

**Loup Intermodal Terms and Conditions (LITC)
for Transportation of Intermodal Shipments**

Effective Date: November 1st, 2021

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A. INTRODUCTION AND GENERAL PROVISIONS

- 1. **Introduction.** Loup Intermodal provides wholesale door-to-door intermodal services in North America utilizing advanced technologies to address growing complexities and efficiencies in Intermodal Transportation, including equipment management, reservations, storage and drayage. Loup Intermodal is not a motor or rail carrier and is not a freight forwarder. Any Governmental Regulation relating to common carriers, contract carriers or freight forwarders does not apply to the services that Loup Intermodal offers.
- 2. **Governing Publications.** Except as otherwise expressly provided herein, these Terms and Conditions are governed by the provisions of the publications and circulars set forth below, including amendments and reissues, in effect on the date(s) of services:

Intermodal Terms and Conditions	<u>UP: Prices & Price Documents</u>
Loup Intermodal Accessorial Definitions	https://www.louplogistics.com/secure/docs/accessorial.pdf

In the event of any direct conflict between the terms of these Terms and Conditions and the publications referenced above, the terms of these Terms and Conditions shall govern. In the event of any direct conflict between any of the publications referenced above, then after application of these Terms and Conditions, the various publications and circulars set forth above shall govern in the listed order.

In the event of a direct conflict between these Terms and Conditions and any transportation agreement separately executed by an authorized representative of Loup Intermodal and Customer, the directly conflicting terms of such applicable transportation agreement shall govern.

Notwithstanding the foregoing, the Intermodal Circulars established by each Transportation Provider in effect at the time of Shipment shall govern the portion of any Shipment Tendered for transportation on rail, including with respect to any Shipment Tendered on the Union Pacific rail lines, which shall be governed by UP: Prices & Price Documents.

- 3. **Accessorial Services.** When required, Loup Intermodal will use reasonable efforts to notify Customer if accessorial services will be necessary to perform the services and such accessorial services will not be performed until Customer confirms acceptance of such services and charges applicable thereto via email; provided, that Loup Intermodal may perform such services without prior notice to Customer if, in Loup Intermodal's sole discretion, such services are reasonably necessary to prevent Damage to any Shipment or Loup Intermodal equipment. Customer will be invoiced under an accessorial invoice (independent of the freight charge) for such accessorial services pursuant to the terms of [the Loup Intermodal Accessorial Definitions](#).
- 4. **Application.** The terms of these Terms and Conditions shall apply to all Shipments Tendered for transportation to Loup Intermodal, directly or indirectly. Loup Intermodal, at its sole discretion, may decline to handle particular traffic movements or movements for particular Customers. Notwithstanding the foregoing, the Intermodal Circulars established by each Transportation Provider in effect at the time of Shipment shall govern the portion of any Shipment Tendered for transportation on rail, including with respect to any Shipment Tendered on the Union Pacific rail lines, which shall be governed by UP: Prices & Price Documents
- 5. **Customer Compliance.** It is Customer's responsibility to comply with each applicable Intermodal Circular, and Customer shall, and shall ensure that any other person or entity having an interest in the freight, including the consignee, consignor, supplier, a third party logistics provider and the beneficial owner of the freight, comply with all applicable Governmental Regulations, including with respect to required permits. Customer understands and agrees that any Transportation Provider engaged by Loup Intermodal in the performance of the services is an independent contractor and not an agent, principal, affiliate or employee of Loup Intermodal, and acknowledges that Loup Intermodal does not control the manner in which any such Transportation Provider performs its services.

6. **Transportation Documents.** Any documents tendered with a Shipment, such as a uniform bill of lading, motor carrier bill of lading or shipper bill of lading, even if signed by Loup Intermodal, will serve solely as a receipt indicating transfer of the Shipment (but will not constitute Loup Intermodal's or the Transportation Provider's verification of the nature, condition, number or volume of the Shipment's contents). Any such documents that identify Loup Intermodal as the carrier will not change the relationship with or obligations to Customer or the nature of Loup Intermodal's role in arranging for transportation services as an intermodal marketing company and as a transportation broker. The terms of any such documents will be subordinate to the provisions of these Terms and Conditions and/or any written agreement signed by Customer and Loup Intermodal. Any change or notation made on the shipping instructions, bill of lading or other receipt or document that is in any way inconsistent with the provisions of these Terms and Conditions and/or any applicable written agreement that Loup Intermodal has signed will be considered as a notation made for the private benefit and information of the consignor or consignee and will not be binding.
7. **No Other Representations.** Except for the representations and warranties expressly set forth in this Terms and Conditions, Loup Intermodal does not make any other express or implied representation or warranty, either written or oral, with respect to the services or the equipment, or any representation or warranty arising from statute or otherwise in law.
8. **Modification.** These Terms and Conditions may be amended or modified by Loup Intermodal at any time, with or without notice. The terms, conditions, limitations, charges and services of these Terms and Conditions in effect on the date that the Shipment is Tendered for transportation will apply. A current copy of these Terms and Conditions is located at [UP: Prices & Price Documents](#) .
9. **Savings Clause.** If any one or more of the provisions contained in these Terms and Conditions shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of these Terms and Conditions, but these Terms and Conditions shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
10. **Recordkeeping and Audit.** Customer shall keep accurate records of Shipments, and Loup Intermodal may inspect Shipment records for the purpose of determining compliance with the terms of these Terms and Conditions.
11. **Effect of Noncompliance.** Loup Intermodal may reject any Shipment that does not comply with provisions of these Terms and Conditions or applicable Governmental Regulations. Failure to reject does not make Loup Intermodal responsible for Damages resulting from noncompliance.
12. **Waiver.** The failure by Loup Intermodal to enforce any provision of these Terms and Conditions will not be construed as a waiver of the provision and does not preclude subsequent enforcement of the provision.
13. **Force Majeure.** If Loup Intermodal or any Transportation Provider is unable to meet or is delayed in meeting its obligations as a result of a Force Majeure Event, then the obligations of the affected party(ies) shall be suspended for the duration of the Force Majeure Event. Loup Intermodal shall not be liable for any Damage, delay or any other event beyond Loup Intermodal's control caused by a Force Majeure Event.
14. **Cumulative Remedies.** All remedies hereunder are cumulative, are in addition to any other remedies provided for by law or in equity, and, to the extent permitted by law, may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. Without limiting the generality of the foregoing, Loup Intermodal's assessment or collection of an administrative charge or other fee set forth in these Terms and Conditions will not affect or limit Loup Intermodal's right to exercise any other right and remedy.
15. **Governing Law.** Any dispute arising in connection with the transportation and other services provided by Loup Intermodal will be governed by and interpreted in accordance with federal transportation laws, rules

