

Pan Am Southern LLC

- TERMS AND CONDITIONS -
FOR
RAIL TRANSPORTATION OF COMMODITIES
MOVING IN INTERSTATE AND INTRASTATE COMMERCE
VIA
PAN AM SOUTHERN LLC*

EFFECTIVE OCTOBER 15, 2014

Issued by:

PAN AM SOUTHERN LLC
1700 Iron Horse Park, North Billerica, MA 01862-1690

*This PAS Circular No. 1 shall apply to PAS West of Milepost ("MP") 312

SECTION I LIABILITY

The liability provisions contained in this Section I of these Terms and Conditions shall apply to all Shipments for which Pan Am Southern LLC (“PAS”) arranges or provides transportation services.

These liability provisions will not apply if: (1) Carmack Liability coverage is selected in accordance with Section II herein; or (2) PAS and Shipper have a signed, written agreement for shipment of Cargo pursuant to 49 U.S.C. § 10709, in which case the terms of said agreement shall apply.

1. Liability.

- a. PAS shall not be liable to Shipper for loss or damage to lading unless there is proof that ST negligence was the cause of the loss or damage. In the event an act or omission of any party involved in the transportation process (including but not limited to Shipper, rail carrier or receiver) is not the sole cause of, but contributes to loss or damage, each such party shall be liable only to the extent said loss or damage was caused by its negligence.
- b. PAS’ liability for loss or damage shall not exceed the actual amount of physical loss or damage sustained to the Cargo. PAS’ total liability for loss or damage to the Cargo of a carload shall not exceed the destination value of the Cargo or fifty thousand (\$50,000.00) dollars, whichever is less, except on container on flat car and trailer on flat car shipments, in which case PAS’ liability for the Cargo shall not exceed the destination value of the Cargo or two hundred fifty thousand (\$250,000.00) dollars.
- c. PAS shall not be liable for special damages (including but not limited to lost, profits, business interruption expenses and Shipper or consignee’s liability to their own customers for liquidated damages or other damages), consequential damages, indirect loss or punitive damages arising from loss, damage, suspected contamination, delay to cargo, any losses attributable to fluctuation in the market value of the cargo or any losses, direct or indirect, which result from an interruption of rail service. PAS shall not be responsible for attorney’s fees, court costs or interest.
- d. PAS shall not be liable for temperature, corrosion or humidity related losses unless mechanical protective service is requested and paid for and PAS owned or leased equipment is used.
- e. PAS and its connecting United States and Canadian rail carriers shall not be responsible for loss or damage occurring in Mexico.

- f. PAS shall not be liable for loss or damage caused by defective equipment when such equipment is not owned or leased by PAS.
- g. On shipments intended for export from the United States, PAS shall not be liable for charges such as brokerage fees, fines, penalties, foreign marine or foreign country freight charges, import duties or other such charges on Cargo that is lost, damaged or delayed in domestic transit.
- h. PAS does not guarantee rail service on any scheduled time frame.

2. Indemnity.

- 1. Shipper agrees to defend, indemnify and hold harmless PAS, or any party involved in the transportation of Shipment that is subject to this Circular, from all claims and/or lawsuits for loss or damage, brought by any person(s) or entity(ies) alleging property loss and/or personal injury and/or death arising out of or resulting from any act and/or omission of the Shipper, and specifically from all claims and lawsuits resulting from the Shipper's failure to comply with the terms and provisions contained in this Circular, relating to the transportation, storage and/or custody of the subject Shipment, including any judgments, settlements, costs, attorney fees and other expenses.
- 2. Shipper shall assume all legal defense against any third-party claims for damage due to Shipper's and/or its agent's failure to comply with the obligations contained in this Circular and the applicable rate documents. The Shipper shall be solely responsible for and will defend, indemnify and hold harmless PAS against all claims for property loss or damage, personal injury, death or any other liability, including fines, PAS costs, late payments, attorney fees, interest and expense resulting from any spill, response, mitigation, cleanup or disposal due to the Shipper's noncompliance with any local, state or federal law or regulation and/or the terms and conditions contained in this Circular, as well as the applicable rate documents.
- 3. Shipper shall be solely responsible for and will defend, indemnify and hold PAS and its parent subsidiaries and/or affiliates of either, harmless against any property loss, damage, personal injury or death arising directly or indirectly from improperly tendering restricted articles as set forth in this Circular and will defend, indemnify and hold PAS harmless from any responsibility, including any related costs and expenses.
- 4. Shipper shall be solely responsible for and will defend, indemnify and hold PAS harmless against any loss, damage or personal injury due to any defects in privately owned or leased equipment.
- 5. The Shipper of any hazardous commodity shipped via PAS shall indemnify PAS and hold PAS harmless for any and all loss, liability or cost whatsoever that PAS may

