

**CARGO CARRIERS,
A DIVISION OF CARGILL MARINE AND TERMINAL, INC.**

**TERMS AND CONDITIONS
OF FREIGHT CONTRACT AND BILLS OF LADING**

1. **APPLICATION AND ACCEPTANCE OF TERMS AND CONDITIONS.** The following terms and conditions apply to and are incorporated into all freight contracts and bills of lading made or issued by Cargo Carriers, a business of Cargill, Incorporated, for transportation of Cargo by barge. Shipper's acceptance of a barge placement by Carrier shall be deemed to constitute Shipper's binding acceptance of these terms and conditions. The Consignee, and any later Consignee to whom the Cargo is sold, or to whom a Bill of Lading is transferred or negotiated, is intended as a party to the freight contract, Bill of Lading, or Shipping Confirmation and shall likewise be bound by the terms hereof. Shipper warrants and represents that it is authorized to bind Consignee and any later Consignee to these terms and conditions. Shipper warrants that it has hired the services of Carrier on its own behalf and not as agent for an undisclosed principal.

2. **DEFINITIONS.** As used in these Terms and Conditions, the following definitions apply:

The term "Carrier" means Cargo Carriers, a business of Cargill, Incorporated and any sub-contractor or assignee of Carrier.

The terms "Shipper" and "Consignor" mean the person or organization named in the Bill of Lading or Shipping Confirmation as the party from whom Cargo has been received for shipment.

The term "Cargo" or "commodity" means the product, merchandise or property to be transported.

The term "Customer" means the person or entity for whom Carrier renders a transportation service and is the consignor, Consignee, or both.

The term "Consignee" means the person or organization named in the Bill of Lading as the party to whom Cargo is shipped.

The term "barge" herein shall mean both the singular and the plural as intended by the parties depending on the number of barges subject to the applicable Contract.

The term "ton" or "net ton" means 2000 pounds.

3. **CONTRACT OF PRIVATE CARRIAGE; CARRIER'S LIABILITY.**

a. Every freight contract with Carrier and Bill of Lading or Shipping Confirmation issued by Carrier shall constitute a contract of private carriage of Cargo in accordance with these terms and conditions. In consideration of Shipper's commitment to pay the agreed amount of freight charges, Carrier shall transport the Cargo by barge from the point of origin to its agreed destination. **Carrier shall have no responsibility for the Cargo until proper loading is complete and the barge has been removed from the loading facility and onto safety navigable water. Thereafter, Carrier shall be liable for loss or damage to Cargo only if such loss or damage was caused directly by Carrier's negligent failure to maintain its barge in a reasonably fit condition. Carrier shall not be liable under any circumstances for any consequential damages, or punitive or exemplary damages. Carrier shall have no liability beyond that specifically stated above.** When Carrier's liability for Cargo loss or damage has been established, there shall be applied, as a deduction to the shipping weight, a credit to the amount due for reasonable shrinkage to the Cargo due to evaporation or other natural causes. Thereafter, Carrier shall pay for lost or damaged Cargo based on its actual value at the time and place of loss or damage, up to a maximum limit of \$500.00 (five hundred dollars) per ton.

b. Without limiting the generality of the foregoing, Carrier shall not be liable for any Cargo loss or damage resulting from or related to deviations or delays in carriage, long-term storage of the Cargo, variation of weight due to natural shrinkage; absence of ventilation; infestation of insects, pests, rodents, or other vermin; heating or freezing; moisture or other conditions in the Cargo itself or such amount of condensation and moisture as is to be reasonably expected in steel river barges; deficiency in packaging or covering or dunnage; accidents resulting from negligent navigation or faults of others; acts of war, terrorism or vandals; or any other causes not related to Carrier's negligence or unseaworthiness of the barge as described in Section 3 a above. Notwithstanding any other provision herein, Carrier shall not be liable for any loss or damage that occurs after the barge has been placed for unloading at destination. Carrier shall have no liability for Cargo damage, Cargo loss, or delay caused by any towing company, terminal or other third party, even if Carrier hired that third party, unless Carrier agrees in advance in writing to bear such liability.

