the Bill of Lading and Shipping Order.
- C.O.D. shipments will not be accepted with the privilege of examination or trial, nor bearing instructions to make partial delivery.
- C.O.D. shipments will not be accepted or receipted for when billed to the consignee with instructions to collect charges from another firm or person.
- The charge for collecting and remitting C.O.D. bills will be collected from the party responsible for the regular freight charges.
- The charge for collecting and remitting C.O.D. collections will be \$0.03 per dollar with a minimum charge of \$75.00.

### **COLLECT OR THIRD PARTY FREIGHT CHARGES**

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Rates, rules and provisions for a specific, named account shall apply to that customer only. Collect or third party shipments may be subject to different rates, rules and provisions. Collect or third party freight charges shall be issued to the party specified on the bill of lading. However, when tendered by the customer, any unpaid collect or third party freight charges will become the responsibility of the customer regardless of any notations to the contrary on the bill of lading. The shipper shall arrange for such shipments to be paid to Forwarder within 15 days of presentation of its freight charges.

### **CONFIDENTIALITY & NO BACK SOLICITATION**

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Customer acknowledges and agrees that the names, routes and pricing of the Carriers and other service providers utilized by Trademark Transportation, Inc are confidential information and are in the nature of a trade secret. Customer shall not directly contact or solicit rates, bids or service from

any underlying carrier or service provider where (1) the availability of carrier or service provider to perform such services first became known to Customer as a result of Trademark Transportation's efforts, or (2) where Customer's traffic was first tendered to the underlying carrier or service provider by Trademark Transportation. If Customer breaches this provisions and "back-solicits" Trademark Transportation's underlying carriers and/or service providers, and/or tenders traffic to such carriers or service providers, Trademark Transportation is then entitled, for a period of eighteen (18) months after the involved traffic first begins to move, to payment from Customer of 15% of the gross transportation charges for all such traffic, as liquidated damages. Termination of the relationship between Trademark Transportation, Inc and Customer shall not affect the enforceability and applicability of the foregoing provisions of this clause for a period of two years after termination.

### **CONSOLIDATION OF SHIPMENTS – LESS THAN TRUCKLOAD**

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Upon instructions from shipper or consignee, Forwarder will consolidate shipments picked up from multiple origins into one shipment to one destination or consolidate shipments from one origin to multiple destinations within a specified route subject to the following:

- All shipments to be consolidated must be tendered together at one time and made available for pick up together from a single origin or must be feasibly picked up the same day if shipped from multiple origins.
- A master bill of lading covering all shipments to be consolidated must be prepared and available at the point of origin.
- Unless otherwise provided the aggregate shipment shall be rated at the highest minimum weight column provided for and at the highest rate stated among the points service is requested to or from.
- Each pickup or delivery in excess of the original pickup and final delivery shall be assessed a stop charge of \$75.00 for the first three and \$100.00 for each additional.

### **CORRECTIONAL FACILITIES, PRISONS, GOVERNMENT FACILITIES AND INSTALLATIONS**

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Except as otherwise provided, a rate of 80 cents per hundred pounds, subject to a \$8.00 pallet minimum and \$20.00 shipment minimum will be charged in addition to all other applicable rates to such locations.

### **CREDIT & COLLECTIONS**

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At its discretion Forwarder shall extend credit. Unless otherwise specified in writing, charges are due and payable within 15 days of presentation of the bill. Bills unpaid after 30 days will be subject to a

service charge of one and one half percent per month (18% per annum) or fraction thereof. Such service charge shall begin to accrue on the 31st day after the date of invoice. Furthermore, Forwarder reserves the right to withhold delivery, or deliveries, at the payor's expense, for payment of unpaid or past due freight charges. The forwarder may also add any reasonable attorney fees, collection costs or service charges incurred in attempt to collect its transportation, handling or storage charges. If it becomes necessary to take such action or to terminate credit and resume service on a cash basis, payment shall be applied in sequence from the recent transaction to the oldest transaction. It is understood that any and all payments rendered are for essential and necessary services and shall, in no way, be considered preferential.

### **CROSSDOCK HANDLING**

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Customer may arrange for product to be dropped off or picked up at one of Forwarder's facilities. Handling charges will be assessed at a rate of \$15.00 per pallet, subject to a \$30.00 minimum.

### **DEFINITION OF FREIGHT FORWARDER, FORWARDING SERVICE**

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The Freight Forwarder is one who holds itself out to the public to provide transportation of property for compensation and in the ordinary course of business:

- Assembles and consolidates or provides for assembling and consolidating shipments and performs or provides for break bulk and distribution operations of the shipments;
- Assumes responsibility for the transportation from the place of receipt to the place of destination; and
- Uses for any part of the transportation a motor carrier subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II or III of Chapter 105 of Title 49.

### **DEFINITION OF MOTOR CARRIER**

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Motor Carrier means:

- A motor common carrier engaged in providing transportation of property by motor vehicle over regular or irregular routes for compensation.
- A motor contract carrier engaged in providing transportation of property by motor vehicle under continuous contract with one or more persons.

DEFINITION OF SHIPMENT

A shipment is a quantity of freight received from one shipper, at one point or origin, or from places within a single plant, at one time for one consignee at one destination and covered by one bill of lading or written shipping order, for transportation in one vehicle.

DESCRIPTION OF FREIGHT

Customer or Consignor shall accurately declare and describe the commodities shipped pursuant to the National Motor Freight Classification ("NMFC") descriptions or Item numbers. If it is determined that the articles shipped or stored are not those described in the bill of lading, warehouse receipt, shipping order or other shipping or storage document, the freight and all other charges must be paid on the basis of the commodities or articles actually shipped. An administrative fee may, at Trademark Transportation's discretion, be assessed against Customer, or other party for each misdeclared shipment as follows:

Table with 4 columns: Instance, Amount, Instance, Amount. Rows include First instance (\$25.00), Second instance (\$50.00), Third instance (\$100.00), Fourth instance (\$200.00), Fifth instance (\$400.00), and Sixth instance+ (\$800.00).

Additionally, Trademark Transportation shall have no liability in the event of loss of or damage to the materially misdeclared or misdescribed freight regardless of Trademark Transportation's actual negligence.

Where applicable, charges shall be computed on the gross weight at the time of shipment including weight of packing and preservatives. If the product net weight, rather than the shipment gross weight, is the only weight stated on the bill of lading, Trademark Transportation will add 10% tare weight to the net weight shown before computing final freight charges.

DETENTION

In the event the forwarder's equipment is unduly detained by the shipper or consignee while loading, unloading, checking freight, or preparing paperwork for the receipt or movement of freight, charges of \$75.00 per hour, billed in quarter hours (subject to a minimum total charge of \$18.75), will be assessed for any time beyond the normal free time expected for such work, as follows:

- When the aggregate pickup or delivery is less than 5000 pounds the free time allowance is 30 minutes.
• When the aggregate is from 5001 pounds to 10000 pounds the free time is 60 minutes.
• When the aggregate is from 10001 pounds to 20000 pounds the free time is 90 minutes.
• When the aggregate is from 20001 pounds to 30000 pounds the free time is 120 minutes.