incur or be held responsible for, to the extent that such liability is due to, or arising from, defects in or failure of Shipper's cars and equipment, due to Shipper's failure to conduct proper or appropriate pre Shipment inspection of the cars as described in 49 CFR Sec. 173.31 (b) or misidentification of commodity shipped during transportation. The indemnification in this paragraph B.5 shall not apply to any loss or liability caused by or due to PAS' negligence, failure to conduct pre-departure inspections as described in 49 C.F.R. § 174(A) or failure to follow American Association of Railroad ("AAR") interchange rules.

SECTION II CARMACK LIABILITY

This Section II applies if, at the time of price quote, Shipper, in writing, selects the liability provisions of 49 U.S.C. § 11706 (“Carmack Liability”), otherwise the provisions of Section I herein shall apply.

In order for a shipment to be subject to the terms of 49 U.S.C. § 11706 it must comply with all of the following provisions:

1. Shipper must notify PAS in writing at the time of price quote that Shipper chooses Carmack liability protection.
2. On Shipments requesting Carmack liability protection, Shipper must prepay a negotiated rate which will be obtained by contacting PAS Marketing Department. Carmack coverage will in no case be less than the usual tariff or circular rate plus 200%.
3. Any Shipper tendering a Shipment for transportation without complying with all of these terms will be subject to the limited liability provisions as set forth in Section I herein.
4. Shippers that do not select Carmack liability expressly acknowledge that PAS and Shipper have agreed to transport the cargo at a reduced rate and pursuant to the reduced liability provisions contained in Section I herein.
5. Carmack liability coverage is not available for any Shipments that originate outside the borders of the United States.

SECTION III CLAIMS

The provisions of this Section II shall apply to all claims for loss or damage to Cargo moved by PAS within the United States, irrespective of the liability provisions that apply to the Shipment. Failure to follow the provisions set forth herein may result of waiver of claim by Shipper. The Shipper shall be conclusively presumed to have agreed to this Circular's terms and conditions by tendering a Shipment to PAS for transportation, even in the absence of an executed agreement between Shipper and PAS.

1. Claims for loss or damage to Cargo must be filed in writing via FAX, Electronic Data Interchange or Electronic Mail within nine (9) months of the delivery date as indicated in car movement history recorded with PAS or in the event of non-delivery, within nine (9) months of the expected delivery date. Claims must be filed by Beneficial Owner, Shipper or Customer. Such written or electronic communication shall comply with the minimum requirements contained in 49 C.F.R. s. 1005.2(b), incorporated herein by reference. Failure to file a claim with PAS within nine (9) months shall constitute a waiver of the claim.
2. Prior to filing a claim, claimants must, within twenty four (24) hours of Shipment's placement, notify destination carrier (as shown on the waybill) of any claimed damages or shortages and allow destination carrier or an agent thereof to inspect said loss or damage. Failure by destination railroad to inspect damaged Cargo shall not relieve claimant from establishing that Cargo was delivered damaged. If destination railroad waives inspection, claimant should include in its filing name of destination railroad's official who waived said inspection, his or her phone number and date on which said inspection was waived.
3. In the event a Shipment is delivered by PAS and is alleged to be damaged or short at the time of delivery, claimant should notify PAS immediately. PAS may, in its sole discretion, conduct an inspection of said Shipment. In no event, however, will PAS issue an exception report.
4. Carrier reserves the right to summarily deny any and all claims submitted that do not contain all of the following required information:
 - a. A demand for payment of a specific amount, with a statement of the formula or basis on which the damages are calculated, plus evidence/documentation in support of the calculation.
 - b. Information identifying the shipment including equipment initials and numbers, Shipper's consignees and receiver's names, address and telephone number, shipping date and commodity.