and regulations and to the extent not preempted, the laws of the State of Nebraska, without giving effect to any choice or conflict of law rules.

B. RATE PROCEDURES

1. **Rate Quote Procedures.** A Customer must first be approved by Loup Intermodal for credit. Then a Customer may obtain a rate quote through one of the following methods:
 - a. For repetitive pricing requests or bid pricing, request rates via email at Louppricing@up.com.
 - b. For spot pricing or short-term project pricing, request a rate at quoteline@up.com or via the web at <http://www.louplogistics.com>.
 - c. Contact the applicable Loup Intermodal sales representative or Regional Sales Representative who will note the relevant information and forward to the Loup Intermodal Pricing Department for a rate quote.

Only rate quotes that are in writing and made by an authorized representative of Loup Intermodal's Pricing or Sales Department are valid.

2. **Rate and Charge Modifications.** All rate quotes are subject to change upon expiration. If no Shipments are moved pursuant to an issued rate quote within 30 days following issuance, Loup Intermodal may, in its sole discretion, cancel or re-quote the rate. Loup Intermodal reserves the right to change rates and charges without notice.
3. **Confidential Information.** All rate quotes are confidential. Customer will not disclose to any third party any confidential information obtained from Loup Intermodal, including the rate levels, expected volume of traffic and origins and destinations. Customer may disclose rate quotes to its employees and agents who need to know the rate quotes to perform their transportation-related obligations. These confidentiality restrictions will not apply to information that is generally made available by Loup Intermodal to the public.
4. **Application of Rates.** Rates are from the stated origin to destination. Rates cannot be applied to or from intermediate points on the route from the stated origin to destination. Rates cannot be used in connection with stopping a Shipment in transit at intermediate points for partial loading or unloading. The rate quote is only valid with respect to Customer identified as the "bill to" name and the specific shipment type set forth on the applicable rate quote. The "bill to" name and shipment type must be specified at the time any request for transportation services is placed for any Shipment to be eligible for transportation under the issued rate for the applicable "bill to" name and shipment type. Customers are not allowed to substitute different shipment types at the quoted rate level without Loup Intermodal's written authorization. Any issued rate will only apply to the services described in the rate quote. Additional charges ([Loup Intermodal accessorial definitions](#)) may apply for services requested and/or performed in addition to those services included in the issued rate quote.
5. **Misapplication of Rates or Misdeclared Shipments.** If it is determined that the commodities actually shipped via Loup Intermodal do not match the shipment type specified in the issued rate quote, Customer must pay the transportation rates and all per diem and other charges based upon the commodities actually shipped; this includes Shipments Tendered for movement under a rate quote that does not apply to that Shipment and empty containers Tendered for movement as loaded. In addition to all other charges that may apply to the foregoing categories of Shipments or that may otherwise be assessed against such Shipments, and without limiting other remedies available to Loup Intermodal, Loup Intermodal may assess and Customer will pay any charges or penalties for each such misapplied or misdeclared Shipment as outlined in the applicable Intermodal Circular and/or governing transportation document. Shipments of hazardous materials, restricted commodities or prohibited commodities that are not declared may be subject to greater misapplied or misdeclared charges. Upon the reoccurrence of misapplied or misdeclared Shipments by a Customer, Loup Intermodal reserves the right to cancel Customer's rate quotes and/or refuse to provide service. Loup Intermodal has no liability for any loss or Damage to any Shipment that in any way results, directly or indirectly, from such misapplication or misdeclaration that could have been avoided had such freight been accurately and completely declared in accordance with these Terms and Conditions.

6. **Fuel Surcharge.** All pricing documents will be subject to fuel surcharge as provided in the applicable Intermodal Circulars established by each Transportation Provider in effect at the time of Shipment, including with respect to any Shipment Tendered on the Union Pacific rail lines, which shall be governed by UP: Prices & Price Documents.

