

# **Terms and Conditions of Sakonnet Consulting Group, Inc.**

## **1. OVERVIEW**

1.1 Sakonnet Consulting Group, Inc. (referred to as "SAKONNET" in these Terms and Conditions) is a Property broker licensed by the Federal Motor Carrier Safety Administration (FMCSA), Docket Number MC- 635687, and as required by applicable law in Canada and, as such, it arranges for highway freight transportation with authorized motor carriage service providers. SAKONNET also arranges for intermodal freight transportation with rail service providers. SAKONNET also arranges for domestic air shipments with air service providers.

1.2 These Terms and Conditions apply to all shipments tendered to SAKONNET to arrange for transportation by motor carriage service providers, intermodal service providers or air freight service providers. In tendering shipments and/or using the services of SAKONNET, CUSTOMER acknowledges and agrees to be bound by these Terms and Conditions as of the date of the shipment.

1.3 As used in these Terms and Conditions, the term "CUSTOMER" means the person tendering shipments to SAKONNET to arrange for transportation for highway, intermodal or air transportation services.

1.4 While SAKONNET endeavors to provide advance notice of changes, SAKONNET reserves the right to change these Terms and Conditions from time to time without notice. The Terms and Conditions can be accessed on SAKONNET's website at [www.sakonnetconsulting.com](http://www.sakonnetconsulting.com).

## **2. Motor Carrier Highway BROKERAGE Service**

2.1 As a broker arranging for highway transportation, SAKONNET is not liable for any claims for loss, damage or delay for shipments tendered by CUSTOMER to SAKONNET to arrange for transportation. LIABILITY UNDER 49 USC 14706 (THE CARMACK AMENDMENT) OR CANADIAN FEDERAL OR PROVINCIAL LAW APPLICABLE TO MOTOR CARRIERS DO NOT APPLY TO SAKONNET.

2.2 Rates for the transportation of CUSTOMER's goods will be established by email confirmation and/or through the Load and Rate Confirmation Document provided by SAKONNET. By tendering the load to SAKONNET, whether or not the Rate and Load Confirmation is signed by CUSTOMER, CUSTOMER will be bound by the rate provided by SAKONNET in such documents.

2.3 Although SAKONNET may assist CUSTOMER with completing Bills of Lading, the CUSTOMER shall be responsible for the accuracy of all information provided on the final Bills of Lading regarding delivery specifications, delivery receipts, and description of the cargo, including, but not limited to, dimensions, weight, any special handling or security requirements and all requirements relating to the transportation of hazardous materials, including any required certifications. CUSTOMER shall employ reasonable security protocols to reduce the risk of cargo theft. CUSTOMER shall indemnify, hold harmless and defend SAKONNET as a result of any claims made due to an inaccuracy in the Bill

of Lading, delivery specifications and description of the cargo, including, but not limited to, dimensions, weight, any special handling or security requirements, and employing reasonable security protocols to reduce the risk of cargo theft.

### **Receipts and Bills of Lading**

2.4 If requested by CUSTOMER, SAKONNET will endeavor to provide CUSTOMER with proof of acceptance and delivery of shipments in the form of a signed Bill of Lading or Proof of Delivery via US Mail, courier, or electronically by fax or email. SAKONNET will not be held responsible for a CARRIER's failure to obtain any requested documentation regarding delivery. CUSTOMER's insertion of SAKONNET's name on the bill of lading as carrier shall be for CUSTOMER's convenience only and shall not change SAKONNET's status as a property BROKER.

2.5 The Terms and Conditions of any freight documentation used by SAKONNET or carrier selected by SAKONNET may not supplement, alter, or modify these standard Terms and Conditions.

### **Claims, Limits of Liability, and Insurance**

2.6 SAKONNET will use commercially reasonable efforts to obtain on-time performance from the motor carriers transporting CUSTOMER's shipments; however, unless otherwise agreed to by SAKONNET in writing before the time of shipment, SAKONNET and the motor carriers do not guarantee adherence to any particular transit schedule and will not be liable for failure to transport any shipment by any particular schedule or in time for any particular market or appointment.

2.7 For shipments originating in the United States, CUSTOMER must file all claims for cargo loss or damage directly with the transporting motor carrier within the time limits established by the motor carrier. Usually, but not always, a motor carrier's time limit for filing claims is within nine (9) months of the date of delivery or, if a total loss, within nine (9) months of a reasonable time for delivery.