4. CARGO INSURANCE. Carrier will carry legal liability insurance to cover any liability on its part that is consistent with the terms of Section 3 above. Carrier shall not be required to carry all-risk insurance on the Cargo, although Shipper may carry such insurance at its option and its cost.

Carrier shall also require all towing companies who tow a barge to carry protection and indemnity, and tower's liability insurance.

5. FORCE MAJEURE. Neither Carrier, Shipper, the barge, the tow, her master or owners, nor any other equipment used by Carrier, shall be responsible or liable in any way for, and each of those shall be excused from, any failure or delay in performance hereunder or in offering for transport, loading, transporting, or unloading the Cargo, arising from Force Majeure, provided the party declaring Force Majeure gives written notice of such condition to the other party within seventy-two (72) hours after commencement of the Force Majeure condition.

The term "Force Majeure" shall mean and include, as examples and not as an exhaustive list, acts of God or the elements; acts of a public enemy; acts of terrorism, insurrections, or riots; strikes or labor disputes; fires, explosions, floods, ice, or high or low water; embargoes, acts or orders of civil or military authorities; lock delays or closings; fuel shortages; and other causes beyond the reasonable control of the party declaring Force Majeure. Such excuse from performance shall continue until the Force Majeure ceases to exist. A party declaring Force Majeure shall make reasonable efforts to eliminate or resolve the condition, recognizing, however, that the settlement of any strike or other labor dispute shall be solely within the discretion of that party. A declaration of Force Majeure by Shipper does not excuse Shipper's obligation to pay storage costs or demurrage.. When a Force Majeure is declared on a barge with remaining free time, the counting of free time shall be suspended until the Force Majeure ceases to exist.

6. TRANSPORT. Carrier is not bound to transport any Cargo by any particular barge or towboat or in time for any particular market or otherwise except with reasonable dispatch. Any tow carrying all or any of the Cargo shall be at liberty to call at any port or ports in or out of the customary route and in any order, to tow and be towed, to assist vessels in distress, to deviate for any reasonable purpose, and to dock and repair any vessel as Carrier deems appropriate. If reasonably necessary to protect or safeguard the barge, Carrier shall be at liberty to transfer, lighter or forward the Cargo or to load or discharge it at any time. Carrier shall only accept Cargo to be transported to destinations accessible to its barge. If Cargo has been accepted or is re-consigned for delivery to a destination that subsequently becomes inaccessible to Carrier's barge for any reason, Carrier may deliver the Cargo to an accessible alternative destination reasonably near to the original destination, in which event the freight charges shall be adjusted to reflect the transportation service actually rendered by Carrier.

No diversion, re-consignment or holding in transit for orders, inspection in transit, transit privileges, holding of barge within a single harbor, stop off to partially unload or to complete loading, or more than one placement at origin or destination, shall be performed or allowed unless expressly approved in advance by Carrier in

writing, upon its sole discretion, and shall be subject to negotiation at Carrier's option.

7. CARGO

a. It is Shipper's obligation to present the Cargo for shipment and to load and unload the Cargo in a safe and workmanlike manner, all in accordance with all laws and regulations applicable to such Cargo, including Environmental Laws (described below). Shipper acknowledges that Carrier accepts the Cargo without knowledge of its quantity, quality, condition, contents or value. Carrier shall not transport or be liable for documents or articles of extraordinary value.

b. Shipper shall promptly supply Carrier with a current Material Safety Data Sheet for any Cargo upon Carrier's request.

c. Shipper also warrants that the Cargo is not a Hazardous Material (as defined below) that requires a special permit for shipping purposes, unless the permit number has been provided to Carrier and is shown on the first page of the Bill of Lading or Shipping Confirmation. Carrier reserves the right to reject Cargo constituting or containing Hazardous Materials. Every party, whether principal or agent, presenting Hazardous Materials or dangerous goods for shipment without previous full written disclosure to Carrier of the Cargo's nature, shall be liable for and indemnify Carrier against all loss, cost, expense, or damage of any kind, including pollution damage, caused by such Cargo. Such Cargo may be disposed of or warehoused at Shipper's risk and expense or destroyed without compensation to Shipper and at Shipper's risk. "Hazardous Materials" means any hazardous, toxic or dangerous substance, waste, contaminant, pollutant, gas or material (including petroleum products, explosives, radioactive materials, pesticides, fertilizers, medical waste and asbestos) that are regulated, defined or classified as such under Environmental Laws and/or for which liability and/or standards of conduct are imposed under Environmental Laws, "Environmental Laws" means all federal, state or local laws regulations, statutes, codes, rules, ordinances, resolutions, directives, orders, decrees, and any other governmental requirements, in effect, which pertain to, regulate and/or impose a liability or standards of conduct with respect to the environment and/or Hazardous Materials.

