

## INTERMODAL TRANSPORTATION SERVICE TERMS

THESE TRANSPORTATION SERVICE TERMS, along with the Rate Quotation and Dispatch Order ("Price Quote"), contain the terms and conditions under which UPS Supply Chain Solutions, Inc., d/b/a Martrac ("SCS"), provides Services to Customer (the "Service Terms"). The terms and conditions set forth in the Price Quote are hereby incorporated by this reference and made part of these Service Terms. SCS reserves the right to modify, amend, supplement, or change these Service Terms at any time without prior notice. The most current and the controlling version of these Service Terms is published electronically at <http://www.ups-scs.com/tools/terms.html>. By tendering goods for Services (the "Goods"), Customer agrees to the Service Terms in effect at the time of Services.

**1. Services.** SCS will provide transportation services to support Customer's logistics requirements related to intermodal transportation (the "Services"), in accordance with these Service Terms.

**2. Fees and Taxes.** Customer shall pay to SCS all fees, charges, expenses, and surcharges, including fuel, security, and other surcharges ("Fees") applicable to the Services, with no right of set-off, including for any claims based on disputed invoices or claims for loss or damage. SCS will invoice Customer for the Fees following each shipment. Customer shall pay all Fees on an invoice within fourteen (14) days from date of the invoice. If Customer fails to make a payment when due, Customer shall pay to SCS a late payment fee equal to one and one-half percent (1½ %) of the total past due balance of Customer's invoice, or the maximum amount allowed by applicable law, whichever is less. All Fees are exclusive of applicable federal, state, and local sales, use, excise, or similar taxes ("Taxes"), and Customer shall pay directly or reimburse SCS for all Taxes applicable to the Services. All payments must be made in U.S. dollars (unless otherwise provided). SCS may change the Fees or surcharges from time to time without prior written notice to Customer. Customer must notify SCS of any billing dispute within 180 days of receiving a contested invoice, or any billing dispute is waived. A partial payment against an invoice is not considered notification of a billing dispute.

**3. Liability for Loss or Damage.**

- a. **Limitation of Liability.** The maximum liability of SCS (which shall include for purposes of this section 3 SCS, its affiliates, and any SCS subcontractors, carriers or other service providers providing Services), for loss or damage to Goods arising from SCS's ground transportation services (including without limitation truckload or rail) shall be Customer's purchase price for such Goods, not to exceed \$100,000 per trailer, per occurrence, or, for shipments containing produce, not to exceed \$50,000 per trailer, per occurrence. Notwithstanding anything herein to the contrary, SCS shall not be liable for loss or damage resulting from spoilage, contamination, freezing, decay, or deterioration unless caused by a mechanical failure or a mechanical breakdown of refrigeration or heating units. SCS shall not be liable for loss or damage to Goods if or when the Goods are in transit in, or located in, Mexico. Customer waives all rights of subrogation on behalf of its insurers for any loss or damage in excess of SCS's liability limits set forth herein.
- b. **Released Value; Customer Waiver.** Customer and SCS agree that they have negotiated a reasonable limit of liability based on the value of the Goods and the parties' respective business interests and rates charged. For purposes of this section, pursuant to 49 U.S.C. § 14101, Customer expressly waives any right or remedy Client may have pursuant to 49 U.S.C. § 14706(a) and (c).
- c. **Ramp-to-Ramp Moves:** For ramp-to-ramp moves, Customer shall be responsible for the unit at destination rail availability upon notification made by email or fax.

**4. Refusal of Service.** SCS reserves the right in its sole discretion to refuse to provide service for, without limitation, (i) any shipment that by reason of the dangerous or other character of its contents may, in the sole judgment of SCS, soil, taint, or otherwise damage other goods or equipment, or that is improperly packed, or that contains prohibited or restricted commodities; (ii) if Customer fails to pay when due any amounts owing; or (iii) if SCS deems that it is unsafe or economically or operationally impracticable to provide service.

**5. Filing of Claims.** All claims for loss or damage to Goods must be filed with SCS within nine (9) months after Customer's claim arose, or such claim is deemed waived. No settlement will be made on any claim until Customer has paid all outstanding Fees.

**6. Exclusions.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES. SCS SHALL HAVE NO LIABILITY TO CUSTOMER IN CONNECTION WITH THE SERVICES EXCEPT AS EXPRESSLY SET FORTH IN THESE SERVICE TERMS.