C. CREDIT AND COLLECTIONS

1. **Credit Application.** Customers must obtain Loup Intermodal's credit approval before Loup Intermodal will arrange for transportation. Applications may be submitted at <https://www.shipstreamline.com/apps/ue-apps/company-registration/index.shtml>. Loup Intermodal reserves the right to revoke credit or to reduce a Customer's credit limit due to a change in credit worthiness, pay history or similar considerations.
2. **Pre-paid Shipments.** Customers may choose to pay in advance of their Shipments. In addition, certain Customers will be required to pay in advance when they have not established credit privileges. Customers' pre-paying for Shipments must submit payment through ACH or wire transfer. Payments must be received by Loup Intermodal prior to any services being performed. Additional charges (Loup Intermodal accessorial definitions) may be applicable to pre-paid Shipments for accessorial services.

ACH payments should be sent to Account: #4426375946, Routing: #111000012

Wire payments should be sent to Account #4426375946, Routing: #026009593

Lockbox:

Loup Logistics Company
14671 Collections Center Drive Chicago, IL 60693

3. **Payment Terms.** Customer shall pay all charges due within 15 days of the applicable invoice date. If an invoice is not paid on or before the applicable due date, such invoice may be subject to a late charge from the date payable until payment in full at 1.5% per month, or such lesser amount as may represent the maximum rate permitted by applicable Governmental Regulations. If Loup Intermodal is required to utilize the services of a collection agency or attorneys to collect any amounts due, Customer will be responsible for Damages (including reasonable collection costs, attorney fees, court costs and other reasonable expenses) incurred in collecting amounts owed. Any broker who is a Customer hereunder warrants that it is authorized to invoice freight charges to the shipper, consignee or any third party ultimately responsible for payment; provided that, each such broker shall be responsible for payment of Loup Intermodal's charges, and any failure of any such broker to collect payment from the shipper or any other entity shall not exonerate such broker of its obligation to pay Loup Intermodal.
4. **Unpaid Invoices and Dispute Procedures.** Customer may not withhold payment as a set off, because of a dispute or claim with Loup Intermodal or its underlying Transportation Providers, including claims for overcharge, duplicate payment or other invoice-related disputes or claims for Damage or delay of freight or equipment. Loup Intermodal will place an account on credit hold if arrangements satisfactory to Loup Intermodal are not made on past due balances. Customers must notify Loup Intermodal via <https://c02.my.uprr.com/aow/secure/aow.jas> of any dispute regarding a Loup Intermodal invoice within 60 days of the invoice date. If Customer fails to timely notify Loup Intermodal pursuant to these Terms and Conditions, Loup Intermodal's original invoice will be deemed to be final, and Customer will be deemed to have accepted such invoice in full and to have waived any and all claims or defenses to paying such invoice. Disputes must be accompanied by reasonably detailed supporting documentation to facilitate efficient resolution. Loup Intermodal will work with its Customers in good faith to resolve invoice disputes. Customers must initiate all invoice-related suits within 12 months of Tender of delivery of the Shipments involved.

D. SHIPPING PROCEDURES AND TERMS

1. **Transit Delay.** Neither Loup Intermodal nor the applicable Transportation Providers guarantee the transit schedule applicable to any Shipment. Loup Intermodal will not be liable in the event any Shipment does not

arrive pursuant to a particular schedule or in time for any particular market or appointment, including with respect to any commodity Damages attributable to fluctuation in the market value of the commodity. Loup Intermodal may assist a Customer to improve on time performance, which may include changing Transportation Providers and/or modifying the applicable rates assessed for the transportation services.

2. **No Equipment Guarantees.** Loup Intermodal does not guarantee equipment availability, including the availability of certain tractor types (including day cab or sleeper). Neither Loup Intermodal nor the applicable Transportation Provider guarantee the availability of gate or terminal reservations, as applicable.
3. **Shipping Instructions.** Customers must provide accurate, proper and complete shipping instructions in a form acceptable to Loup Intermodal and accurately identify the commodities being shipped. To prevent errors and delays, these instructions must be provided in writing, such as through an EDI tender, web tender or e-mail transmission, to the Loup Intermodal office arranging for the transportation. Loup Intermodal and the Transportation Providers will rely on the information that is provided for accuracy and completeness. All shipping instructions should include the following information:
 - a. Name of Customer (i.e., the entity to be invoiced).
 - b. Telephone number of Customer's office providing the shipping instructions.
 - c. Commodity description (and STCC code if available).
 - d. Container identification number (e.g., EMHU 480001).
 - e. Lading weight (weights should be exact, not estimates).
 - f. Name, address and contact numbers (telephone and facsimile) of the origin location.
 - g. Name, address and contact numbers (telephone and facsimile) of the destination location.
 - h. Any special routing or handling instructions if such special routing and handling has been pre-approved.
 - i. Seal number on the equipment (if available).
 - j. Origin and destination terminal.
 - k. Beneficial owner.
4. **Changes to Shipping Instructions.** Corrections or other changes to previously submitted shipping instructions must be submitted in writing to the Loup Intermodal Operations group. Customer is expected to call the applicable customer service representative by telephone to notify them of the need to change or correct the shipping instructions. The e-mail, web tender or EDI cancellation must clearly indicate the intention to either cancel the Shipment or correct the original instructions. Sending a new set of shipping instructions without notifying Loup Intermodal as set forth in these Terms and Conditions that it is a correction or change to an existing order will result in a duplicate Shipment. Corrections must specify the original and corrected shipping instructions. Corrections to data included in previously submitted shipping instructions other than changes to the origin or destination information can be made at any time before the Shipment is delivered to its final destination. Loup Intermodal reserves the right in its sole discretion to assess an administration and handling charge for each correction or cancellation. Loup Intermodal will not be liable in the event that Customer's attempts to correct or change shipping instructions is unsuccessful.
5. **Shipment Cancellation.** Customers may cancel a Shipment any time before the motor carrier is dispatched for pick-up. Customers should submit the cancellation request sufficiently in advance to allow Loup Intermodal to notify the motor carrier of the cancellation before the driver is dispatched to the origin location. Loup Intermodal reserves the right in its sole discretion to assess an administration and handling charge for each cancellation. Loup Intermodal will not be liable in the event that Customer's attempts to cancel a Shipment is unsuccessful.
6. **Destination Changes.** After an Intermodal Shipment has been loaded on a train, changes to the ramp destination will not be possible. A request to change the final destination for Intermodal Shipments must be received sufficiently in advance to allow Loup Intermodal to inform the dray carrier before dispatch to the destination ramp. A request to change the destination for a Highway Transportation Shipment must be