d. Every party, whether principal or agent, that ships explosives or dangerous goods, without previous full written disclosure to the Carrier of their nature, shall be liable for and indemnify the Carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

e. All quantities of Cargo listed on Carrier's Bill of Lading or Shipping Confirmation are Shipper's weight, load and count. Within 72 hours after completion of loading, Shipper shall submit to Carrier a written report descriptive of

the Cargo and the weight thereof.

8. DELIVERY, POSSESSION, LOADING AND UNLOADING OF BARGES.

a. Delivery of a Barge. Carrier shall deliver a barge to a dock or fleet designated by Shipper or Consignee for loading or unloading. Shipper warrants every barge shall have a safe berth during loading or unloading, free of any fleeting charges to Carrier, unless otherwise agreed in writing by Carrier in advance. In the event that the dock or fleet designated by Shipper or Shipper's Consignee is deemed unsafe or unable to accept a barge for any reason when tendered by Carrier, Carrier will deliver the barge to the nearest fleet in which space is available (an "Alternate Location") and the barge will be deemed to be constructively placed upon delivery to such Alternate Location. Shipper will be responsible for all additional costs associated with moving the barge to such Alternate Location, utilizing the Alternate Location, and the movement, if any from the Alternate Location to the original dock or fleet.

b. Shipper's Possession of the Barge during Loading and Unloading. For the purpose of this sub-section, the term "possession" shall mean that time commencing upon Carrier's delivery of a barge to any landing, dock or fleet designated by Shipper (or to an Alternate Location as described above) for loading or unloading until the barge is removed by Carrier or its agents after loading or unloading. Acceptance of possession of a barge shall constitute a guarantee to Carrier that Shipper or Consignee will assume the duty and responsibility for the safety of the barge while in its possession, including the provision and maintenance of necessary lights and any pumping and other care of the barge that may be necessary. The Shipper and Consignee, respectively, will comply with all applicable rules and regulations of the United States Coast Guard. The ownership or non-ownership of the landing, dock or fleet by Shipper or Consignee shall not affect the application or enforcement of this provision. During "possession" barges will be held without charge to Carrier. Carrier will not provide a towboat to stand by for shifting or switching of the barge, before, during or after loading or unloading.

c. Loading Requirements. Shipper or its agents shall load a barge in a safe and workmanlike manner, in accordance with Carrier's instructions, including to the maximum draft specified by Carrier, the height of the load, the tonnage of the Cargo, and such other instructions that Carrier may deem necessary for safe transportation. Shipper will be subject to any demurrage charges that may accrue due to Shipper's non-compliance with Carrier's requirements or instructions.

Shipper shall be required to distribute Cargo in a barge to ensure an even draft. If a barge is not loaded to an even draft, or if Cargo or debris is left on the working surfaces (i.e., covers, decks, gunnels, etc.), Carrier, at its exclusive option, may refuse

to accept the barge for transport, in which event Shipper must, at its expense, redistribute the Cargo and remove debris in compliance with Carrier's requirements. In addition, the barge will be subject to the demurrage provisions herein, from the time and date of placement until the barge is accepted for transportation by Carrier, or an empty barge is released and accepted by Carrier.