- When the aggregate is 30001 pounds and greater the free time is 180 minutes.
- In the event of an inside delivery, store door delivery or tailgate delivery the free time allowance will be the amount stated times two.
- Computations of time are to be made based on regular business hours, unless loading and unloading is permitted to continue beyond regular business hours until completion. The amounts due the forwarder under the provisions of this rule shall be assessed against the party responsible for the applicable freight charges. Charges for driver loading and unloading, sorting and segregating of freight by forwarder at shipper's or consignee's dock are separate from, and in addition to these charges, if any.

## DISPUTED CHARGES

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If Customer disputes any charges, including any claim of overcharges, Customer shall pay the amount it deems correct within the normal 15 day time frame and must provide written notice of dispute and documentation supporting its claim within 21 days of receipt of invoice or billing. Customer's failure to dispute charges or assert an overcharge claim in the accordance with provisions and time frame set forth above shall be deemed an acknowledgement by Customer that all such charges are correct.

## DUTY OF CARE

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Trademark Transportation undertakes to arrange for the transportation of customers' freight by motor vehicle. Prior to tendering Customers' freight to any carrier, Trademark Transportation, or its Agent(s), shall obtain a copy of carrier's federal operating authority for interstate shipments and state operating authority for intrastate shipments. Trademark Transportation shall verify carriers' operating authority and federal safety rating via Federal Motor Carrier Safety Administration's ("FMCSA") website "Safersys.org" or other means.

Trademark Transportation will only use carriers with a "Satisfactory", "Conditional" or "unrated" safety rating. Trademark Transportation is in the business of arranging for transportation by motor carrier and is neither trained, licensed nor otherwise qualified to assess, analyze or predict the likelihood of a carrier's safe operations. Trademark Transportation reasonably relies upon the Federal and State Governments to only allow safe carriers to operate on the public roads, and is under no duty to investigate individual carriers' operations.

Trademark Transportation shall obtain an Acord Certificate of Liability Insurance for each carrier. Trademark Transportation shall only use carriers showing a minimum of \$750,000 public liability insurance and \$100,000 cargo insurance. However, Trademark Transportation has no duty to obtain, review or read carriers' insurance policies. Nor does it have any duty to discover policy limitation, exclusions or endorsements not specified on the Acord Certificate. Trademark

Transportation has no duty to discover the value of Customers' freight, or arrange for carriers with "adequate insurance coverage" unless specifically requested in writing to do so by Customer prior to shipment on a shipment by shipment basis.

### EQUIPMENT ORDERED NOT USED

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In the event pickup is requested then canceled on the same day as the scheduled pickup, the party requesting pickup shall be charged a fee for the requested pickup.

- More than 4 hours notification day of pickup: \$25.00 per pallet (\$150.00 minimum, \$300.00 maximum)
- Fewer than 4 hours notification day of pickup: \$50.00 per pallet (\$300.00 minimum, \$600.00 maximum)

### FORWARDER LIABILITY

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Forwarder shall only be liable for cargo loss, damage or delay caused by Forwarder. Tender in alleged good condition and non-delivery and/or shortage, damage or other defect upon delivery does not constitute the standard of proof required as negligence by Forwarder is not presumed. Loss or Damage during transportation, storage, handling or any other services performed under this agreement shall be subject to a maximum valuation limit of \$1.50 per pound, per article, unless otherwise provided for in writing, in advance.

### FUEL SURCHARGE

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When the Interstate Commerce Commission national average self serve fuel price index rises above \$1.15 per gallon a fuel surcharge will apply. The surcharge will be computed every Monday and will apply to all shipments handled during the week from Monday through Sunday. The surcharge is subject to change weekly without notice. It will be in the form of a percentage applied to the invoice total. The surcharge will be computed as follows:

- 1) The national average price index will be determined on Monday and rounded to the nearest cent.
- 2) The \$1.15 per gallon base price will be subtracted from the average. The result equals the increased cost of fuel.
- 3) The increased cost will be divided by a factor of .05 for truckload shipments and .08 for LTL shipments. The truckload amount equals the rate per mile increase. The LTL amount equals the percentage of increase to the invoice.
- 4) The rate per mile will be rounded off to the nearest cent.

## GOVERNING LAW

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Any action against Trademark Transportation, Inc for loss or damage to cargo must be commenced no later than two years from the date of delivery or, in cases where delivery is not made, two years from the date of a reasonable time for delivery. Any other action must be brought within one year of the date on which the cause of action arose.

Any action against Trademark Transportation must be brought in the State or Federal Court for St. Paul, Minnesota.

Any dispute arising from transportation or services provided under this Tariff shall be interpreted in accordance with Federal Statutory, Regulatory or common law regarding interstate transportation, and the laws of the State of Minnesota, where applicable.

## GOVERNING PUBLICATIONS

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The transportation or other services provided are subject to and governed by:

- Mileage guide shall be the PC Miler via practical route and most current version.
- Rules Tariff shall be these Transportation Guidelines.
- Motor transportation contract shall be TDMK Motor Transportation Contract and TDMK Schedule 100.
- Bill of Lading contract shall be Trademark Straight Bill of Lading - Short Form.

## GOVERNMENT FACILITIES AND INSTALLATIONS, CORRECTIONAL FACILITIES AND PRISONS

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Except as otherwise provided, a rate of 80 cents per hundred pounds, subject to a \$8.00 pallet minimum and \$20.00 shipment minimum will be charged in addition to all other applicable rates to such locations.

## HANDLING & UNLOADING CHARGES

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Additional charges are automatically applied at receiving locations with special requirements for delivering to their facilities. These charges are primarily for unloading or handling requirements at these locations which are commonly wholesale grocery and food service distributors. Trademark charges standard rates for delivering to these facilities to help reduce costs to the shipper and make these costs more consistent and predictable.

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*See Addendum A: Named Consignees for a complete list of receivers with these automatic arbitrary charges.*

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All shipments into these named receivers are charged for unloading. Shipments higher than 48" are charged the breakdown rate. Shipments with multiple items shipped per pallet are charged the sort and segregate rate. All of these charges are based on the number of pallets shipped regardless of how many pallets they are repositioned on upon unloading.

The majority of these receivers are charged a Trademark Rate that is consistently lower than what straight lumper fees require. Rates are based on cents per hundred weight with a minimum per pallet and a minimum for shipment. (Pallet minimum is based on 1000 pounds per pallet minimum density. Products under 1000 pounds per pallet should use a full pallet rate.)

| <b>TRADEMARK RATE CHARGES</b>         |            |                        |                          |
|---------------------------------------|------------|------------------------|--------------------------|
| Unloading Only                        | \$0.80 cwt | \$8.00 pallet minimum  | \$20.00 shipment minimum |
| Breakdown (including unloading)       | \$1.25 cwt | \$12.50 pallet minimum | \$25.00 shipment minimum |
| Sort & Segregate (includes unloading) | \$1.95 cwt | \$19.50 pallet minimum | \$39.00 shipment minimum |

There is a small group of receivers who are charged a Lumper Rate. These receivers require exclusive use of their lumper services at a higher rate to help avoid unnecessary delays and additional charges. This Lumper Rate is a standard charge developed by Trademark. The actual amount paid to the lumpers upon delivery is consistently higher than these standard charges. In these cases the shipper is charged Trademark’s Lumper Rate only and Trademark covers the difference in cost.

| <b>LUMPER RATE CHARGES</b>            |            |                        |                          |
|---------------------------------------|------------|------------------------|--------------------------|
| Unloading Only                        | \$0.90 cwt | \$9.00 pallet minimum  | \$22.50 shipment minimum |
| Breakdown (includes unloading)        | \$1.50 cwt | \$15.00 pallet minimum | \$30.00 shipment minimum |
| Sort & Segregate (includes unloading) | \$2.35 cwt | \$23.50 pallet minimum | \$47.00 shipment minimum |

**HAZARDOUS MATERIALS**

Shipments of hazardous materials and hazardous substances are subject to 49 Code of Federal Regulations (CFR), Parts 100-179, as amended and supplemented from time to time.