received sufficiently in advance to allow Loup Intermodal to inform the motor carrier before arrival at the destination. If the Shipment has already been delivered to the original destination, Customer will be responsible for the transportation charges to the original destination as well as transportation charges from the original destination to the changed final destination. If the destination is changed while the carrier is in transit, out of route mileage additional charges may apply in Loup Intermodal's sole discretion.

7. **Commodity Descriptions.** Customers must provide detailed and accurate commodity descriptions. Failing to provide accurate and detailed descriptions may result in delays at the origin pick-up or rail point. Additional charges may apply in Loup Intermodal's sole discretion if descriptions are vague or not specific. Loup Intermodal has no liability for any loss or Damage to any Shipment that in any way results, directly or indirectly, from such misdescription that could have been avoided had such freight been accurately and completely described in accordance with these Terms and Conditions.
8. **Limited Loup Intermodal Warranties.** The following are the sole representations and warranties made by Loup Intermodal to Customer with respect to each Transportation Provider that operates as a motor carrier:
 - a. Such motor carrier Transportation Provider has represented to Loup Intermodal that it is properly registered with the FMCSA as a motor contract carrier.
 - b. Such motor carrier Transportation Provider has represented to Loup Intermodal that it has procured and maintained at least the following amounts of insurance coverage: \$250,000 of Motor Truck Cargo insurance, limits must be equal to the greater of the replacement cost of the freight being transported or the aforementioned limit; no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate of Commercial General Liability insurance; no less than \$1,000,000 Business Auto/Truckers Liability insurance; no less than \$25,000 Trailer Interchange insurance; and Workers Compensation coverage under the laws of the States in which the carrier operates with no less than \$500,000 Employers' Liability (Part B) in all categories.
 - c. Such motor carrier Transportation Provider has represented to Loup Intermodal that it does not have an "unsatisfactory" FMCSA safety rating at the time Loup Intermodal entered into a written agreement with such motor carrier.
 - d. Loup Intermodal's contract with such motor carrier Transportation Provider includes a provision that the motor carrier Transportation Provider assumes all liability for any loss, Damage, fine and/or other consequential loss or Damage to any Shipment from the time of receipt of such Shipment by such motor carrier Transportation Provider until proper and actual delivery has been made.

E. HAZARDOUS MATERIALS AND RESTRICTED AND PROHIBITED COMMODITIES

1. **Shipping Instructions for Hazardous Materials.** All Shipments of hazardous materials and hazardous substances must comply with Governmental Regulations in effect on the date of Shipment. In Tendering a Shipment of hazardous materials to Loup Intermodal, Customer must do all the following:
 - a. Provide accurate and complete shipping information for the hazardous materials as required by Governmental Regulation, including a shipper's certificate addressing the following:
 - i. Proper shipping name of the hazardous material as listed in 49 CFR §172.101 (Hazardous Materials Table), or any successor regulation, and any technical chemical name (if applicable).
 - ii. The primary hazard class to which the commodity is assigned and any subsidiary risk.
 - iii. The UN/NA number assigned to the material.
 - iv. The packing group code assigned (if applicable).
 - v. Reportable Quantity (if applicable).
 - b. Emergency response telephone number as required by 49 CFR 172.602. This number must be manned 24 hours a day by a person who is knowledgeable about the materials being shipped and has comprehensive emergency response information or can immediately access a person who has this information. The emergency response information that must be available through such telephone number must include:

- i. Proper shipping name of the material.
 - ii. Immediate hazards to health.
 - iii. Risk of fire or explosion.
 - iv. Immediate precautions to take in case of an incident.
 - v. Methods of handling fires.
 - vi. Methods for handling spills or leaks.
 - vii. Preliminary first-aid information.
 - viii. Emergency response information such as a materials data info sheet or emergency response guidebook.
 - ix. Whether the commodity is a marine pollutant (if applicable).
- c. Certify that the materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation in accordance with DOT regulations.
 - d. Affix to the trailer or container the proper placards identifying the type of hazardous material in the trailer or container.
 - e. All placards must be placed on the container or trailer such that they are completely visible, when viewing container from the side of the intermodal car.
 - f. Must comply with AAR Intermodal Loading Guide.

Please note that a notation on a bill of lading is not sufficient to comply with the foregoing requirements.