**7. Force Majeure.** "Force Majeure Event" shall mean any event beyond a party's control, including but not limited to: acts of war, acts of public enemies, terrorist attacks, governmental orders relating to the foregoing, insurrections, riots, sabotage, earthquakes, floods, acts of God, embargoes, authority of laws, labor disputes (including strikes, lockouts, job actions or boycotts), fires, explosions, or failure in electrical power, heat, light, air conditioning or communications equipment. To the extent that either party's performance (except payment obligations) is precluded or delayed by a "Force Majeure Event" such performance shall be excused for the time necessitated by such Force Majeure Event.

**8. Independent Contractor.** SCS is an independent contractor. Except as set forth in a duly authorized Power of Attorney, SCS shall not hold itself out as an agent of or in a joint venture with Customer, and SCS shall have no authority to act on behalf of Customer.

**9. Subcontractors.** SCS may subcontract all or portions of the Services to its parent, affiliates or third party service providers, and may disclose to such entities any Customer Confidential Information necessary to perform the Services and as permitted by the UPS Privacy Policy in effect at the time of performance which is located at [www.ups.com](http://www.ups.com).

**10. Hazardous Materials and Other Regulated Goods.** Unless SCS expressly agrees in writing with Customer to handle, receive, accept, transport, or store: (a) any type of hazardous materials or Goods containing hazardous materials, or (b) any type of Goods which may be regulated by a governmental body, entity or agency, including but not limited to, those Goods which are regulated by the Food and Drug Administration, the United States Department of Agriculture, the Drug Enforcement Administration, the Alcohol and Tobacco Tax and Trade Bureau, and analogous regulatory agencies (collectively, "Hazardous or Regulated Goods"), it is agreed that (i) Customer shall not itself or through others offer, present or otherwise tender any Hazardous or Regulated Goods, to SCS, its affiliates, assignees, agents or subcontractors for Services, and (ii) Customer represents, warrants and covenants that in providing Services, it is not required or contemplated that SCS, its affiliates, assignees, agents or subcontractors shall handle, receive, accept, dispose of, transport, store, or arrange for the handling, disposal, storage, or transportation of any Hazardous or Regulated Goods. SCS may take any action that SCS, in its sole discretion, deems appropriate or necessary in relation to any actual or suspected Hazardous or Regulated Goods. Customer hereby fully and completely releases and forever discharges SCS, its affiliates, controlling entities, and the directors, employees, officers, agents, subcontractors, licensors, suppliers of each of them from and against (i) all Claims arising out of or caused by actual or suspected Hazardous or Regulated Goods; (ii) all Claims relating to or arising out of any SCS action taken in relation to such actual or suspected Hazardous or Regulated Goods; (iii) Customer's noncompliance with applicable laws; or (iv) the breach of any representation, warranty or covenant of Customer as contained herein.

**11. Prohibited and Restricted Commodities.** Certain commodities, as set forth in rail carrier intermodal rules and policies will not be accepted for Services when such Services include rail transportation service.

**12. Refrigeration.** If refrigerated trailers are used to perform the Services, Customer shall specify on the applicable bill of lading the necessary trailer temperature; provided, however, that such temperature may vary by five degrees (5°) F on the thermometer gauge of the refrigeration unit. If refrigerator unit is allowed to run out of fuel while in the Customer's responsibility, Customer is responsible for all charges to repair and/or replace, plus 10%.

**13. Dispatch.** SCS dispatch center hours of operation shall be the local facility time, Monday through Friday, excluding holidays (which are: Thanksgiving, Day After Thanksgiving, December 25, and 31, January 1, Memorial Day, July 4, and Labor Day). Reasonable after hours Services operations coverage may be provided if requested by Customer in writing twenty four (24) hours in advance and mutually agreed to by SCS.

**14. Indemnification.** Customer shall indemnify, defend and hold harmless SCS and SCS's affiliated and controlling entities, and the directors, employees, officers, agents, subcontractors, and suppliers of each of them, from and against any and all claims, liabilities, suits, demands, actions, fines, damages, losses, costs and expenses (including reasonable attorneys' fees) ("Claims") arising out of or related to the Services, including but not limited to: Claims for personal injury, damage to or loss of improvements to real property or tangible property; Claims arising out of or in connection with the design, manufacture, distribution, marketing, use or sale of the Goods, Customer's instructions regarding such Goods, or lost, damaged or undelivered Goods, or Goods not delivered on time; to the extent such Claims are caused by or resulting from the acts or omissions of Customer, its affiliates and/or their respective officers, directors, employees, agents, suppliers, vendors, or customers.

**15. Compliance with Terms, Laws.** Customer shall ensure that all shipments tendered for Services comply with the Service Terms, and all applicable federal, state, provincial, or local laws applicable to the shipper and the shipment.