2.8 In its contracts with the motor carriage service providers, SAKONNET requires the transporting motor carrier to have in effect cargo liability insurance in the amount of \$100,000.00, HOWEVER, such policies have exceptions and exclusions to coverage which could result in their being no cargo liability insurance coverage for one or more of CUSTOMER'S shipments. If SAKONNET is notified by CUSTOMER with reasonable advance notice, SAKONNET, if commercially feasible, will arrange for additional cargo insurance for the customer.

2.9 SAKONNET, at its own discretion, may assist CUSTOMER in the filing and/or processing of claims with the carrier. If payment of claim is made by SAKONNET to CUSTOMER, CUSTOMER automatically assigns its rights and interest in the claim to SAKONNET. See Section 5.29: Freight Claim Processing for further information.

2.10 For shipments originating in the United States, CUSTOMER must file any civil action to recover for loss or damage claims against Carrier within the time limits established by the transporting motor carrier. Usually, but not always, the Carrier's time limit for filing civil actions is

within two (2) years from the date the Carrier has provided notice that it has disallowed all or any part of the claim.

2.11 Carriers have special rules and requirements that apply to shipments originating in Canada. In addition, there are Canadian laws that could also apply. These include different, usually lower, limits of liability for loss and damage to cargo and different claim filing provisions than for shipments moving entirely within the United States. For shipments originating in Canada, the following will apply:

A. The motor carrier's liability for loss, damage, or delay of shipments is a maximum of \$2.00 Canadian per pound, unless there is a declaration of value on the bill of lading evidencing or covering the shipment.

B. The time limit for providing written notice of a claim is sixty (60) days after the delivery of the shipment or, in the case of failure to make delivery, within nine (9) months after the date of shipment. The final statement of the claim must be filed within nine (9) months after the date of the shipment, together with a copy of the paid freight bill.

C. CUSTOMER must file any civil action to recover for loss or damage claims against Carrier within the time limits established by applicable law in the province of origin of a shipment. Usually, but not always, the statutory time limit for filing civil actions is two (2) years from the date of the shipment of the goods.

### **3. Intermodal Brokerage Service**

3.1 The provisions in this Section 3 apply to intermodal shipments moving by both highway and rail. To the extent the terms in this Section 3 conflict with the terms in Section 2 (Motor Carrier Highway Brokerage Service), the terms of this Section 3 shall apply.

3.2 SAKONNET arranges for rail transportation through contracts with North American rail transportation providers. These contracts are supplemented by the rail transportation provider's published intermodal circulars, tariffs, directories, agreements, rules and other publications in effect at the time of shipment (each an "Intermodal Circular").

All intermodal shipments arranged for by SAKONNET are subject to the Intermodal Circular of the rail transportation carrier providing the rail transportation. In their Intermodal Circulars, the rail transportation providers impose certain requirements, limitations and restrictions on shipments transported on their rail networks, including requirements relating to blocking and bracing, restrictions on certain types of cargo, limitations of liability, required data in shipping information, charges for failures to comply with requirements, and other matters.

CUSTOMER should obtain and be familiar with the Intermodal Circulars. Failing to comply with the Intermodal Circulars will result in penalties; additional charges and costs; shipping delays; liability for equipment, cargo, other property and personal injury; indemnification obligations; and other consequences discussed in these Terms and Conditions.

If CUSTOMER is not sure which Intermodal Circular would apply, CUSTOMER should contact a SAKONNET customer service representative.

The following is a list of the Intermodal Circulars of significant rail transportation providers operating in North America. Please note that the Intermodal Circulars listed below may cross-reference other circulars, tariffs, directories, agreements, rules, publications and industry documents, each of which will also be considered included in the term “Intermodal Circular” as used in these Terms and Conditions. This list is accurate as of the effective date of these Terms and Conditions but is subject to change to reflect changes in the listed publications made at the discretion of the rail transportation provider. CUSTOMER should check the latest issue of the rail transportation provider’s Intermodal Circular for current information.