2. **Hazards Materials Surcharge.** Loup Intermodal may assess a surcharge on each Shipment of hazardous materials, in addition to all applicable freight charges. An additional surcharge may be applicable to Shipments originating or destined outside the continental United States.
3. **Restricted and Prohibited Materials.** Any commodity that is prohibited by the rail carriers for transportation is also prohibited by Loup Intermodal for transportation. Any commodity that is classified as “restricted” by the rail carriers is also considered “restricted” by Loup Intermodal for Intermodal Transportation or Highway Transportation and subject to special procedures to be eligible for transportation. Other commodities such as freight that could be considered to pose a safety or health issue, is easily perishable, is considered to be of extraordinary value, or needs temperature protective services may also be subject to limitations or special requirements. Before tendering any such freight for transportation, Customer must make prior arrangements with Loup Intermodal.
4. **Hazardous Materials and Prohibited and Restricted Commodity Liability.** Loup Intermodal is not responsible for reviewing any shipping instructions provided by Customer, for classifying commodities, for verifying whether the commodity is subject to any Governmental Regulations or is properly classified. Failure to disclose to Loup Intermodal the presence of hazardous materials or prohibited or restricted commodities or to comply strictly with the requirements for transporting such materials or commodities will relieve Loup Intermodal and any Transportation Providers of any liability for Damages directly or indirectly caused to or by the materials or commodities. Customer will be responsible for and will defend, indemnify and hold harmless Loup Intermodal and each Transportation Provider for any Damages arising out of Customer’s failure to properly declare materials or commodities, or to comply strictly with the requirements, including Governmental Requirements, for transporting the materials or commodities. Any hazardous materials found to have been misdeclared may be warehoused at Customer’s risk and expense or destroyed without compensation, as determined by Loup Intermodal. Customer will be solely responsible for any penalties or charges assessed by the Transportation Provider arising out of Customer’s failure to comply with the applicable requirements, including Governmental Requirements, in addition to any special rates (including costs to repair, restore and decontaminate containers or chassis) that apply to any such Shipment.

F. LOADING, BLOCKING AND BRACING REQUIREMENTS

- 1. Applicable Standards.** Unless arrangements are made for the Transportation Provider to provide loading, blocking and bracing services at the time of Customer's request for pricing or before the freight is Tendered for Shipment, Customer will be responsible for causing all freight to be loaded, blocked and braced in accordance with industry standards for the intended mode of transportation. For Intermodal Transportation, all Shipments must be loaded, blocked and braced in accordance with AAR standards. Customer is responsible for complying with the Intermodal Safe Container Act. Customer should also ensure that commodities are wrapped with waterproof materials to prevent wet Damage to the freight in transit. The Transportation Providers have the right to reject any Shipment that does not comply with these requirements. Acceptance of a sealed container for transportation does not constitute a waiver of Customer's liability or of Loup Intermodal's or the Transportation Provider's right to seek indemnity from Customer for noncompliance with the loading obligations. The presence during loading or participation by an employee or agent of any Transportation Provider will not in any way change or lessen Customer's responsibility to properly and adequately package, load, unload, secure, block and brace the freight within the container or trailer.
- 2. Weight of Lading and Overweight Conditions.** Customer is responsible for complying with all Governmental Regulations regarding shipment weights, including the Intermodal Safe Container Act. Neither Loup Intermodal nor the Transportation Provider will be responsible for any weight violation. Forklifts or other equipment when loaded or empty should not exceed the floor rating of the container or trailer being loaded (such floor rating is often found on the door of the applicable container or trailer). Customer will be responsible for all costs arising out of the overweight condition of the equipment, including fines or penalties charged by a governmental authority, repair of Damaged equipment, storage, redelivery charges, loss or Damage to freight, and adjustment and transload services. If a Transportation Provider is cited and fined for noncompliance with highway weight laws, that Transportation Provider will have the right to recover incurred costs from Customer that caused the container or trailer to be overloaded or improperly loaded.
- 3. Consequences of Improper Loading.** Loads that shift in transit because they were not properly prepared for Shipment will be reloaded, re-secured or adjusted in the equipment or transloaded into other equipment, at Customer's expense. If a load shift occurs during transportation and it is determined that improper or insufficient loading, blocking and bracing proximately caused the load shift, Loup Intermodal and the Transportation Providers may hold Customer liable for all Damages arising from the load shift, including the repair of Damaged equipment, loss or Damage to freight, fines, penalties and adjustment and transload services.

G. EQUIPMENT TERMS

- 1. Shipper Load and Count.** All loads are considered shipper load and count and consignee unload unless arrangements are made at the time of the request for pricing or before the freight is Tendered for Shipment. The consignor is responsible for specialized stamp or form as a delivery receipt for a Shipment will not invalidate any other form of delivery receipt obtained by the Transportation Provider. Furthermore, a consignor's or consignee's failure to record the seal number of a Shipment will not render Loup Intermodal or the Transportation Provider liable for shortage in that Shipment.
- 2. Sealed Shipments.** In the event of a shortage, Customer must provide physical evidence of unauthorized entry into the freight vehicle while in the possession of the Transportation Provider, including providing seal records and actual loading and unloading records. By Tendering the Shipment to Loup Intermodal for transportation, Customer agrees that the Transportation Provider may break the seal on a trailer or container if it determines that it is reasonably necessary to do so to inspect, reposition, or protect the cargo or the transportation equipment or to comply with Governmental Regulations. The consignee may not refuse delivery of a Shipment solely because the seal on the container or trailer is broken.
- 3. Inspection of Equipment.** All empty equipment provided for loading should be inspected prior to loading to ensure that it is in suitable condition to protect and preserve the freight during transit. This

inspection, at a minimum, should include closing the doors and inspecting for any light that would indicate that the unit structure is compromised. Customer should promptly notify Loup Intermodal of any rejected equipment. If an investigation reveals that defects in equipment could reasonably have been discovered prior to loading, any claim for loss or damage will be declined.