Trademark Transportation will only accept Hazardous Materials in limited circumstances.. With prior written notice and agreement. Customer agrees that all such HazMats shall be properly packaged, identified and placarded for the rigors of transportation in accord with industry guidelines. In no circumstance does Trademark Transportation undertake to perform or provide for any of the services of an offeror under 49 C.F.R. 171, nor shall it be considered an offer or required to register as such under 49 C.F.R. 107. Trademark Transportation will transmit information received from the shipper to the carrier, but reasonably relies on customer to accurately describe the freight and request the appropriate means of carriage. Customer will be responsible for the cost of decontamination and/or rehabilitation of the container or any other shipping conveyance. Customer shall further indemnify

Trademark Transportation, from the cost of any spill, response, mitigation, fines and penalties, clean up, and ultimate disposal resulting from the transportation, handling or storage of hazardous materials.

Any hazardous material found not in conformance with this section may be warehoused at the owner's risk and expense or destroyed without compensation. A \$50,000 charge as liquidated damages will be assessed against the shipper and/or consignor for each and every shipment of hazardous materials tendered to Trademark Transportation in violation of this section, and such liquidated damages represent the reasonable approximation of Trademark Transportation's anticipated damages.

## HOLDING DELIVERIES

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When requested and if operating conditions permit, the Forwarder may delay delivery of a shipment, at any time prior to or at the point of delivery. The following additional charges will be assessed by the Forwarder for each day of delay, exclusive of Saturdays, Sundays, or legal holidays. Chargeable days will be computed on total days from pickup to delivery, minus the Forwarder's scheduled days for transit involved. Forwarder reserves the right to place products into other storage facilities and, or arrange for interline delivery at the expense of the party responsible for freight charges.

- Truckloads at \$300.00 per day or fraction thereof.
- LTL at \$25.00 per pallet subject to a minimum charge of \$50.00, and a maximum of \$300.00 per shipment per day.

## INDEMNIFICATION

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The Customer, Consignor, Consignee, Beneficial Owner and/or any other party(s) to the transaction shall be liable, jointly and severally, to pay or indemnify Trademark Transportation for all claims, fines, penalties, damages, reasonable attorney's fees, costs or other sums which may be incurred, suffered or disbursed by Trademark Transportation by reason of any violation of any of the terms and conditions contained in this Tariff, or the underlying motor carriers' applicable tariffs or publications, or any other default of the Customer, Consignor, Consignee, Beneficial Owner or other such party with respect to a shipment.

Customer agrees to defend, indemnify and hold Trademark Transportation harmless for all costs arising out of any spill, response, mitigation, fine or penalty, clean up (including decontamination and/or rehabilitation of the equipment) or ultimate disposal of cargo, including hazardous materials which result from a failure by the Customer, Consignor or Beneficial Owner to properly package, or in regard to truck load shipments, load, secure, placard or otherwise properly prepare the shipment for transportation. Such a failure shall include, but is not limited to, the failure to properly package, load, block or brace the freight; the failure to properly document or placard or describe the freight.

Additionally, Customer agrees to indemnify Trademark Transportation, for any costs, fines or penalties arising out of the transportation of an overweight shipment or container. Though Customer is entitled to seek indemnification from others ultimately responsible, the responsibility of others shall in no way relieve Customer of its duty to indemnify Trademark Transportation. Additionally, Trademark Transportation shall be entitled to reasonable attorney fees and costs for enforcement of these terms.

### **INJURY TO PERSONS OR PROPERTY**

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Trademark Transportation shall not be liable to Customer or any other entity for injury to persons or property unless such injury is solely attributable to Trademark Transportation's acts or omissions. To the extent that Customer, its employees, agents or subcontractors causes or contributes to such injury it shall defend, indemnify and hold Trademark Transportation harmless from any claims, suits, causes of action, including reasonable attorney fees and costs. Additionally, Trademark Transportation shall be entitled to reasonable attorney fees and costs for enforcement of these terms.

### **INSIDE DELIVERY**

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Inside deliveries to doorways not immediately adjacent to the forwarder's vehicle will be moved by a connecting interline carrier. Customer will be charged the cost of interline, plus 15%.

### **KOSHER PRODUCTS**

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Kosher products or those blessed by religious ceremony shall be transported with all reasonable care and expediency under the provisions of reasonable dispatch. Forwarder shall not be held liable for failure to meet dates and times for product rewashing or blessing. Further, charges will be issued to the party responsible for original freight charges for reconsignment, reshipments, returns, detention, storage and interlining dictated as a result of missing or readjusting schedules to meet such timetables.

### **LATE FEES & PENALTIES**

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Forwarder will not be responsible for any charges levied by anyone for failure to perform any service other than the transportation of goods whether implied by an effort to accommodate the shipper and receiver or not. Such fees may include, but are not limited to a failure to make or meet appointment times or a failure to notify of a change in schedule.

## **LIABILITY FOR LOSS OR DAMAGE OF EQUIPMENT**

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The Customer, Consignor or Consignee is responsible for any loss or damage to equipment (trailer, chassis, container) while in their possession or proximately caused by Customer, Consignor or Consignee's acts, including by not limited to improper packaging, loading, bracing, securing or positioning of the freight. Payment for such loss or damage will be the greater of the replacement cost or actual cash value at the time the equipment is damaged or lost. Customer, Consignor or Consignee shall indemnify Trademark Transportation and hold Trademark Transportation harmless for any and all actions resulting from such losses and any resultant action by the damaged carrier.

## **LIABILITY FOR LOSS OR DAMAGE OF FREIGHT**

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Trademark Transportation shall not be liable for loss of or damage to freight except as provided herein. Unless the loss or damage is the direct result of negligence of Trademark Transportation or its employees, Trademark Transportation shall not be liable. Negligence of underlying Carriers shall not be imputed to Trademark Transportation.

In no event shall Trademark Transportation be liable for special, consequential, or punitive damages, or for any amount in excess of actual damage to or loss of the commodity transported subject to the limitations of liability and/or maximum declared values set forth below. No claim under the minimum claim threshold amount of \$300.00 shall be filed against Trademark Transportation or Trademark Transportation's underlying Carriers.

All freight should be packaged to withstand the rigors of cross-dock handling and motor transport. The Customer is responsible for complying with all rules, regulations, and recommendations relating to the packaging, loading, blocking, and bracing of commodities as contained in National Motor Freight Classifications (NMFC) publications

Matters relating to loss or damage claims and suits against underlying carriers that are not covered by this Tariff, or the applicable tariff or other governing publications of the Carriers are governed by the Uniform Straight Bill of Lading regardless of the terms on the actual bill of lading used.