- c. Origin records or certification as to the condition and quantity of the lading at the time the goods were tendered to the origin rail carrier. If shortage is involved, origin seal records must be furnished including but not limited to bill of lading, shipping manifest, and/or purchase and sale agreement, as applicable.
 - d. Destination records or certification as to the condition and quantity of the lading at the time the goods were received from the destination rail carrier. If shortage is involved, destination seal records must be furnished.
 - e. Verification of the amount claimed such as certified invoices or repair bills.
 - f. Documentation as to the disposition of the damaged lading and salvage proceeds therefrom.
 - g. Documentation that Shipment was loaded in compliance with the provisions herein or applicable American Association of Railroad ("AAR") loading specifications if no specific provisions apply.
 - h. Supporting photographs (digital, if possible) which include, but are not limited to photographs of: outside of rail car showing railcar initial and number; intact face of lading adjacent opened side door(s) showing arrival condition; locations of holes or leaks, if any; blocking and bracing used to secure Cargo; and photographs that substantiate damage to containers; product remaining intact in lading including full view of lading in ends of railcar or trailer/container.
5. Shipper shall be required to accept delivery of a Shipment so long as any part of it is not damaged and/or the Shipment is not totally worthless. It shall be the duty of the Shipper to preserve the value of that part of a Shipment received in an allegedly damaged condition. Shipper shall exercise all reasonable and good faith efforts to mitigate its damages. This includes Salvage. If the shipper contends that it cannot Salvage damaged Cargo, then the Cargo shall be offered to PAS for Salvage. If Shipper prevents or refuses to sell or allow sale of the damaged Cargo, PAS may deduct the market value of the damaged Cargo from the amount of the claim, and the Shipper shall be bound by such deduction.
6. Claims for less than five hundred (\$500.00) dollars of Cargo loss or damage shall not be permitted and no claim shall be paid if the amount of loss or damage is found to be less than five hundred (\$500.00) dollars. Shipper hereby waives any and all recovery, remedies and/or rights with respect to such claims.
7. PAS shall not be liable for more than five hundred (\$500.00) dollars per car load for the amount of internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, and beer previously withdrawn from bond, which were lost, rendered unmarketable or condemned by a duly authorized official by reason of fire, flood, casualty or breakage, destruction or other damage (but not including theft) resulting from

vandalism or malicious mischief, if such damage or disaster occurred in the United States and if such distilled spirits, wines or beer were held and intended for sale at the time of such disaster or other damage.

8. PAS will accept whole or partial claim for overcharge, over collection or duplicate payment only if the claim is in writing and contains sufficient information for PAS to conduct an investigation, including the name of the claimant, which must be the payer; their claim number; the amount being claimed, the original freight bill; payment of freight bill documentation showing that PAS collected all of the charges at issue and, in the case of overcharges, the rate, weight, commodity, description and supporting authority claimed to be applicable. The claim must be filed within two (2) years of the date of delivery or tender of delivery by PAS or delivering rail carrier of the subject Shipment.
9. Claims and correspondence associated therewith, filed pursuant to this Claims Provisions Circular shall be addressed as follows:

Pan Am Southern LLC
Director of Freight Claims
1700 Iron Horse Park
North Billerica, Massachusetts 01862
t. 978 663 1060
f. 978 663 1237
freightclaims@panamrailways.com

10. All civil actions for loss or damage must be filed within two (2) years from the date PAS provides notice to the claimant that it has denied all or part of its claim.

SECTION IV MISCELLANEOUS

The provisions contained in this Section III shall apply to all Shipments for which Pan Am Southern LLC ("PAS") arranges or provides transportation services.