4. **Use of Equipment.** If Loup Intermodal arranges for containers or trailers to be dropped at a location for Customer and left unattended by the Transportation Provider, Customer will be responsible for any Damage to the equipment occurring during or as a result of the possession or use of the equipment by Customer or its consignees or consignor or their agents or employees. Equipment use is subject to the Uniform Intermodal Interchange Agreement (UIIA). In the case of an unloading pool, it is Customer's responsibility to report any owner responsible Damage in compliance with UIIA within 6 days of the receipt of the equipment. Any unreported Damage after the 6th day will be Customer's sole responsibility.

H. LIABILITY FOR FREIGHT LOSS, DAMAGE OR DELAY

1. **Loup Intermodal's Liability.** Loup Intermodal will be liable for loss or Damage to freight solely to the extent that Loup Intermodal's actual negligence or willful misconduct in arranging for transportation of the freight was the proximate cause of the freight loss or Damage. Loup Intermodal is not liable for any Damages caused by the services or actions of any Transportation Provider, including freight loss or Damage, personal injury or property Damage. Notwithstanding these Terms and Conditions, in no event will Loup Intermodal's total liability for Damages exceed \$250,000.00 per container or trailer, subject to any lower limitations of liability applicable to the Shipment, including limitations under an ocean bill of lading. Loup Intermodal will have no liability in the event if the Shipment is found not to comply with AAR guidelines or applicable Governmental Regulations.
2. **Transportation Provider Liability.** Each Transportation Provider will be liable for loss or Damage to freight to the extent provided under the terms of and subject to the procedures set forth in these Terms and Conditions, the applicable Intermodal Circular or the contract between Loup Intermodal and the Transportation Provider, or if not covered in these Terms and Conditions, the applicable Intermodal Circular or the Loup Intermodal contract, under federal transportation law. The liability of any highway carrier engaged by Loup Intermodal for loss or Damage to freight will be limited to \$250,000.00 per container or trailer. The limitations of liability established by the U.S. and Canadian rail Transportation Providers in effect as of the date of these Terms and Conditions are subject to change without notice.
3. **Defenses to Liability for Freight Loss or Damage.** Neither Loup Intermodal nor the Transportation Providers will be liable for the following: (a) Damage to freight or equipment to the extent due to packaging, loading, unloading, blocking, bracing or securing of the freight; (b) inherent vice or defect in the freight transported, including rusting of metals, swelling of wood caused by humidity, moisture or condensation, deterioration of perishable products, or Damages caused by heat or cold; (c) Force Majeure Events; (d) an act, omission or default of any Customer, shipper, consignor, consignee, beneficial owner or other third party logistics provider; (e) Shipments stopped and held in transit at Customer's request; or (f) loss or Damage of freight that violates any Governmental Regulations or that has been loaded in a container or trailer so that the combined weight of the chassis, container or trailer and the freight exceed 65,000 pounds.
4. **Liability outside the USA and Canada.** Freight loss and Damage occurring while in the possession of Transportation Providers in Mexico are subject to Mexican law and the rules and policies of the Mexican carriers. Loup Intermodal is not liable for freight loss or Damage that occurs while the freight is in the possession of an international or domestic carrier in Mexico. Loup Intermodal does not assume any liability for Shipments outside the United States or Canada.
5. **Computation of Damages.** Loup Intermodal's liability for Damages will not exceed the actual loss or Damage to the freight minus the salvage value of the freight, subject to the \$250,000.00 per vehicle limit and other applicable limitations. Loup Intermodal shall not be liable for loss of or Damage to any goods not identified in the transportation documents, loss of or Damage to any dunnage, freight charges, attorneys' fees and brokerage fees, fines, import duties or other charges on Shipments

intended for export. Loup Intermodal will not, under any circumstances, be liable to any Customer, supplier, consignor, consignee, beneficial owner, third party logistics provider or any other party for consequential, special, incidental or indirect damages, lost profits, lost savings, business interruption expenses, lost use of equipment, punitive damages, losses due to fluctuations in the freight's market value, exemplary damages or attorney's fees or interest relating in any way to services performed or arranged by Loup Intermodal, or to loss, Damage or delay of freight, regardless of whether Loup Intermodal was aware of or reasonably or otherwise could have foreseen any such damages. In any legal proceedings with respect to a freight claim, Customer must prove, among other matters and at a minimum, that (a) the freight was in good condition, properly prepared for transportation, appropriately packaged, loaded, blocked and braced in accordance with industry standards (which for intermodal shipments are the AAR guidelines) or as specifically approved by the Transportation Provider, within the vehicle at the time the Shipment was tendered by Customer to the Transportation Provider; (b) the freight arrived at destination in a Damaged or diminished condition; and (c) the amount of Damages due for the freight claim can be specified.

6. **Duty to Mitigate.** The consignee must mitigate Damages. If the consignee is unable or unwilling to assist in mitigating the loss, Loup Intermodal will notify Customer of the refusal and follow Customer's direction regarding the freight, including shipping it to a location designated by Customer for further handling. Costs associated with complying with Customer's direction will be billed to Customer.
7. **Surety Bond.** Loup Intermodal and Customer will each maintain a surety bond or trust fund agreement to the extent required pursuant to Section C of Subpart 387 of the FMCSA in the amount of \$75,000. Loup Intermodal and Customer will provide copies of its authority and surety bond to the other party upon request.