In the event there is partial loss or damage to a shipment that does not render it worthless, it is the duty of the Consignor to arrange for acceptance of the freight in its damaged condition. The Customer, Consignor, Consignee and/or Beneficial Owner must mitigate the loss of damage and may file a claim only for the amount of damage sustained, subject to any other claim provisions. Shipments that have been only partially damaged and that retain a substantial value may not be abandoned to the carrier.

Trademark Transportation does not accept certain goods for transportation or distribution as set forth in the "Prohibited Articles" Section. Trademark Transportation assumes no liability whatsoever for such goods if tendered to Trademark Transportation in violation of this Tariff. Additionally,

liquidated damage provisions may apply if prohibited articles are tendered to Trademark Transportation – see Hazardous Materials section.

### LIGHT OR BULKY FREIGHT

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When the weight of a floor loaded LTL shipment loaded securely into a vehicle and so as it will not inhibit air circulation, or as designated by the consignor, averages less than 1000 pounds per lineal foot of trailer floor space occupied, the minimum weight of such freight shall be computed on basis of 1000 pounds per lineal foot of floor space occupied. When the weight of a palletized LTL shipment similarly loaded averages less than 1500 pounds per 40"x48" pallet position the minimum weight for such freight will be computed on the basis of 1500 pounds per pallet position occupied. Charges on such LTL shipments shall be assessed on the minimum weight so computed or the actual weight, if greater, at the rate applicable thereto.

### LOADING OR UNLOADING

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Loading of shipments onto the Forwarder's vehicle shall be performed by the consignor and the unloading of shipments from the Forwarder's vehicle shall be performed by the consignee. Upon request of the party responsible for the regular freight charges, Forwarder will furnish adequate labor to perform loading or unloading.

See *Handling and Unloading* for charges.

### MALLS, MARKETS & STORES

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When requested by the consignor or consignee, and operating conditions permit, the forwarder will move or arrange for shipments or portions of shipments to be moved to a position or place other than a dock suitable for loading and unloading the forwarder's vehicles. Deliveries to stores, markets and malls can be handled in two ways, based on Customer's request:

- Tailgate delivery - Forwarder moves the product to the rear of the trailer. Consignee must unload and bring the product inside. Charge to move product to the tailgate is 150 cents per 100 pounds, subject to a \$15.00 pallet minimum and \$30.00 shipment minimum.
- Offload delivery - Forwarder moves the product to the tailgate and unloads it to the ground adjacent to the trailer. Consignee must bring product inside. Charge to offload is 235 cents per hundred pounds with a \$23.50 pallet minimum and \$47.00 shipment minimum.

For the purposes of this item driver loading, unloading, sorting and segregating are included. Driver and vehicle detention rules however, are not included and will apply in addition to the above charges. Inside deliveries will be interlined with a connecting carrier (*see Inside Delivery*).

## MARKING SHIPMENTS & PRODUCT

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Every pallet load of product tendered for transportation must be clearly marked with the name, city and state of the consignee. Every pallet shall also be numbered and marked with the total number of pallet loads for each consignee. For example if a consignee is to receive two pallets the pallets should be numbered 1 of 2 and 2 of 2. Additionally, all packages of product must be labeled such that they are easily identified with the respective shipper, packing lists, bills of lading and shipping orders. Mixtures of different items must not be packed in the same container, unless each item is listed both on the outside of the container and on the bill of lading with the proper piece count noted. Any commodity description and temperature instructions on the bill of lading must match precisely with markings on the packages. If packages and bill of lading do not match, Forwarder assumes no claim liability whatsoever. Shipments found in possession of Forwarder not marked in accordance with these rules will be subject to sort and segregate charges, delay charges and possible delays in transit. In addition Forwarder may return shipment(s) to consignor without claim liability, place product in storage and reship product as necessary to reconcile shipping errors at the expense of the party responsible for freight charges as long as normal care and handling are taken by Forwarder.

## MAXIMUM WEIGHT

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The maximum allowable weight per shipment shall be 42,500 pounds, gross weight including necessary packing and shipping equipment.

## MINIMUM CHARGE

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The minimum charge for a straight or mixed shipment will be the applicable rate at the actual weight or minimum weight specified, whichever is greater. Any deficit between actual weight and the minimum weight specified will be charged for at the rate applying to the lowest rated article in the shipment.

## MITIGATION

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Both Consignor and Consignee have the duty to mitigate damages in case of cargo loss, damage or delay, which includes the duty to accept and salvage. The standard shall be the “practically worthless” test, so that only if the cargo is practically worthless for the intended use are the consignor and/or consignee absolved from the duty to accept and mitigate. If Consignor and/or consignee fail to accept salvageable cargo they shall be considered to have abandoned it and shall only be entitled to whatever salvage value the carrier or others can collect.

### MIXED SHIPMENT – TRUCKLOAD OR VOLUME

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When a number of different articles for which truckload or volume rates are provided when in straight truckload or volume shipments, are shipped at one time by one consignor on one bill of lading as a mixed volume or mixed truckload shipment, the entire shipment will be charged at the actual weight and at the applicable truckload or volume rate for each of the respective articles, subject to the highest truckload or volume minimum weight for any article in the mixture. Any deficit in minimum weight shall be charged for at the rate applicable to the lowest rated article in the mixture.

### NEW YORK CITY CHARGE

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Pickups and deliveries in the New York City area (Zips 100-108, 110-119) will incur an additional charge of \$75.00 per delivery. This charge covers fees and additional expenses to deliver in this area. This charge is in addition to normal rates, fuel surcharge or handling charges.

### NIGHT DELIVERY

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Consignees requiring a night delivery will be subject to Trademark's Lumper rate charges.

See *Unloading and Handling* for charges.

### OVERFLOW CHARGE

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When the Forwarder is provided a shipment on one bill of lading, and at one time, where the lading cannot be loaded in one trailer, the portion of the shipment that cannot be loaded into the first trailer, either because of weight or cubic volume of the lading, will be considered an overflow. The overflow will be treated as a separate shipment and charges will be assessed as such.

### PACKING OR PACKAGING - SHORTAGE

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Forwarder will not be responsible for shortage on shipments which are banded, strapped, netted, shrink-wrapped or otherwise secured to bins, pallets, platforms or skids when such securing material is found to be intact at the time of unloading by consignee. Forwarder will only be responsible for the number of bins, pallets, platforms or skids on such shipments.

### PACKING REQUIREMENTS

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Shipments must be in barrels, baskets, boxes, cartons, crates, hampers or kegs, sacked or wrapped, and any shipment or part thereof deemed by the Forwarder to be not in proper condition for safe transportation will be refused. Products must be packaged such that it must bear its own weight

when stacked from the floor to the ceiling of a trailer on pallets. Further, products must withstand warehouse and terminal crossdock handling, loading and unloading.

Any shipment or part thereof deemed by Trademark Transportation, Inc or the Carrier not to be in proper condition for safe transportation will be refused. However, failure of Trademark Transportation, Inc or the Carrier(s) to reject a shipment that does not comply will not make Trademark Transportation, Inc or such carrier(s) responsible for loss, damage, or injury resulting from improper loading, packing or securing. Where Trademark Transportation, Inc or the Carrier undertakes to re-package, re-wrap, re-load, re-block or re-brace or otherwise re-furbish a shipment, Customer will be charged 195 cents per hundred pounds, subject to a \$19.50 pallet minimum and \$19.50 shipment minimum.