1. Commodities from or to a Foreign Country.
 - a. Unless otherwise agreed upon between the parties, the transportation, or any portion thereof performed within a foreign country, will be subject to all laws and rules pertaining to the railroad transportation in that country, including but not limited to, environmental, taxing, civil, commercial, loss and damage to cargo, administrative and labor laws, rules, decrees, ordinances, Mexican Regulatory Railroad Service Law and its Regulations (without giving effect to the principles of conflicts of laws). PAS shall not be liable for freight loss or damage that occurs while cargo is in the possession of an international or a domestic rail carrier in a foreign country.
 - b. Rates for Shipments moving in Bond for clearance by U.S. Customs at an PAS facility will not include the unloading, segregating or reloading of freight when required to accomplish U.S. Customs clearance. Such unloading, segregating and reloading of freight and/or the charges associated with this action is the responsibility of consignor and/or consignee.
2. Commodities not Accepted for Transportation in TOFC and COFC.
 - a. The following articles of Cargo shall only be accepted pursuant to a Special Rate Quote. The terms of said SPQ and shipment thereof shall be negotiated by Shipper and PAS at the time of quote. PAS reserves the right to add Cargo not listed in this section at its sole discretion.
 - Acids, liquid, in carboy; Animals, live; Articles described under Rule 3 of the Uniform Freight Classification; Articles exceeding inside length of van-type trailer used or articles exceeding length of flat-bed trailer used; Articles requiring protective service; Articles of extraordinary value including old or rare precious articles; Bees; Blacks (carbon gas or oil blacks), lamp black or vegetable black, dry, NEC, not activated, not dyes or dyestuffs; Bulk commodities, excluding articles in packages, bundles or units weighing 8 pounds or over, also excluding articles in tank trailers (carriers will not furnish tank trailers) (Notes 3 and 4)Carcasses, animal, bird, poultry or reptile; Carrion Coin Currency; Explosives as described in Classes A and B, Section 173.53 to 173.93 of Tariff ICC BOE 6000Fresh meat, packing house products and dressed poultry, as described in Items 67780 to 68010 of ICCUFC6000 (See Note 2 below)Missiles, guided, or rockets, guided; guidance system or electronic guidance control apparatus for installation in missiles or in missile sections; missile or rocket from

assemblies containing electronic apparatus; or mobile missile guidance systems as described in Items 69093 to 69098 of ICC UFC 6000; Motor vehicles, freight or passenger or combination of freight or passenger, complete or not complete, finished or not finished; Precious metals; Radioactive materials; Railway wheels, new or used, when moving on other than flatbed trailers; Trailers, freight, or tank trailers, new or used, including freight trailers, NOIBN, as described in Item 92900 of ICC UFC 6000, but excluding farm or freight cars, trucks or wagons, NOIBN, as specifically described in Item 92900 and other than as described in Items 93080, 93100 and 93110 of ICC UFC 6000 (See Note 1 Below); Stones or articles manufactured therefrom; U. S. Mail of any class; Valuable papers of any kind; Waste materials: Hazardous, having no reclamation value, as described in Part 1, Title 40, Code of Federal Regulations

3. Dunnage.

- a. Except as otherwise agreed upon in writing by the parties, temporary blocking, flooring or lining, corrugated fiberboard or plywood separators or dividers, standards, strips, stakes or similar bracing or supports, bulkheads, partitions, temporary doors or door protection, not constituting a part of the car, (hereinafter referred to as "Dunnage") when required to protect and make freight secure for a Shipment shall be furnished and installed by Shipper and at their expense. Dunnage does not include excelsior, hay sawdust, shavings, shredded paper, straw, packing cushions or pads or similar packing material.
- b. Except as provided in this paragraph or the paragraph below, an allowance of actual weight, but not in excess of two thousand (2,000) pounds, will be made for dunnage used when such materials are required for safe transportation of freight provided in no case shall less than the established minimum carload weight be charged for.
- c. No allowance will be made for dunnage used in connection with bulk freight.
- d. No allowance for Dunnage used will be made unless Shippers specified total actual weight of dunnage on the Bill of Lading.
- e. Transportation charges for Dunnage, when made, shall be at the rate applicable to the cargo which it accompanies.

4. Loading and Unloading.

- a. Shipper shall be responsible for the proper loading and unloading of railroad cars and for all associated costs.