<b>Provider</b>	<b>Internet Address</b>	<b>Intermodal Rules Circular</b>
Burlington Northern Santa Fe	<a href="http://www.bnsf.com/customers/pdf/2008_Intermodal_R_and_PG.pdf">www.bnsf.com/customers/pdf/2008_Intermodal_R_and_PG.pdf</a>	Rules & Policies Guide
Canadian National	<a href="http://www.cn.ca/en/shipping-intermodal-north-america-price-tarrifs.htm">www.cn.ca/en/shipping-intermodal-north-america-price-tarrifs.htm</a>	CN 9200
Canadian Pacific	<a href="http://www.cpr.ca/en/ship-with-cp/how-you-can-ship/intermodal/Documents/intermodal-shipping-guide.pdf">www.cpr.ca/en/ship-with-cp/how-you-can-ship/intermodal/Documents/intermodal-shipping-guide.pdf</a>	Intermodal Shippers Guide
CSX Intermodal	<a href="http://www.csxi.com/share/csxiservices/main/docs/servdir1-REF10281.pdf">www.csxi.com/share/csxiservices/main/docs/servdir1-REF10281.pdf</a>	Service Directory No. 1
Florida East	<a href="http://www.fecrwy.com/sites/default/files/Intermodal%20Directory-Effective%2011-01-2011.pdf">www.fecrwy.com/sites/default/files/Intermodal%20Directory-Effective%2011-01-2011.pdf</a>	Intermodal

<b>Coast</b>	<b>Internet Address</b>	<b>Directory</b>
Kansas City Sout	<a href="http://www.kcsouthern.com/en-us/Services/Documents/Tariffs/2011/03-11KCS9011GREVISION13.pdf">http://www.kcsouthern.com/en-us/Services/Documents/Tariffs/2011/03-11KCS9011GREVISION13.pdf</a>	Rules Circular 9011-G
Norfolk Southern	<a href="http://www.nscorp.com/nscintermodal/Intermodal/Rules_Circular/intermodal_rules_circular.pdf">www.nscorp.com/nscintermodal/Intermodal/Rules_Circular/intermodal_rules_circular.pdf</a>	Rules Circular #2
Union Pacific	<a href="http://www.uprr.com/customers/intermodal/mita.shtml">http://www.uprr.com/customers/intermodal/mita.shtml</a>	Master Intermodal Transportation Agreement (Union Pacific Exempt Circular MITA-2 Governing Rules Circular)

### **Applicable Standards**

3.3 Unless arrangements are made for the transportation provider to provide loading, blocking

and bracing services at the time of the 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 Association of American Railroad standards. CUSTOMER is also responsible for complying with the Intermodal Safe Container Act and applicable Canadian law. CUSTOMER should also ensure that commodities are wrapped with waterproof materials to prevent wet damage to the freight in transit.

The Intermodal Loading Guide for Products in Closed Trailers or Containers and various other publications of the AAR provide guidance on appropriate loading, blocking and bracing techniques. For a complete listing of Damage Prevention and Loading Services publications, contact Rail Inc. at 919-651-5000 or [www.railinc.com](http://www.railinc.com) or contact the AAR:

The Association of American Railroads  
50 F Street NW  
Washington, DC 20001-1564  
(202) 639-2100

A SAKONNET claims department or sales representative can provide you with the loading standards of the underlying transportation provider.

#### **Weight of Lading; Gross & Axle Overweight Conditions**

3.4 The weight of the freight should be evenly distributed in the container or trailer, and the freight should be restrained adequately to prevent it from exerting excessive pressures against doors, walls, or ends of the containers that might cause their failure. The loaded weight must not exceed the limit set forth in the equipment manufacturer's plates and may not exceed the weights specified weights by each transportation provider.

**Rail owned or controlled or CUSTOMER furnished Intermodal Units must comply with all state, provincial, federal Department of Transportation (DOT), and Federal Highway Administration (FHWA) regulations. In addition, all vehicles must comply with the Intermodal Safe Container Transportation act of 1992. A CUSTOMER who tenders an overweight vehicle will be subject to charges published herein, per vehicle, and also will arrange for and incur all costs of adjusting the shipment's weight, and will be responsible for all applicable storage charges**

In loading heavy or concentrated weight commodities, no more than 25,000 pounds may be distributed over any 10 linear feet within the container. On freight with small supporting bases, no more than 3,500 pounds may be concentrated on a floor area of less than 25 square inches (minimum dimension 3.1 inches by 8 inches), with such areas no closer than 35 inches to one another.