In no instance should the gross weight of the container and its contents exceed state and federal laws governing weight. Customer has the responsibility to assure that the Consignor and/or Beneficial Owner adequately loads, blocks, and braces the shipment.

Containers are designed for uniform weight distribution. Lading weight in containers must be evenly distributed both crosswise and lengthwise. It must be equally distributed between the rear tires and the king pin.

Lading is to be secured in such a manner to prevent it from shifting either crosswise or lengthwise during transport where it would affect safe weight distribution or position in the container., Lading shall always meet all applicable Federal and State standards.

In loading heavy or concentrated weight commodities, no more than 25,000 pounds may be uniformly distributed over any 10 linear feet within the container. On lading with small supporting bases, no more than 3,500 pounds may be concentrated on a floor area of less than 25 square inches (minimum dimension 3.1 inches by 8 inches) with such areas no closer than 35 inches to one another. Container doors are not designed or constructed to restrain longitudinal movement of lading under normal railroad operating conditions. Lading must be loaded and restrained adequately to prevent it from exerting excessive pressures against doors, walls, or ends of trailers/containers that might cause their failure.

Customer, Consignor and Beneficial Owner are liable to Trademark Transportation, Inc or any other involved party for damages, personal injuries, or death resulting from failure to comply with equipment specifications and loading standards as contained in the Uniform Freight Classification and/or from a failure of the Customer, Consignor, or Beneficial Owner to load and brace the lading properly; if such defect or failure is a proximate cause of the damage, injury, or death. Acceptance of a sealed trailer or container by any underlying carrier for transportation does not constitute a waiver of Trademark Transportation, Inc's right to seek indemnity from Customer, Consignor or Beneficial Owner for noncompliance with its obligations.

Customer agrees to indemnify and hold Trademark Transportation, Inc harmless from the loss or damage described above and for the cost of defending claims or suits filed against Trademark

Transportation, Inc for such damage, including reasonable attorney fees and costs incurred, including attorney's fees and cost for enforcement of this agreement.

### **PALLET EXCHANGE**

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Except as otherwise provided, Forwarder will not exchange pallets. Palletized shipments will be accepted for transportation and pallets will be delivered to the consignee as part of the shipment provided that the pallets and pallet weight are included with the shipment description on the bill of lading. Pallets will become the property of the Forwarder when they are not so noted on the bill of lading. Upon special request, Forwarder will attempt to furnish pallets for exchange when available and under the following conditions:

- Pallets may be retained by the consignor or consignee provided that they are immediately replaced with a like number of pallets of identical size and construction, either loaded or empty.
- When the consignor desires that the Forwarder maintain pallet exchange records and maintain an even pallet balance, over time, exchanges must be clearly noted and initialed by the driver on the bill of lading. Separate pallet slips will not constitute a record of uneven pallet exchanges. Forwarder will maintain a record of uneven exchanges and undertake to return excess pallets received at no charge provided that 1) pallet returns can be accomplished without expense and at the Forwarder's convenience and 2) the Forwarder is compensated at a rate of \$10.00 per pallet, per shipment, by the party responsible for freight charges, for pallets supplied to the consignor and not returned by the consignee.
- Under no circumstances will deductions in payment be permitted for outstanding pallet balances owed by the Forwarder.

### **PAYMENT OF FREIGHT CHARGES**

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Customer is responsible for all charges and fees relating to a shipment, including but not limited to transportation charges, handling, storage, detention, and service charges, regardless of any payment instructions to the contrary. In the event of default by Customer, and in addition to the lien rights set forth above, (See Credit and Collections Section) Trademark Transportation, Inc reserves the right to collect all such charges from the Consignor, Consignee, Beneficial Owner or other party to the transaction, and such parties' liability for freight and other charges shall be joint and several, regardless of the payee designated on the bill of lading or other documents. The provisions of "Section 7" of the National Motor Freight Classification's ("NMFC") Uniform Straight Bill of Lading shall not apply. Trademark Transportation, Inc may, at its sole discretion, initiate collections (with or without discount application) as provided above.

By special arrangement, as a courtesy to the Customer, Trademark Transportation, Inc may undertake "Collect" or third party payable shipments, though such shipments may be subject to additional charges or a different scale of rates. Collect or third party freight charges shall be issued to the party specified on the shipping documents, including, but not limited to, bills of lading. Any unpaid collect or third party freight charges remain the responsibility of the Customer regardless of any notations to the contrary on the bill of lading. The Customer warrants payment shall be made to Trademark Transportation, Inc within 15 days of presentation of its freight charges.

Payment of freight and other charges are not subject to deductions, offset or withholding for any reason whatsoever.

### PICKUP OR DELIVERY SERVICE

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Rates named include pickup and delivery service at all points within the limits of the cities, towns or villages, from, to or between which the rates apply.

### PRECEDENCE OF RATES

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Where, in rate tables governed by this schedule, rates are published in the same section as applying from a specific point and/or from a county and/or from a zone and/or from a state, the rate to apply shall be the rate published from the most specific point. For example: If rates were published as applying for a specific account, to or from a specific address, from St. Paul (Ramsey County), MN, as well as from Zone 1 and the state of Minnesota, and region 5 precedence of rates in numerical order will be:

- 1) Specific named account
- 2) To or from a specific address
- 3) City (St Paul), including the local commercial zone and suburban areas
- 4) County (Ramsey)
- 5) Five digit zip code
- 6) Three digit zip code
- 7) State (Minnesota)
- 8) Area (11), including a grouping of three or five digit zip codes
- 9) Region (Upper Midwest)

Rates shall be amended from time to time. The latest and more recent date of issue will take precedence over rates issued previously whether in the possession of the party requesting transportation service or not.

Trademark Transportation, Inc's offer of rates is based on the availability of equipment, lanes, return freight and other factors. As each customer's rates are based on a variety of factors and services required, Trademark Transportation, Inc cannot offer "most favored nation" provisions or guarantee parity of rates for different customers. In all cases, Trademark Transportation's rates are based on the underlying carrier having a maximum of \$1,000,000 public liability and \$100,000 cargo insurance. Upon prior written request, Trademark Transportation, Inc can attempt to procure carrier(s) with greater coverage, at an additional cost.

## **PRISONS, CORRECTIONAL FACILITIES, GOVERNMENT FACILITIES AND INSTALLATIONS**

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Except as otherwise provided, a rate of 80 cents per hundred pounds, subject to a \$8.00 pallet minimum and \$20.00 shipment minimum will be charged in addition to all other applicable rates to such locations.

## **PROHIBITED ARTICLES**

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Trademark Transportation, Inc WILL NOT ACCEPT the following articles:

- Accounts, bills, deeds, evidences of debt, currency, money, securities, notes, letters of credit, passports, tickets or other valuable papers;
- Bullion, precious stones, jewelry or other similar valuables, paintings, statuary, or other works of art, furs, or garments trimmed with fur;
- The following hazardous materials, as described in Bureau of Explosives Tariff 6000 series:
- Liquid corrosive materials, in excess of 25 percent of total weight
- Explosives, Class 1.1, 1.2, or 1.5
- Nitrostarch, wet or dry
- Radioactive materials (as described in Item UFC 6000-A)
- Sodium compounds (as covered by STCC 28-123 of STCC Tariff 6001-K)
- Poisons
- Metal Coils
- Hazardous Wastes - Regulated by the DOT and EPA, as described in Part 261, Title 40, Code of Federal Regulations Trademark Transportation, Inc DOES NOT HANDLE HAZARDOUS WASTE UNDER ANY CIRCUMSTANCES.
- Corpses, cremated or disinterred remains
- Live Animals or Birds

Additional commodities may also be restricted in individual rail and motor carrier's rules circular(s). A \$50,000 charge as liquidated damages will be assessed against the shipper and/or consignor for each and every shipment of prohibited articles (excluding hazardous material which are subject to \$50,000 liquidated damages charge) tendered to Trademark Transportation, Inc in violation of this section, and such liquidated damages represent the reasonable approximation of Trademark Transportation, Inc's anticipated damages.