5. Overloaded Cars.

- a. An overloaded car is defined as a rail car for which either the net weight (actual weight of freight including all other materials incidental to the movement of the

goods) is in excess of the car's authorized load limit (as listed in Universal Machine Language Equipment Register-UMLER), or the gross weight (combined weight of railcar and freight including all other material incidental to the movement of the goods) is in excess of the track weight limitations at any point along the route of movement

- b. If a car is overloaded, Shipper is responsible for the removal and disposal of the excess portion of the lading of the car. PAS will not be responsible for damaged goods or loss of lading resulting from the process of removing excess portion and PAS does not assume responsibility for the proper loading or unloading of any lading into or out of a car containing excessive lading. All charges referred to are assessed as a deterrent to the unsafe practice of overloading rail cars and are not connected in any way with the line-haul transportation charges.
 - c. If Shipper does not produce a certified weight document, in a form acceptable to PAS, indicating that the excess tonnage has been removed from each car, weighing charges for each overloaded car, including applicable switch charges as published in PAS 8100-Series, will be assessed against the Shipper in addition to all other charges named in this publication
 - d. If a car is found to be overloaded at origin after having been removed from industry or if a car is found to be overloaded at railroad tracks where loaded or if a car is found to be overloaded after the car has departed the origin station, the overloaded car(s) will be placed at a point of PAS choosing until the excess lading is removed and will be subject to a surcharge of \$2000.00 per car, a switch charge of \$200.00 per car, and the applicable freight charges. Shipper will be notified via telephone, fax or by an electronic means and shall remove the excess lading at the operating convenience of PAS. Cars found to contain excess lading at origin will remain on continuous demurrage under the provisions found in PAS Demurrage publication 6000-Series, until the excess lading is removed.
 - e. If Shipper fails or refuses to arrange to have the excess lading removed from each car within one hundred and twenty (120) hours from the date and time of notification, PAS may, at its discretion, arrange for removal and disposal of the lading in excess of the weight limit needed to allow the car to continue safely to destination. The Shipper will be assessed and pay actual cost of removal and disposal to the party removing the lading from the car. If Shipper/consignor has not commenced reducing the excess portion from each car after two hundred and forty (240) hours from the date and time of notification, the lading in the car will have been deemed abandoned and PAS may, at the option of PAS Freight Claim Department sell or dispose of the lading. All charges (switching, weighing, demurrage, reduction and disposal expense) resulting from the overloaded car, will be deducted from the proceeds of sale.
6. Packaging.
- a. PAS does not make any representations as to the suitability of cargo for rail transportation. The Shipper acknowledges that there are significant forces exerted

on the cargo in rail transportation that may require additional packing measures for the cargo to move safely and damage free.

- b. All loading, bracing and blocking must comply with the applicable, Association of American Railroad (“AAR”)’s pamphlet or general information series publication or modifications approved by PAS’ Freight Claims Department prior to Shipment. Shipper is required to take all necessary additional steps to protect their product during rail transportation.
- c. In the event a load shift is required, when determined by rail carriers that there was insufficient or improper blocking and bracing, the Shipper shall be responsible for all expenses associated therewith, including but not limited to the repair of damaged equipment, loss or damage to cargo, and transfer services. In addition, all charges, administrative, civil fines, storage and demurrage are due and payable in full before the railcar or the cargo is released.

7. Privately Owned Cars.

- a. Use of private equipment is limited to cars, which have been authorized by PAS to operate over its lines. Nothing herein shall be construed as requiring PAS to grant such authorization.
- b. Nothing herein shall affect or be construed to affect any arrangement, interchange agreement or other agreement between PAS and the owner of the private car with respect to the use, maintenance, operation or repair of, or payment for damage to or destruction of such private cars.

8. Order/Notify Shipments.

- a. Specialized rail handling such as ‘do not hump’; speed restrictions and equipment size are special rail services and non-routine rail services. Unless agreed to by both PAS and Shipper and memorialized in writing, any restrictions on rail handling placed by Shipper upon a particular car (including but not limited to “do not hump” signs, notations as to speed or other restrictions on a bill of lading, EDI notations) shall have no effect and shall be void. Shippers desiring special handling must contact PAS to arrange said special handling.
- b. PAS does not provide Order/Notify service. Bills of lading or shipping instructions tendered to PAS in the form of an order/notify bill of lading will be handled as straight bills of lading. Instructions to the effect of requiring PAS to not complete delivery of a Shipment until either securing authorization for delivery from the Shipper or some other party, surrender of the bill of lading or notification by PAS to the Shipper or some other party shall have no effect and be void regardless of whether such instructions are contained in a straight or an order/notify bill of lading; and PAS shall have no liability for delivering a Shipment to the consignee listed in the bill of lading in such circumstances.