**16. Transportation Documents.** Except as set forth in these Service Terms, any terms and conditions printed on transportation documents such as bills of lading or delivery receipts including as may be issued by Customer, SCS, any carrier or other service provider, will not change or supersede the terms of this Agreement, and such documents will operate solely as receipts.

**17. Title to Goods.** Unless otherwise specified in the Service Terms, title to Goods shall remain at all times with Customer and shall not pass to SCS under any circumstances.

**18. Confidentiality.** For two (2) years from the date of disclosure by a party of any of its proprietary or confidential information ("Confidential Information"), and in the case of Confidential Information that constitutes a trade secret under applicable law for so long as such Confidential Information remains a trade secret, the party receiving such Confidential Information will not disclose such Confidential Information and shall exercise the same degree of care to avoid disclosure of such Confidential Information as it employs with respect to its own Confidential Information, but not less than reasonable care. Confidential Information shall not include such

information that: (a) is now or hereafter becomes publicly known without violation of these Service Terms; (b) was known to the recipient prior to the time of disclosure without obligation to preserve confidentiality; (c) was received by the recipient from a third party legally entitled to disclose the information without obligation to preserve confidentiality; (d) was independently developed by the recipient; (e) is authorized to be disclosed by the disclosing party or is required to be disclosed by law in which case the recipient will inform the disclosing party and allow the disclosing party reasonable time to seek a protective order. Customer Confidential Information shall not include: (i) information contained on the exterior of a package, including information contained in plain text or bar code form on shipping labels, or (ii) package level detail or smart label information, including but not limited to, consignee's full name, complete delivery address, package weight and zone, and package labeling that contains Maxicode, postal barcode, current routing code, appropriate service level icon, a 1Z tracking number bar code and address details related thereto ("PLD") (collectively, "Shipping Information"). SCS will use Shipping Information only as permitted by the UPS Privacy Policy located at [www.ups.com](http://www.ups.com) and in effect at the time of shipping or as permitted by law.

**19. Warranties.** ANY WARRANTIES OF THE PARTIES EXPRESSLY SET FORTH HEREIN ARE THE SOLE WARRANTIES MADE BY THE PARTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER'S SOLE REMEDY FOR BREACH OF ANY SUCH WARRANTY SHALL BE LIMITED TO THE REPERFORMANCE OF THE SERVICE AT ISSUE.

**20. Governing Publications.** Transportation of all Goods under these Service Terms is subject to the following publications. If any term in a Governing Publication conflicts with the Service Terms (including any Price Quote), the Service Terms shall govern:

- a. Transportation by rail: Intermodal Circulars issued by applicable rail carriers. Customer shall comply and remain in compliance with, all applicable Intermodal Circulars issued by rail carriers.
- b. Transportation by ground: (i) National Motor Freight Classification ("NMFC") - 100 W series or reissues thereof; (ii) U.S. Postal Service Zip Code Directory; and (iii) P.C. Miler as appropriate to the contracts and shipments involved, in use by SCS at date of shipment.

**21. General Provisions**

- a. **Survival.** The rights and obligations of the Service Terms which by their nature are intended to survive expiration or termination shall so survive, including but not limited to: Fees and Taxes, Indemnification, Term and Termination, Liability for Loss or Damage, and Filing of Claims.
- b. **Entire Agreement.** These Service Terms (including the Price Quote) set forth the full and complete understanding of the parties with respect to the matters herein, and supersede any and all agreements and representations between the parties made or dated prior to the commencement of Services, including any agreements regarding confidentiality. Customer acknowledges that it has read the most current version of the Service Terms and agrees to be bound by them.
- c. **Assignment; No Third Party Beneficiaries.** The rights and obligations under the Service Terms may not be transferred or assigned to a third party by Customer or SCS without the prior written consent of the other party; provided however, SCS may transfer or assign all or part of its rights and/or obligations to one or more of its parent or affiliates. There are no third party beneficiaries.
- d. **Waiver; Severability.** A waiver of any right by either SCS or Customer will not constitute a waiver of such right on any subsequent occasion. Acceptance by SCS of the amounts (or lesser amounts) payable under the Service Terms (including a Price Quote) shall not be deemed a waiver of any default. If any provision of the Service Terms is determined to be invalid, such invalidity will not affect the validity of the remaining portions of the Service Terms.
- e. **Controlling Law.** The Service Terms shall be governed by federal law, where applicable, and the laws of the State of Georgia without regard to Georgia's conflicts of laws provisions.
- f. **No Use of Trademarks.** Neither SCS nor Customer shall use each other's or their respective affiliates' corporate name or logo without prior written consent; provided however, SCS may disclose Customer's name as a reference to any current or prospective customer.