### **PROOF OF DELIVERY AND BILL OF LADING COPIES**

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A bill of lading copy will be issued with the transportation invoice when requested in advance and when the shipper has provided a minimum of 3 copies of the bill of lading or shipping order with the shipment. The Forwarder reserves the right to issue its bill of lading contract for transportation services rendered. Proof of delivery shall only be submitted upon special request at a rate of \$3.00 each. A proof of delivery shall not be issued as a condition for payment. A signed photocopy of a delivery receipt will serve as reasonable evidence of delivery.

### **PROTECTIVE SERVICE**

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Forwarder will provide adequate protection for the preservation of perishable commodities against heat or cold. Unless specified otherwise, the rates for transportation published in this schedule include the cost of such protection.

- The Forwarder will not be held responsible for maintaining any temperature in transit, other than zero degrees, 35 degrees Fahrenheit or the ambient air temperature. The shipper may specify only one of the foregoing temperatures per shipment or consolidation of shipments. The bill of lading must be clearly noted with one of the foregoing temperatures regardless of how the order information is transmitted in advance. In lieu of such notations, or if the bill of lading disagrees with one of the foregoing temperatures, the Forwarder will make its best determination of temperature and handle it as accordingly such, without liability.
- In connection with mixed shipments of frozen and other than frozen articles the Forwarder shall only provide for the holding of the articles during the course of their transportation at the nearest temperature specified in paragraph (a) which is no higher than the temperature of the unfrozen article contained in the shipment which has the highest temperature at the time of its acceptance by Forwarder.
- Shippers may, at their own expense, furnish refrigerants in the form of liquid or solid carbon dioxide or similar refrigerants, other than wet ice, in addition to that provided by the Forwarder's mechanical refrigerated equipment. Such additional refrigerant will be transported without additional charge.

- Fresh meats packed in barrels, tubs or bins must contain a 4 inch minimum diameter cardboard cylinder in the center and extending the full height of each packing unit. It must be supplied and filled with dry ice by shipper. Such products shall be handled and transported at 35 degrees Fahrenheit.
- The Forwarder does not agree to deliver shipments tendered at any lower temperature than that at which the shipment is originally tendered to the Forwarder.
- Unless otherwise specified in writing, the Forwarder will not be held responsible for the condition of any temperature sensitive articles which, in order to maintain the integrity of the product, cannot withstand 1) multiple pickup and delivery service which requires the trailer doors to remain open during loading and unloading, 2) periods of actual warehouse loading and unloading at any pick up or delivery location en route, and 3) Forwarder's terminal crossdock activity. Each of these conditions subject the product to uncontrolled ambient air temperatures. Such commodities specifically include, but are not limited to, frozen baked goods, ice, ice cream, individually quick frozen (IQF) commodities, and frozen novelties. The same will apply to articles which cannot withstand periods in transit at or below 32 degrees and or articles which cannot withstand periods in transit at or above zero degrees while being transported in a dual temperature environment. Refrigeration will be set to maintain either zero degrees or 35 degrees Fahrenheit to maintain one temperature environment. Portable bulkheads, blankets, dry ice, heaters, curtains, dunnage and other equipment or ordinary and proven means will be employed to maintain the other temperature environment.
- The Forwarder does not guarantee or assert the condition of return goods with respect to condition or product temperature under any circumstances.

## REASONABLE DISPATCH

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General service schedules may be issued from time to time as a guideline to reflect transit times which can typically be accomplished. Specific guarantees shall only be accepted in writing, in advance, with all conditions, charges and penalties endorsed by the Forwarder. Otherwise, Forwarder is not bound to transport property in any particular vehicle, in time for any particular market or markets, other than according to reasonable dispatch. It shall be dictated, among other things, by a) the nature of LTL transportation, b) safe and legal transportation operating requirements, and c) multiple shipper, receiver and customer requirements and parameters.

Further Trademark Transportation, Inc does not warrant that shipments en route will remain in continuous transit. Customer understands and acknowledges that, from time to time, shipments may be delayed while en route.

Trademark Transportation, Inc's offer to arrange, provide or perform transportation service is subject to availability of appropriate equipment, which will be determined by Trademark Transportation, Inc, as soon as possible after service is requested. Neither Trademark

Transportation, Inc, nor the underlying Carriers shall be liable for suspension of service or operations that result from Acts of God, war, terrorism, insurrection, strikes, derailment, or any other cause beyond their control. The service standards for Trademark Transportation, Inc's underlying carriers are not guaranteed service standards, nor shall they be construed as such by any Trademark Transportation, Inc's Customer, Consignor, or Consignee.

Trademark Transportation, Inc will not be responsible for any charges levied by anyone for failure to perform any service as to the timeliness of pick-up or delivery, whether implied by an effort to accommodate the Customer, Consignor and Consignee or not. Such fees may include, but are not limited to a failure to make or meet appointment times or a failure to notify of a change in schedule.

In no event shall Trademark Transportation, Inc be liable for any special, incidental, consequential or punitive damages, including without limitation, damages due to delay, loss of profits, rental or income, travel, labor or expense, interest, costs or attorney fees, whether or not Trademark Transportation, Inc, its Regional Service Providers or Line-Haul Carrier had knowledge that such damages might be incurred.

## RECONSIGNMENT OR DIVERSION

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Shipments may be diverted or reconsigned at point of original destination or at some intermediate point subject to the following:

- A charge of \$50.00 shall apply in addition to all other applicable charges.
- Shippers Order or Order Notify shipments will not be diverted or reconsigned until the bill of lading properly endorsed by the party to whose order the shipment is reconsigned, is surrendered for cancellation, for endorsement of diversion or reconsignment, or for exchange.
- The rate on a shipment diverted in transit or at original destination shall be \$50.00 providing the shipment is reconsigned to the commercial zone of the original destination. A truckload shipment reconsigned to another commercial district shall be rated on the basis of service from origin to the new destination and shall be subject to circuitry via the point of diversion. An LTL shipment reconsigned to another commercial district shall be rated from point of origin to original destination, regardless of point of diversion, plus interline costs or applicable LTL rates herein from the point of diversion to new destination.
- If reconsignment results in a vehicle delay, refusal, redelivery, additional stop in transit, storage or return then such charges will apply in addition to all other applicable charges.

## REDELIVERY SERVICE

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When, through no fault of the Forwarder, a shipment cannot be delivered when tendered, or after the Forwarder has made reasonable effort to effect delivery and redelivery is requested, charges for

each additional delivery, or attempted delivery, will be assessed at the rates named in this schedule plus applicable return to terminal or agent charges and storage charges.