Upon completion of loading and release of the barge to Carrier, Shipper shall be deemed to warrant to Carrier that it or its agent or assignee inspected the barge before loading, and did not commence loading until satisfied that the barge was in a clean and seaworthy condition fit to receive the Cargo. Shipper further warrants that it or its assignee was solely responsible for loading the Cargo, and did so in a safe, expeditious and workmanlike manner so as not to cause damage to the barge, Cargo, or other property, or injury or death, or violation of any law. Shipper warrants that when loaded, the Cargo was in good condition, free from defect or inherent vice, and that all exterior barge surfaces were clean.

d. Unloading. Shipper and Consignee warrant that they and/or their assignee are solely responsible for unloading Cargo at destination and will do so in a safe, expeditious and workmanlike manner so as not to cause damage to the barge, Cargo, or other property, or injury or death, or violation of any law. Shipper or Consignee will pay for the cost of removing any Cargo, material or other objects left in or on the barge after unloading.

Cargo not removed by the party entitled to receive it within two days after notice that it is available at destination has been duly sent or given, may be removed to and stored in a public or licensed warehouse at the place of delivery, or other available place, at the cost of the Shipper, Consignee, or Customer and will be held there without liability on the part of the Carrier, subject to Carrier's lien for all freight and other lawful charges; provided that nothing shall abridge the right of the Carrier at its option to sell the Cargo under such circumstances and in such manner as may be authorized by law.

e. Mitigation. If all or any part of the Cargo is discovered to be damaged while aboard the barge, the Carrier at its sole discretion, in order to minimize the damage, may sell the Cargo at public or private sale to the best advantage, provided that where practicable, notice of the proposed sale shall be given to the Shipper and the Consignee: and provided further, that the proceeds of any sale made under this section shall be applied by the Carrier to the payment of freight, demurrage, storage and any other charges and the expense of notice, advertisement, sale and other necessary expense of caring for and maintaining the Cargo and the balance, if any, shall be paid to the owner of the Cargo.

If Shipper or Consignee shall breach any warranty contained in this Section 8, the Shipper agrees to hold harmless and fully indemnify and defend Carrier for

any loss, damage, or additional expense that Carrier sustains as a result.

9. BILL OF LADING. Upon the request of Shipper, Carrier shall issue and deliver a Bill of Lading or status report for the Cargo loaded into a barge. All Bills of Lading shall be subject in all respects to these terms and conditions.

10. CLEANING AND COVER CHARGES. Carrier shall pay the usual and customary charges for routine cleaning of the Cargo compartment of barges at the port of Destination or next port of Origin. At Carrier's sole discretion, if cleaning costs are considered excessive by Carrier, Shipper shall, upon written notice from Carrier, pay Carrier for such excessive cleaning expenses. Unless otherwise expressly agreed by the parties, Shipper will be responsible for payment of any barge cover handling expenses at Origin and Destination and for proper resetting of covers.

11. FREIGHT AND OTHER CHARGES.

a. General. Freight shall be considered earned in full upon the commencement of transportation after loading is completed. No deduction shall be made to the freight or demurrage thereafter if the barge or Cargo is lost, or if the transportation is interrupted or abandoned. Freight rates include one placement of a barge at Origin and one placement of a barge at Destination. Additional shifts are for the Shipper's account.

Carrier shall have the right to require at time of shipment the prepayment or guarantee of freight. If Carrier waives prepayment, then Carrier may insist that payment of freight will be made on presentation of invoice and prior to release of Cargo, unless Carrier is provided with an acceptable surety bond or other security guaranteeing payment of freight. Carrier has a maritime lien on all Cargo that it may assert and enforce to ensure payment of the freight and demurrage on all current shipments and any earlier completed shipments for which freight or demurrage are still owing. Waiver of such lien on prior shipments does not constitute a waiver as to the Cargo covered by this agreement. In the event Carrier delivers Cargo before payment of freight and demurrage is made, such delivery shall be a conditional delivery and shall not extinguish Carrier's lien on the Cargo even after such Cargo has been unloaded.

b. Exclusions. Freight rates apply for line hauls only and do not include the cost of: ballasting a barge; demurrage; disposing of excess Cargo; drayage; elevation; loading or unloading of Cargo into or from a barge; opening or closing barge covers or hatches; removal or replacement of barge covers; stacking or restacking of barge covers; rail switching; tollage; wharfage; or any other terminal expense at either origin or destination. All expenses reasonably required for the movement of Shipper's Cargo in addition to the freight rates shall be for the account

of Shipper and shall be promptly paid when invoiced.