CUSTOMER is responsible for complying with the Intermodal Safe Container Act, applicable state and local and Canadian requirements regarding shipment weights, including foregoing and applicable weight limitations per axle.

Keep in mind that for intermodal shipments, the placement of the axles on the chassis used for the delivery of the container from the destination rail terminal to the final destination may differ from the axle placement on the chassis used for pick-up from the consignor to the origin rail terminal. Such differences must be taken into consideration when loading the container.

Neither SAKONNET nor the underlying transportation provider will be responsible for any weight violation. The 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.

Forklifts or other equipment, when loaded or empty, should not exceed the floor rating of the container or trailer being loaded. In many cases, the floor rating may be found on the door of the container or trailer.

### **3.5 Corrections to Ramp Destination – Intermodal Shipments**

After an intermodal shipment has been loaded on the train, changes to the ramp destination will not be possible. If the change in destination is not made before the intermodal shipment has been loaded on a train, the shipment will move on the route required by the shipping instructions originally submitted by you, and you must submit shipping instructions for movement from the ramp destination originally specified to the desired destination. SAKONNET's customer service group can provide assistance in arranging transportation from the original destination to the corrected destination. Additional charges may apply.

### **3.6 Corrections to Final Destination**

A request to change the final destination for intermodal shipments must be received sufficiently in advance to allow SAKONNET to inform the dray carrier before dispatch to the destination ramp. A request to change the destination for a highway shipment must be received sufficiently in advance to allow SAKONNET to inform the motor carrier before arrival at the destination. Your SAKONNET customer service representative can help you determine the amount of advance notice needed to correct the final destination of a shipment. If the shipment has already been delivered to the original destination, you 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.

### **3.7 RESTRICTED AND PROHIBITED COMMODITIES**

#### **3.7.1 General Information about Restricted and Prohibited Commodities**

The rail transportation providers have specific rules regarding the type of freight that they will carry as well as the additional documentation necessary for shipping of these restricted or prohibited commodities. These rules are specified in detail in the Intermodal Circulars. Any commodity that is prohibited by the rail carriers for transportation is also prohibited for intermodal or highway transportation arranged by SAKONNET. Prohibited commodities include hazardous wastes, garbage, explosives, metal coils, scrap metal or parts and sodium compounds or other commodities that would reasonably be expected to contaminate or otherwise render the trailer or container unsuitable for future shipments.

Any commodity that is classified as “restricted” by the rail carriers is also considered “restricted” for intermodal or highway transportation arranged by SAKONNET and subject to special procedures in order to be eligible for transportation. Restricted commodities include bulk commodities, rolled paper, household goods, metal banding, dense metal items, rubber shavings, tire fabric, over-dimension loads, currency, postage stamps and mail. 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, CUSTOMERS must make prior arrangements with SAKONNET. If CUSTOMERS are unsure as to whether or not your commodity has special requirements for shipment, please contact either your sales or pricing representative or the Director of Freight Claims. SAKONNET will be glad to coordinate your special needs with the underlying transportation providers.

The commodities listed above are not an exhaustive list of restricted and prohibited commodities.

### **3.7.2 Consequences of Tendering Prohibited or Restricted Commodities in Violation of these Terms and Conditions**

Failure to disclose to SAKONNET the presence of restricted commodities or to comply strictly with the requirements for transporting restricted commodities will relieve SAKONNET and the underlying transportation provider of any liability for loss or damage directly or indirectly caused to or by the restricted commodities. Likewise, SAKONNET and the underlying transportation providers are not liable for loss or damage directly or indirectly arising out of your tendering prohibited commodities to SAKONNET or for any loss or damage to any prohibited commodities or to any restricted commodities tendered without strict compliance with the procedures set forth in these Terms and Conditions. The CUSTOMER will be responsible for and will defend, indemnify and hold harmless SAKONNET and the underlying transportation providers for any liabilities, costs and expenses arising out of your (a) tendering of any prohibited commodity for transportation, (b) failure to properly declare any restricted commodity or (c) failure to comply strictly with the requirements for transporting restricted commodities. In addition to the special rate applicable to any restricted commodity and all other charges that apply to that shipment and costs to repair, restore and decontaminate any container or chassis used to transport any restricted or prohibited commodity, the CUSTOMER will be responsible for any penalties or charges assessed by the

underlying transportation provider.