I. FREIGHT CLAIM PROCESSING

1. **Freight Claim Processing.** Loup Intermodal will use commercially reasonable efforts to assist and cooperate with Customer to investigate and process any freight loss or Damage claims against the Transportation Providers and any claim for Damage to Customer's property occurring in the course of the transportation services. Loup Intermodal will encourage the Transportation Providers to pay, settle or disallow all claims within 120 days of filing and to provide an explanation for any declined claim. If the claim is not processed and disposed of within 120 days after receipt, Loup Intermodal will provide Customer with status updates upon request. Loup Intermodal reserves the right in its sole discretion to assess an administrative charge for Loup Intermodal's assistance to Customer in handling freight claims.
2. **Notification of Damages.** If a Shipment arrives with visible or obvious Damage or loss of cargo, Customer must notify Loup Intermodal promptly (in no event later than the time limit established in the applicable Intermodal Circular) in writing advising Loup Intermodal of the nature and extent of the loss or Damage. Prompt notification is required to enable Loup Intermodal to comply with required notification terms for the applicable Transportation Providers, to allow the removal of Damaged trailers and containers from further use until repairs can be made, and to permit Loup Intermodal and the Transportation Providers to inspect the Shipment. The Transportation Providers, in their sole discretion, may consider Customer to have waived and released the claim if there is a failure to provide prompt notification. Customer will (or will cause its consignee to) preserve and make available to Loup Intermodal's or the Transportation Provider's inspectors all Damaged cargo, all cargo received in good condition and all packaging, blocking, bracing and security devices to assist the inspectors in determining the cause of the Damage or loss. Failure to inspect Damaged cargo for whatever reason will not change the burden of proof or Customer's obligation to mitigate Damages nor will it be considered an admission of liability by Loup Intermodal or the Transportation Provider. For claims please email Loup Intermodal at loupclaims@up.com or contact the applicable Loup Intermodal customer service representative.
3. **Time Limits for Claims.** Transportation Providers will not pay freight claims that do not meet the time limits set forth in the applicable Intermodal Circulars. Customer must submit the claim to Loup Intermodal's freight claims department within 9 months of the date of delivery or in the case of a lost

Shipment, within 9 months of the expected delivery date, if Customer desires Loup Intermodal to assist with claims processing. If the freight claim is not timely filed, Loup Intermodal and the Transportation Providers may consider Customer's failure to timely file the claim as a release by Customer of Loup Intermodal and the Transportation Provider from responsibility to pay the freight claim and/or Customer's claim may be declined. After expiration of the foregoing time period, Customer must proceed by filing the written claim directly with the applicable Transportation Provider. If Customer believes that Loup Intermodal is directly liable for any freight loss or Damage, Customer must institute a suit or arbitration proceeding against Loup Intermodal within 5 months from the date of the original written disallowance of the claim. If the suit or arbitration on a freight claim is not timely initiated, Customer's failure to timely file the claim will constitute a release of Loup Intermodal by Customer from responsibility for that freight claim, and Loup Intermodal will not be liable for and will not process or pay that claim.

4. **Consequences of Failing to Accept Freight.** If the consignee refuses the freight or Customer refuses to give timely direction about the disposal of freight rejected by the consignee, Loup Intermodal may, without further notice or demand, place the freight in storage at the risk and expense of the freight and Customer. Such stored freight will be subject to a lien in favor of Loup Intermodal for any charges. By tendering freight for transportation, Customer will be conclusively presumed to have granted such a lien to Loup Intermodal. Loup Intermodal may exercise the foregoing rights at any time after 48 hours have elapsed since notification of the arrival and availability of the freight at destination or of the consignee's rejection of the freight. Alternatively, Loup Intermodal or the Transportation Provider may sell the freight to the highest bidder in a public or private sale. Before such a sale of nonperishable freight is made, Loup Intermodal will first give written notice to Customer that the freight has been refused or unclaimed and that it will be subject to sale if disposition is not arranged for within 3 business days. Further, failure or refusal to claim or dispose of the freight within this time period will constitute a waiver by Customer of all right, title and interest in and to the freight and all rights, claims, notices and defenses with respect to the freight to the maximum extent permitted by applicable Governmental Regulations. If the receiver of perishable freight fails or refuses to accept it promptly, Loup Intermodal may, in a public or private sale, sell the freight to the best advantage to prevent deterioration. Where the procedures provided for in the two preceding paragraphs are not possible, Loup Intermodal may sell the freight as authorized by applicable Governmental Regulation. Loup Intermodal will be entitled to recover from Customer, and/or from the proceeds of a sale or disposal of the freight, all costs incurred as a result of Customer's or consignee's failure to accept delivery of the freight or to provide direction about disposal of rejected freight, including all storage fees, equipment use charges and costs of disposal.
5. **Salvage Obligation.** Customer is required to use all reasonable and good faith efforts to mitigate Customer's damages from any freight loss or Damage. These efforts will include salvaging the goods in a commercially reasonable manner and repackaging and relabeling the freight. If Customer prevents or refuses to sell or allow the sale of Damaged freight, Loup Intermodal may deduct its reasonable estimate of the salvage value of the Damaged freight from the amount of the claim against the Transportation Provider and/or Loup Intermodal. Customer will be bound by the reasonable salvage deduction determined by Loup Intermodal. Loup Intermodal may recover from Customer and/or from the proceeds of a sale of the freight (or deduct from the claim) all costs incurred as a result of Customer's or the consignee's rejection and Customer's failure to provide direction or to sell or permit the sale of the freight, including all storage fees and costs of disposal. Notwithstanding the foregoing, if the freight is offered to Loup Intermodal for salvage, Loup Intermodal is entitled to, but is not required to, undertake salvage efforts. If Loup Intermodal, in its sole discretion, determines that it will not undertake salvage efforts, Loup Intermodal in no way waive its right to assert its claim that Customer failed to mitigate Damages by Customer's failure to take efforts to salvage the freight.
6. **Claim Assignment.** Loup Intermodal is not liable for Damages (including freight loss) to any person or entity other than Customer and will not process a freight claim brought by any person or entity other than Customer. If a Customer wishes to assign a claim to the beneficial owner of the freight or other interested party, Customer must execute and deliver to Loup Intermodal an assignment of rights in a form acceptable to Loup Intermodal that assigns all of Customer's rights in the freight claim to the other party.