c. Pass-through charges. If during the term of this Contract, any form of tax assessment, by any level of government, applicable to the Cargo, waterways user taxes, service charges, lock delay, lock assist, or other navigational surcharges, tolls or other similar charges increase over those in effect on the date of this Contract, such increases shall be paid by the Shipper in addition to the freight rates stated herein, on a pass-through basis. Any other charges imposed by a third party outside Carrier's control attributable to the movement of the barge will be paid by Shipper on a pass-through basis.

d. Non-grain Calculation. Settlement for freight charges for all Cargo other than grain shall be calculated on the basis of weights obtained at Origin as specified herein. Carrier shall not assume any responsibility to weigh the Cargo at its Origin or Destination. Within seventy-two (72) hours after the loading is completed, Shipper shall submit to Carrier a written confirmation of loading which describes the Cargo and its weight (net tons) (the "Confirmation"). Carrier will promptly invoice Shipper upon receipt of the Confirmation. If actual weight of the Cargo cannot be determined at Origin, the parties shall use estimated weights to calculate the freight charges. The freight charges shall be adjusted to reflect the unloaded weight of the Cargo, if such unloaded weight is available at Destination. If facilities for determining the Cargo's weight at Destination are not available, the barge will be gauged before it is unloaded, at Shipper's expense, and the weight of the Cargo thus ascertained shall be used to adjust the freight charges.

e. Grain Calculation. For grain, including, but not limited to, corn, soybeans, wheat, milo, sorghum and rice, Shipper's elevator shall provide Carrier within seventy-two (72) hours a U.S. Department of Agriculture ("USDA") official grain weight certificate indicating unloaded weight of the Cargo. The USDA official grain weight certificate may be an original or photocopy. Carrier shall invoice Shipper upon the receipt of the weight certificate for Cargo.

Any charges (including charges for lost barge days computed under the demurrage rules and regulations) encountered by the Carrier for removal of such Cargo or debris shall be in addition to the freight rate and for the customer's account.

12. FREE TIME AND DEMURRAGE. Free time will be calculated from 7:00 a.m. of the next day following the placement (actual or constructive) of a barge and shall continue to 7:00 a.m. on the day after a barge has been released. Loading or unloading shall be deemed as utilizing one (1) full day, notwithstanding that a barge may be loaded or unloaded and released to Carrier in less than a 24-hour period. After the period of free time has expired, the demurrage charges specified under this Contract or in the Bill of Lading or Shipping Confirmation will be assessed for each day, including Saturdays, Sundays and Holidays, until the barge is released as

provided herein. "Holidays" shall mean New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. The phrase "placement of the barge" means actual or constructive placement of a barge at a dock or a fleeting service (if the barge is delivered to the dock by the fleeting service) for loading or unloading. A barge shall be considered "released" and free time shall cease to run (i) at Origin, at 7:00 a.m. on the day after Shipper or Consignee notifies Carrier by rapid communication, that a barge is ready to be transported; and (ii) at Destination, at 7:00 a.m. on the day after Shipper notifies Carrier by rapid communication, a barge is unloaded and ready to be returned to Carrier. Demurrage will be billed at origin and destination separately on all grain Cargo, and at the conclusion of the voyage for all other Cargo.

13. CLAIMS. As a condition precedent to recovery, Shipper or Consignee must give notice to Carrier immediately upon knowledge of lost or damaged cargo that may give rise to a claim against Carrier. Documents in support of a claim shall be furnished promptly to Carrier upon request. Suits against Carrier arising from lost or damaged Cargo must be instituted within one year after the loss or damage occurred.