#### **4. AIR FREIGHT SERVICES**

4.1 The provisions in this section 4 apply to shipments within the United States moving by air. To the extent the terms in this section 4 conflict with the terms in section 2: Motor Carrier Highway Brokerage Service or the terms in section 3: Intermodal Brokerage Service, the terms of this section 4 shall apply.

4.2 SAKONNET arranges for air transportation through contracts with North American air service providers. These contracts are supplemented by the air transportation provider's published tariffs, directories, and rules.

4.3 SAKONNET IS NOT AN AIR CARRIER AND IS NOT LIABLE FOR DAMAGES RELATED TO SHIPMENTS BY AIR, INCLUDING, BUT NOT LIMITED TO, CARGO LOSS OR DAMAGE. ALL AIR SHIPMENTS ARRANGED FOR BY SAKONNET ARE SUBJECT TO THE TERMS AND CONDITIONS OF THE AIR CARRIER, INCLUDING, BUT NOT LIMITED TO, THE APPLICABLE AIRBILL. AIR BILLS AND AIR CARRIERS TERMS AND CONDITIONS OF SERVICE TYPICALLY PROVIDE FOR LIMITS OF LIABILITY FOR LOSS AND DAMAGE TO CARGO AS LOW AS \$0.50 PER POUND. IF SAKONNET IS NOTIFIED BY CUSTOMER WITH REASONABLE ADVANCE NOTICE, SAKONNET, IF COMMERCIALY FEASIBLE, WILL ARRANGE FOR ADDITIONAL CARGO INSURANCE FOR THE CUSTOMER. THE AIRWAY BILLS ALSO ESTABLISH VERY SHORT TIME LIMITS FOR FILING CLAIMS.

4.4 CUSTOMER warrants and represents that in tendering freight for shipment by air it has accurately described the items being shipped and that they are suitable for transportation by air and comply with all applicable laws, regulations, and airline rules and conditions governing transportation by air, including, but not limited to, the laws and regulations relating to the transportation of hazardous materials and dangerous goods.

4.5 Should the CUSTOMER wish for SAKONNET to assist in recovery for freight loss or damage from the underlying air transportation provider, the CUSTOMER must submit the claim to our freight claims department within forty-eight (48) hours of the time of the delivery or, in the case of a lost shipment, within forty-eight (48) hours of the expected delivery date.



## 5. GENERAL TERMS FOR ALL SERVICES

**5.1 Accord and Satisfaction.** If, in connection with any dispute between SAKONNET and CUSTOMER arising out of or relating to the Services, CUSTOMER pays to SAKONNET, in purported "full settlement" or "full satisfaction" (or other words of similar import) of all amounts due and owing from CUSTOMER to SAKONNET, any amount that is less than the Invoiced Amount, any acceptance by SAKONNET of the payment (including, but not limited to, an unequivocal acceptance) shall be deemed an acceptance under an explicit reservation of SAKONNET's rights, and SAKONNET's acceptance of payment shall not operate as an accord and satisfaction of any amount that SAKONNET contends remains due and payable.

### **5.2 Disclaimer of Warranties.**

(a) **SAKONNET MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED.**

### **5.3 Liability; No Liability for Consequential Damages.**

(a) **WITHOUT LIMITING THE EFFECT OF THE PROVISIONS OF SECTION 2.1 ABOVE OR THE OTHER PROVISIONS OF THIS SECTION 5, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LIABILITY OF SAKONNET OF ANY KIND SHALL BE LIMITED TO THE PAYMENT BY SAKONNET BY WAY OF DAMAGES OF A SUM NOT EXCEEDING U.S. ONE HUNDRED DOLLARS (\$100.00) OR ITS EQUIVALENT PER SHIPMENT, EVEN IF SAKONNET AS AT FAULT OR WOULD BE OTHERWISE LIABLE. FOR THE PURPOSE OF ESTABLISHING THE AMOUNT OF SAKONNET'S LIABILITY UNDER THIS CLAUSE, A "SHIPMENT" MEANS ALL GOODS LISTED ON ONE BILL OF LADING. THE VALUE OF THE GOODS SHALL BE ASCERTAINED BY REFERENCE TO THEIR REPLACEMENT OR REPAIR COST AT THE TIME OR PLACE OF SHIPMENT.**