### **REFUSED OR UNDELIVERED SHIPMENTS**

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Shipments which have been refused, or which for any reason the Forwarder is unable to deliver, will be placed at the forwarder's terminal, agent's facility or qualified warehouse. If practical, Forwarder will make attempt to contact the consignor for alternative instructions at the time delivery is attempted but, shall not be bound to do so. Forwarder however, shall issue notice to consignor within one business day after Forwarder has been unable to effect delivery. Unclaimed product will be considered as refused after 3 days from such notification. Except in the case of product damage caused by the Forwarder, such shipments shall be subject to a flat fee of \$50.00 plus a stop charge of \$50.00 to place product on hold within the original destination commercial zone. If the product is placed in a location other than the commercial zone of the original shipment destination charges will apply as provided herein to reship product to the nearest practical location en route. Shipments shall also be subject to applicable storage, redelivery, reconsignment, or return charges.

### **RELEASED VALUATION**

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Unless otherwise expressly stated, all rates quoted by Trademark Transportation, Inc are "released valuation rates" with an agreed limitation of liability for loss, damage or delay as set forth of above, (See Liability Section) regardless of actual value, notations on the bill of lading, customs declarations or other shipping or storage documents notwithstanding. Only upon written declaration, signed and acknowledged by Trademark Transportation, Inc, and payment of higher rates shall shipment move or be stored at valuations in excess of those stated above – up to a maximum declared value as set forth in the Liability section. Any attempt to declare a value in excess of maximum declared value shall be null and void, nor shall Trademark Transportation, Inc or the underlying carrier have any liability on any shipment in excess of such amounts.

### **RESIDENTIAL DELIVERIES, CHURCHES AND SCHOOLS**

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When requested by the consignor or consignee, and operating conditions permit, the forwarder will move or arrange for shipments or portions of shipments to be moved to a position or place other than a truck dock suitable for loading and unloading the forwarder's vehicles.

- For the purposes of this item, driver loading, unloading, sorting and segregating are included. Driver and vehicle detention rules however, are not included and will apply in addition to inside delivery.

- The forwarder will, at its discretion, put such shipments into temporary storage for later delivery and, or interline such shipments, if such handling will result in a delay to the forwarder's operations.
- Deliveries to private residences, schools and churches will be subject to a charge of 150 cents per one hundred pounds, subject to a \$15.00 pallet minimum and \$30.00 shipment minimum.

## ROUTING

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Unless otherwise specified in writing, the route, mode of transportation and/or particular Carrier utilized shall be at the sole discretion of Trademark Transportation, Inc. Trademark Transportation, Inc reserves the right to route or re-route shipments via the route, mode of transportation, or Carrier which in its judgment will provide the most expeditious service to destination. Trademark Transportation, Inc shall not be obligated to provide advance notice of the means selected to effect delivery.

## SCHOOLS, CHURCHES AND RESIDENTIAL DELIVERIES

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When requested by the consignor or consignee, and operating conditions permit, the forwarder will move or arrange for shipments or portions of shipments to be moved to a position or place other than a truck dock suitable for loading and unloading the forwarder's vehicles.

- For the purposes of this item, driver loading, unloading, sorting and segregating are included. Driver and vehicle detention rules however, are not included and will apply in addition to inside delivery.
- The forwarder will, at its discretion, put such shipments into temporary storage for later delivery and, or interline such shipments, if such handling will result in a delay to the forwarder's operations.
- Deliveries to private residences, schools and churches will be subject to a charge of 150 cents per one hundred pounds, subject to a \$15.00 pallet minimum and \$30.00 shipment minimum.

## SORTING & SEGREGATING

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Additional charges are automatically applied at receiving locations with special requirements for delivering to their facilities. These charges are primarily for unloading or handling requirements at these locations which are commonly wholesale grocery and food service distributors. Trademark charges standard rates for delivering to these facilities to help reduce costs to the shipper and make these costs more consistent and predictable.

*See Addendum A: Named Consignees for a complete list of receivers with these automatic arbitrary charges.*

All shipments into these named receivers are charged for unloading. Shipments higher than 48" are charged the breakdown rate. Shipments with multiple items shipped per pallet are charged the sort and segregate rate. All of these charges are based on the number of pallets shipped regardless of how many pallets they are repositioned on upon unloading.

The majority of these receivers are charged a Trademark Rate that is consistently lower than what straight lumper fees require. Rates are based on cents per hundred weight with a minimum per pallet and a minimum for shipment. (Pallet minimum is based on 1000 pounds per pallet minimum density. Products under 1000 pounds per pallet should use a full pallet rate.)

| <b>TRADEMARK RATE CHARGES</b>         |            |                        |                          |
|---------------------------------------|------------|------------------------|--------------------------|
| Unloading Only                        | \$0.80 cwt | \$8.00 pallet minimum  | \$20.00 shipment minimum |
| Breakdown (including unloading)       | \$1.25 cwt | \$12.50 pallet minimum | \$25.00 shipment minimum |
| Sort & Segregate (includes unloading) | \$1.95 cwt | \$19.50 pallet minimum | \$39.00 shipment minimum |

There is a small group of receivers who are charged a Lumper Rate. These receivers require exclusive use of their lumper services at a higher rate to help avoid unnecessary delays and additional charges. This Lumper Rate is a standard charge developed by Trademark. The actual amount paid to the lumpers upon delivery is consistently higher than these standard charges. In these cases the shipper is charged Trademark’s Lumper Rate only and Trademark covers the difference in cost.

| <b>LUMPER RATE CHARGES</b>            |            |                        |                          |
|---------------------------------------|------------|------------------------|--------------------------|
| Unloading Only                        | \$0.90 cwt | \$9.00 pallet minimum  | \$22.50 shipment minimum |
| Breakdown (includes unloading)        | \$1.50 cwt | \$15.00 pallet minimum | \$30.00 shipment minimum |
| Sort & Segregate (includes unloading) | \$2.35 cwt | \$23.50 pallet minimum | \$47.00 shipment minimum |

**SPECIAL SERVICE CHARGES, ASSESSORIAL CHARGES**

Assessorial charges include any expense not otherwise specifically included in the transportation rate. When the forwarder is requested to make a delivery to terminal markets, piers, or warehouses or any other location where an entry fee or gate fee is required, and when timely and effective transportation necessitates the use of interlines, storage, driver load, unload, lumper services or results in an assessorial service and expense, the Forwarder will advance the assessed fees or charges. Unless otherwise stated, assessorial charges are applied per occurrence, per shipment. They are in addition to all other applicable charges. They are not subject to prior notice or approval. They are due and payable by the party responsible for the regular freight charges.