14. PAYMENT TERMS. All payments required hereunder shall be made in full within the time required by the contract or 30 days from load date whichever is less. A late charge equal to two percent (2%) of the payment due shall be charged and paid by Shipper for each month (or any fraction thereof) that any payment obligations hereunder are not paid when due, until such payment obligations are satisfied in full and all late charges paid. Carrier, in its sole and absolute discretion, may, upon written notice require different payment terms, including without limitation, payment in advance before placing a barge for loading. In the event that Shipper fails or refuses to make payment in accordance with Carrier's payment terms, Carrier shall have no further obligations to Shipper under this Contract. If any agency or attorney is employed to assist in the collection of such payment obligation, then the delinquent party also shall be required to pay the reasonable fees of such agency or attorney relating to such collection. Carrier has the right to delay placement of any barge and/or delivery of the Cargo if Shipper's payment obligations are five (5) days past due, until such time as all amounts due Carrier are paid in full.

15. DEFAULT. No default of either party in the performance of any of its covenants or obligations hereunder, which, except for this provision, would be the legal basis for rescission or termination of this Contract by the other party hereto, shall give or result in such a right unless and until the party committing such default shall fail to correct the default within ten (10) days after written notice of such default

is given to the defaulting party by the non-defaulting party. Notwithstanding anything in this Contract that may be construed to the contrary, there shall be no cure period for any payment default or default by Shipper or Consignee in complying with environmental or hazardous materials provisions of this Contract. Each party shall have each and every other right afforded it under law against the defaulting party.

16. NOTICES. All notices, consents, determinations, instructions and communications provided for herein must be in writing and shall be given, made or served, by personal delivery, overnight delivery by a recognized commercial courier service, by registered or certified mail, postage prepaid, or by email or facsimile to Shipper and Carrier at their respective addresses listed at the beginning of the Contract, or as the parties may otherwise direct in writing, including by emailed messages. Any notice, consent, determination, instruction, approval or other communication hereunder shall be deemed given and effective as of the date of delivery in person or by courier, or as set forth on the return receipt, facsimile confirmation, or email confirmation of receipt.

17. INDEPENDENT CONTRACTOR. Nothing contained in this Contract shall be construed as a contract by Shipper for the chartering, hiring or leasing of any barge, towboat or other equipment of Carrier to be provided hereunder; nor shall any of the agents, servants, subcontractors or employees of Carrier be regarded as employees of Shipper, it being understood that Carrier in all respects is an independent contractor and that Shipper shall exercise no control over the operation of any barge, towboat or other equipment of Carrier or over Carrier's agents, servants, subcontractors or employees.

19. SUBCONTRACTOR. Carrier, with prior written approval from Shipper, which approval shall not be unreasonably withheld, may subcontract for any of the services to be provided by Carrier hereunder, but Carrier shall remain fully responsible to Shipper for the proper performance of all of Carrier's obligations under this Contract. The parties acknowledge that Carrier may use third-party towing companies to provide towing of barges without prior approval from Shipper.

20. MISCELLANEOUS.

a. Conflict. In the event any of the terms of Shipper's confirmation or any applicable Bill of Lading differ or conflict with any of the provisions of this Contract, then the terms of this Contract will prevail. The terms set forth in the Bill of Lading will prevail over Shipper's confirmation.

b. Assignment. Shipper shall not be permitted to assign or otherwise dispose of all or any part of its rights or obligations hereunder without first obtaining

the written consent of Carrier. Such consent shall not unreasonably be withheld, provided that any such permitted assignment or other disposition shall not relieve Shipper of its obligation under this Contract.

c. No Waiver. The failure of Shipper or Carrier to insist upon strict performance of any of the provisions of this Contract in one or more instances or the failure of Shipper or Carrier to exercise any of its rights hereunder in one or more instances shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

d. Governing Law: Binding Effect. This Contract shall be governed by and construed in accordance with the general maritime laws of the United States, and, as to any issue for which no maritime rule or law exists, the laws of the State of Minnesota.

e. Forum. Any action arising out of this Contract including actions for the recovery of loss of or damages to Cargo must be brought in the United States District Court for the District of Minnesota or the District Court for Hennepin County, Minnesota. Shipper warrants and represents that it is authorized to bind Consignee and any later Consignee to this forum selection clause.

f. Headings. Headings are included merely for the convenience of reference, and shall not be construed as part of the governing terms of this Contract.

g. Integration/Execution. This Contract sets forth the entire agreement between the parties regarding the subject matter and no amendment or waiver shall be valid unless made in writing and duly signed by all parties involved.