9. Returned, Refused or Rejected Shipments.

- a. This item does not apply to Coal or Perishable Freight requiring protective service.
- b. When a Shipment covered by this publication has reached destination but is refused or rejected, not unloaded, and is returned to the original shipping point for reasons other than rail carrier's error, the return movement will be subject to the rate and minimum weight in the reverse direction in effect on date Shipment is tendered for return, or to the rate normally applicable for such return movement if lower.
- c. Routing for the return movement will be applicable only via the reverse of the route over which the original Shipment moved, except in the case of emergency routing orders.

10. Seals.

- a. It is the sole responsibility of the Shipper to determine the type of protection necessary to protect the cargo, including but not limited to the use of seals and security devices. PAS does not apply or determine if seals or security devices are appropriate or adequate, except in the case of contamination (see paragraphs below). Nor does PAS, in all cases, inspect Shipments for seal integrity. In the event that a seal or a security device is broken or missing, the absence or breach of a seal will not create a presumption of contamination or theft without actual physical evidence. Documentation of the application of seals or security devices at origin is the responsibility of the Shipper and the seal number(s) must be included on the bill of lading or shipping instructions and in any claim application.
- b. In order for PAS to consider a claim for contamination of cargo, the Shipment must be sealed by the actual Shipper or its agent. The minimum seal will be a barrier type seal meeting American Society for Testing and Materials (ASTM) standards, a cable seal 1/8 inch in diameter, a high security bolt seal, or its equivalent. All seals utilized by the Shipper will be sequentially numbered and recorded on the bill of lading or shipping instructions. The Shipper will maintain for one year a record of the date and time of the application of seal, and the identity of the person applying the seal.
- c. PAS will not consider any claim from cargo contamination unless the above minimum standards are met.

DEFINITION OF TERMS

AAR – Association of American Railroads. The Association of American Railroads provides railroad-related services, research and analysis to railroads and Intermodal companies in the USA, Canada and Mexico

Agent – An Agent is a third party who acts on behalf of the Customer, Shipper, or Broker with another entity; transmitting instructions on their behalf

Beneficial Owner – Actual owner of the commodity that is being tendered for Shipment in an Intermodal Unit.

Cargo – The freight within or contents of a trailer or container.

Carmack Liability – 49 U.S.C. § 11706. Carmack liability provides for full liability and other terms for PAS and the Shipper

Claim – A request for reimbursement supported by evidence to show that claimant has sustained a loss caused by the negligence of a carrier.

COFC – The movement of a container, which is not mounted on a chassis, on a railroad flat car

Consignee – The receiver of a Shipment.

Equipment – Equipment includes but is not limited to trailers, containers (with or without chassis, chassis, flat beds, open-top containers (with or without chassis), flat racks (with or without chassis), portable tank containers (with or without chassis) and all types of equipment used for handling or moving intermodal shipments.

Hazardous Materials – Materials as defined by DOT in the Code of Federal Regulations (49 CFR) as hazardous materials, hazardous wastes, and hazardous substances.

Hazardous Material Regulation – The Code of Federal Regulation (CFR) Title 49, parts 100 through 180 Regulation.

Private Car – Equipment owned by non-rail carriers.

Receiver – Person, party, or legal entity receiving the Shipment at destination; also referred to as the consignee.

Salvage – The sale of damaged Cargo in mitigation of damages.

Seal – Device for fastening or locking the doors of all loaded railcars or Intermodal Units that is manufactured of such a material as to provide

Shipment integrity and security and create a deterrent for unauthorized intrusion while Shipment is Enroute.

Shipment – A loaded or empty car tendered for transportation between one origin and one destination.

Shipper – The person or entity contracting to engage the services of PAS. The party named on the shipping documents or billing instructions as the Shipper, who may be the consignor, seller and/or Beneficial Owner, and who may also be the party paying the freight costs.

Shipment – A loaded or empty car tendered for transportation between one origin and one destination.

Special Price Quote (SPQ) – A quotation by PAS of a special price or of different or additional contractual terms generated with respect to a Shipment made at the request of a qualifying Shipper.

TOFC (CC) – A Trailer on a railroad flatcar; indicates the type or movement such as a trailer or a container mounted on a chassis moving on a flatcar.

UFC – Uniform Freight Classification.