(b) **SAKONNET SHALL NOT BE LIABLE IN ANY CASE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, USE OR OPPORTUNITY, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT SAKONNET WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**5.4 Indemnification.** CUSTOMER shall defend, indemnify and hold SAKONNET harmless from and against any and all demands, claims, actions, suits, liability, damages, losses, judgments, costs and expenses, including, without limitation, attorneys' fees, arising from, or in any way related to or concerning (i) any act or omission of CUSTOMER, its agents, employees, and/or representatives, (ii) any breach of these Terms and Conditions by CUSTOMER, and (iii) the enforcement of these Terms and Conditions by SAKONNET.

**5.5 Force Majeure.** Without limiting the effect of any other term contained herein, SAKONNET shall not be liable for damages of any kind resulting from delay or inability to deliver, or failure to deliver, caused directly or indirectly by circumstances beyond SAKONNET's control, including, without limitation, acts of God; CUSTOMER's acts or omissions; acts of any government or any state (foreign or domestic) or political

subdivision thereof; riots or civil unrest; war; accidents, fires, floods, explosions, or other catastrophes; lockouts, strikes or labor disputes or shortages; the inability to obtain fuel, power, materials, supplies, equipment, or shipping space; transportation delays; epidemics or quarantine restrictions; severe weather; compliance with, or the operation of, any applicable government legislation, regulation, directive or order of any government (foreign or domestic), or political subdivision thereof, including, without limitation, embargoes or boycotts; judgments or orders of any court of competent jurisdiction; orders or rulings of any board, agency, commission, officer or other competent governmental authority (domestic or foreign), or any political subdivision thereof; delays caused by CUSTOMER; or any other cause or causes, whether similar or dissimilar to the foregoing, beyond SAKONNET's absolute and unconditional control or which would excuse or suspend SAKONNET's performance under applicable law. In the event of such delay, the date of delivery of the materials described herein shall be extended by a period approximately equal to the time lost by reason of such delay. In the event of any partial failure to deliver so caused, SAKONNET shall have the right to payment pro rata for such of the materials as it could and did in fact deliver, whether or not delivery of the same may have been delayed. This clause shall not suspend CUSTOMER'S payment obligations to SAKONNET.

**5.6 Severability.** Any provision of these Terms and Conditions which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**5.7 Fees and Costs.** CUSTOMER agrees to pay all fees, costs and expenses, including, without limitation, attorneys' fees, costs and disbursements which SAKONNET incurs in order to enforce these Terms and Conditions and/or to collect any sums due from CUSTOMER to SAKONNET hereunder.

**5.8 Construction.** All headings in these Terms and Conditions are for convenience only and shall not be considered in construing the meaning of these Terms and Conditions. All references to sections include all subsections thereof.

**5.9 Notices.** All notices by either CUSTOMER or SAKONNET required by these Terms and Conditions must be in writing and will be considered given: (a) upon delivery by hand; (b) one business day after being sent by overnight courier; or (c) three business days after being deposited in the United States mail, postage prepaid. All communications to SAKONNET should be addressed as follows.

Sakonnet Consulting Group, Inc.  
291 McGowan Street  
Fall River, MA 02723

**5.10 Modification and Waiver.**

(a) These Terms and Conditions shall not be modified, amended, or supplemented unless made in a writing duly executed by qualified officers of SAKONNET and CUSTOMER (and no agreement to allow these Terms and Conditions to be modified orally shall be valid or binding). Provisions inconsistent with these Terms and Conditions contained in order confirmations or similar documents prepared by CUSTOMER shall not be valid or binding.

(b) The failure or refusal by SAKONNET either to insist upon the strict performance of any provision of these Terms and Conditions, and no delay or omission on the part of SAKONNET in exercising any right, shall operate as a waiver of such right or any other right, nor shall such delay or omission be deemed a custom or practice contrary to such provision or right.