7. **Claim Filing.** Freight Claims should be submitted to the address below or emailed to Loup Intermodalclaims@up.com.

Loup Intermodal – Finance
222 South 15th Street,
Suite 402 South Omaha,
NE 68102

When submitting a claim, the following items must be included. Failure to provide all of the following information within the time limits set forth in these Terms and Conditions with respect to claim submission may be considered a waiver and release of the claim:

- a. A demand for payment of a specified dollar amount determined in accordance with these Terms and Conditions. This demand should include documentation to verify the amount of the demand such as certified copies of repair invoices or actual product costs. If the freight has not been invoiced to the consignee or the invoice does not show the price or value, or the freight has not been sold but transferred at bookkeeping values only or has been shipped on consignment or approval or is otherwise involved in an inventory or stock to stock transfer, the demand should include documentation and certification of the actual value of the freight.
- b. Information to identify the Shipment such as unit number, date of Shipment, origin and destination of the Shipment, shipper's, consignee's and notify party's names, and bill of lading number.
- c. Legible copies of shipping instructions, the delivery receipt and other shipping documents.
- d. Applicable salvage allowance.
- e. Legible copies of the loading and unloading tally denoting contents and quantities of each of the cartons, crates, boxes, pallets or shipping units involved in the Shipment and seal record (particularly for shortage claims).
- f. Supporting documentation detailing the nature of the Damage or loss (such as photographs supporting the method of bracing, or actual Damage to equipment), proof-of delivery, reports, and receiving records. Note that photographs should show the loaded container (with the equipment number visible) at the time the Damage or loss was noted, as well as the condition of the equipment that is believed to have caused the Damage or loss and the Damaged goods themselves. Photos only of Damaged goods after they have been unloaded from the container do not indicate how the goods were Damaged.
- g. Origin records or certification as to the condition and quantity of freight at the time received from the destination Transportation Provider.
- h. Shipper import declaration (if applicable).
- i. Evidence that the Shipment was properly loaded, blocked, braced and secured for the selected mode of transportation.

Since documents, photographs and other information sent by facsimile are often illegible or may not be available in an electronic format suitable for e-mail, Loup Intermodal recommends that Customer send freight claims by mail, expedited delivery (such as FedEx) or personal delivery. Providing legible and complete documentation will expedite the processing of the claim.

J. GLOSSARY OF TERMS

The following terms shall have the meaning set forth below when used in these Terms and Conditions:

1. "AAR" means the Association of American Railroads.
2. "Customer" means the person or entity contracting to engage Loup Intermodal's services with respect to a Shipment.

3. "Damages" means losses, damages, costs, expenses (including reasonable attorneys' fees, costs of court and other legal or investigative expenses, reasonable consulting fees, costs of environmental clean-up, environmental remediation, emergency responses, evacuations, and damages caused by the release, discharge, escape, or presence of a commodity that is poisonous or toxic by inhalation), judgments, fines, and penalties.
4. "FMCSA" means the Federal Motor Carrier Safety Administration.
5. "Force Majeure Event" means an act of God; authority of law or Governmental Regulation; labor dispute; weather impediments; fire; explosion; war; insurrection; threatened or actual act of terrorism; or other like causes beyond one's reasonable control. Downturns in the economy and changes in market conditions are not considered a Force Majeure Event. A Force Majeure Event cannot excuse non-compliance with safety requirements and Governmental Regulations.
6. "Governmental Regulations" means any and all federal, state or local laws, regulations, governmental rules, and orders.
7. "Highway Transportation" means highway transportation through over-the-road, truckload motor carriers.
8. "Intermodal Circular" the applicable terms and conditions published and established by each Transportation Provider in effect at the time of Shipment.
9. "Intermodal Transportation" means transportation using both rail and highway transportation through rail and motor transportation providers.
10. "Loup Intermodal" means Loup Logistics Company.
11. "Shipment" means moves, with or without commodities, Tendered to Loup Intermodal for Highway Transportation or Intermodal Transportation.
12. "Tender" means the notification of arrival, constructive placement, or actual placement of a move, with or without commodities, with Loup Intermodal or the Transportation Provider; or the notification by a consignor or Customer to Loup Intermodal or the Transportation Provider that Shipment is or will be ready for pick-up on set date provided.
13. "Transportation Provider" means any entity that Loup Intermodal engages to provide or arrange for transportation, including rail carriers, motor carriers, drayage providers, rail transportation providers, intermodal equipment providers, freight brokers and other transportation intermediaries.