## **STOPOFFS – TO PARTIALLY LOAD OR UNLOAD**

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Shipments may be stopped in transit to partially load or complete loading or to partially unload subject to the following provisions:

- Stops for partial loading or unloading will be permitted only at points within the scope of carrier's operations.
- A shipment with stops in transit must be from one shipper at one point of origin to one consignee at one destination, on one master bill of lading.
- The master bill of lading or shipping order must show the point or points at which shipment is to be stopped for partial loading or unloading together with a complete description of the kind and quantity of freight to be loaded or unloaded at each point and the name and address of the party from or to whom each portion is to be received or delivered. If receipt or delivery is made at two or more different locations at the same point (city, town or village) each pick-up or delivery will be considered as a separate stop in the application of this rule.
- Stops to partially unload will be permitted only at points beyond those at which the last stop for partial loading is made.
- Transportation charges shall be assessed on basis of actual weight of the entire shipment, but not less than the applicable minimum weight, and at the rate or rates, in effect on date of shipment, for the applicable distance from point of origin through the stop-over point or points to the final destination, plus charge provided in paragraph (g).
- An additional charge shall be made for each stop to partially load or unload a shipment, exclusive of the initial pick-up stop and final delivery stop. The charge will be \$75.00 each.
- Freight charges on a shipment stopped to partially unload must be prepaid or guaranteed by the shipper. The shipper may show on the bill of lading the name of one party from whom the entire freight charges, including the stop-off charges, shall be collected, which must be a party to whom a portion of the shipment is to be delivered.
- Stopping in transit for partial unloading will not be permitted on a shipment when consigned "C.O.D.", "To Order", or to be delivered on shipper's written order, or where accompanied by any instructions from the consignor requiring the surrender or presentation of the bill of lading, a written order or any other document as a condition precedent to delivery at stopoff point, or moving on a Uniform Bill of Lading having section 7 thereof signed.

## **STORAGE**

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Customer may store product at one of Forwarder's facilities at a rate of \$25.00 per pallet, subject to a \$50.00 minimum until the end of the calendar month. Charge is renewed the following month. Customers with large volumes may be quoted individually upon request. Crossdock handling

charges will be assessed to move product into or out of the facility at a rate of \$15.00 per pallet, subject to a \$30.00 minimum.

## STORES, MARKETS & MALLS

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When requested by the consignor or consignee, and operating conditions permit, the forwarder will move or arrange for shipments or portions of shipments to be moved to a position or place other than a dock suitable for loading and unloading the forwarder's vehicles. Deliveries to stores, markets and malls can be handled in two ways, based on Customer's request:

- Tailgate delivery - Forwarder moves the product to the rear of the trailer. Consignee must unload and bring the product inside. Charge to move product to the tailgate is 150 cents per 100 pounds, subject to a \$15.00 pallet minimum and \$30.00 shipment minimum.
- Offload delivery - Forwarder moves the product to the tailgate and unloads it to the ground adjacent to the trailer. Consignee must bring product inside. Charge to offload is 235 cents per hundred pounds with a \$23.50 pallet minimum and \$47.00 shipment minimum.

For the purposes of this item driver loading, unloading, sorting and segregating are included. Driver and vehicle detention rules however, are not included and will apply in addition to the above charges. Inside deliveries will be interlined with a connecting carrier (see Inside Delivery).

## SUBSTITUTED SERVICE

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Unless otherwise specified to the party requesting transportation service in advance of shipping, all services performed by the Forwarder and the duties and obligations of the Forwarder shall be that of a Freight Forwarder. The particular mode of transportation utilized shall be at the sole discretion of the Forwarder and the Forwarder shall not be obligated to provide advance notice of the means selected to effect delivery.

## SUIT TO COLLECT CHARGES

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In addition to its lien rights, Trademark Transportation, Inc shall be entitled to sue in its own name for any and all unpaid freight and other charges, including discount revocation. In the event that Trademark Transportation, Inc determines that suit must be filed to collect charges, the amount sued upon shall include interest, reasonable attorney fees and other collection costs set forth above. (See Credit and Collections section). The parties acknowledge and agree that the limitations period set forth at 49 U.S.C. §14705 is not applicable to Trademark Transportation, Inc, and to the extent applicable to Trademark Transportation, Inc is expressly waived. The time period for bringing any action to collect its charges shall be governed by the laws of the State of Minnesota regarding actions upon a written contract.

## **TAILGATE SERVICE**

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Unloading is the responsibility of the receiver. When requested by the consignor or consignee, and when safe and practicable operating conditions permit, the Forwarder may move shipments or portions of shipments from or to the rear of the trailer to accommodate loading or unloading at a rate of 150 cents per hundred pounds, subject to a \$15.00 pallet minimum and \$30.00 shipment minimum. The Forwarder shall be permitted to interline or put such shipments into temporary storage for later delivery pick up or delivery, at the expense of the party responsible for the regular freight charges, if such handling will result in a delay to the Forwarder's operations. The charges provided in this item will be in addition to all other lawful charges and shall be paid by the party responsible for the regular freight charges.

## **UNCLAIMED OR REFUSED FREIGHT**

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Freight not removed by the receiver after the freight has been made available and notice of the arrival at destination has been sent may be kept by Trademark Transportation, Inc and will be subject to storage charges. At the option of Trademark Transportation, Inc, the freight may be stored in a warehouse at the expense of the Customer, Consignor, Consignee, Beneficial Owner, or other party liable for freight and other charges. In this case, the freight will be held without liability to Trademark Transportation, Inc, and subject to Trademark Transportation, Inc's lien for all charges, including a reasonable charge for storage.

If the receiver of nonperishable freight fails or refuses to accept deliver within a reasonable time after notice of arrival has been given, Trademark Transportation, Inc may sell the freight to the highest bidder. Before such a sale is made, Trademark Transportation, Inc will first give formal notice to the Customer, Consignor, or Beneficial Owner that the freight has been refused or unclaimed, and that the freight will be subject to sale if disposition is not made within three (3) business days. On perishable freight, Trademark Transportation, Inc may sell the freight to the best advantage to protect its interest and prevent deterioration. Where the procedures outlined are not possible, Trademark Transportation, Inc may sell the freight in a commercially reasonable manner consistent with the circumstances. The proceeds of any sale made under this section will be applied by Trademark Transportation, Inc to payment of freight and accessorial charges, interest and attorney fees, costs of sale and other necessary expenses. Any balance will be paid to the Customer or Beneficial Owner of the freight.

## **UNLOADING & HANDLING CHARGES**

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Additional charges are automatically applied at receiving locations with special requirements for delivering to their facilities. These charges are primarily for unloading or handling requirements at these locations which are commonly wholesale grocery and food service distributors. Trademark

charges standard rates for delivering to these facilities to help reduce costs to the shipper and make these costs more consistent and predictable.

*See Addendum A: Named Consignees for a complete list of receivers with these automatic arbitrary charges.*

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## WAIVER

The failure of Trademark Transportation, Inc to enforce a provision, exercise a right, or pursue a default of this Tariff shall not be considered a waiver. The express waiver of a provision shall be effective only in the specific instance, and as to the specific purpose, for which it was given.

### **WALMART DELIVERY**

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All Walmart locations assess a \$50 fee per delivery. This charge will automatically be billed to the customer. Additional unloading or handling charges may apply.

### **WEIGHTS – GROSS WEIGHTS**

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Charges shall be computed on the gross weight at the time of shipment including weight of packing and preservatives. If the product net weight, rather than the shipment gross weight, is the only weight stated on the bill of lading, the Forwarder will add 10% tare weight to the net weight shown before computing freight charges.

### **WEIGHTS – MINIMUM WEIGHT FACTOR**

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When and where Federal, State or Municipal Laws prescribe maximum gross weights which thereby prevent loading of the highest minimum weights as provided herein on the vehicle furnished, shipment will be transported at actual weight or maximum permissible weight under the provisions of such Federal, State or Municipal Laws, whichever is greater, as minimum, and at the truckload or volume rate otherwise applicable on the weight tendered for transportation.