## **5.11 RATES AND CHARGES**

### **5.11.1 Obtaining a Rate Quote**

Once SAKONNET has approved a CUSTOMER for credit, the CUSTOMER may obtain a rate quote by one of the following methods:

- (a) For repetitive pricing requests or bid pricing, request rates via email at BCoulombe@sakonnetconsulting.com
- (b) For spot pricing or short-term project pricing, request a rate at BCoulombe@sakonnetconsulting.com
- (c) Contact your SAKONNET sales representative or Regional Sales Representative who will note the relevant information and forward to the SAKONNET Pricing Department for a rate quote.

Please note that, in order to be a valid rate offer from SAKONNET, the offer must be in writing and must be made by an authorized representative of SAKONNET's Pricing Department.

### **5.11.2 Information Needed for Rate Quote**

The following information is required in writing in order for SAKONNET to issue a rate quote:

- (a) Name of the shipper and consignee;
- (b) Origin and destination of shipment (please provide city, state, and zip codes);
- (c) The commodity being shipped;
- (d) The equipment size and type required;
- (e) Target rate if available;
- (f) Competitive information regarding how the freight is moving if available;
- (g) Any additional services required (extended free time, lumper, driver unload, etc.);
- (h) A request for cargo insurance, a request for excess value coverage for shipments originating in the United States or a request for a declaration of value for shipments originating in Canada.

### **5.11.3 Target Rate Requested. Issuance of Rate Quote**

SAKONNET issued rate quotes to a particular customer, referred to as the "bill to" name, and differentiate rate quotes by the relevant shipment specifics, such as type of commodity, equipment size, origin/destination and other information required under Section 5.11.2: Information Needed for Rate Quote. The rate quote will not apply to other "bill to" names or shipment types.

Unless otherwise stated in writing, the quote is subject to increase upon expiration. However, if no

shipments are moved under the quoted rate within 7 days, SAKONNET reserves the right to cancel or re-quote the rate. SAKONNET customers must specify the “bill to” name and shipment specifics at the time the request for transportation services is placed in order to be eligible for transportation under the active rate issued for that “bill to” name and shipment type.

#### **5.11.4 Notification of Changes to Published and Quoted Rates and Charges**

SAKONNET reserves the right to change published rates and charges without notice unless a written agreement to the contrary has been made. It is SAKONNET’s practice to provide customers with a minimum advance notice of five (5) days prior to an increase in published rates and charges. SAKONNET will provide notice of changes in single shipment quoted rates and charges as quickly as possible.

#### **5.11.5 Confidentiality of Rate Quotes**

All rate quotes that we issue are confidential. SAKONNET customers are not permitted to disclose or make available our rate quotes to persons or entities other than its employees and agents who need to know the rate quotes to perform their transportation-related obligations. During the time that the SAKONNET rate quote remains outstanding and in effect, neither SAKONNET nor the CUSTOMER will disclose to persons or entities outside our respective organizations any confidential information obtained from the other party in connection with the issuance of a rate quote, including the rate levels, expected volume of traffic and origins and destinations. These confidentiality restrictions will not apply to information that is generally available to the public, which is independently developed by a party without use of the other party’s information, that was known to a party before disclosure by the other party, or that is obtained from another source without violation of any confidentiality obligations.

### **5.12 NO INTERMEDIATE POINT**

Rates are from the origin to destination stated. 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.

### **5.13 RESTRICTIONS ON RATES**

Rates are valid only for the specific customer and shipment type (i.e., commodity, origin/destination and equipment size/type) quoted. CUSTOMERS are not allowed to substitute different shipment types at the quoted rate level without SAKONNET’s written authorization. In addition, the rates only cover the services described in the rate quote. Additional charges may apply for services requested/performed in addition to those services included in the initial quote as well as fees assessed by the underlying transportation provider for fuel.

### **5.14 CONSEQUENCES OF MISAPPLICATION OF RATES OR MIS-DECLARED SHIPMENTS**

If it is determined that the commodities actually shipped via SAKONNET are not those described in the

shipping instructions, the CUSTOMER must pay the transportation rates and all per diem and other charges based upon the commodities actually shipped. Mis-declared shipments also include 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 that shipment or are assessed against it, and without limiting other remedies available to it, SAKONNET may assess and the CUSTOMER will pay any additional charges or penalties assessed by the underlying transportation providers in connection with the mis-declared shipment. Additional administrative fees may also apply. Shipments of hazardous materials, restricted commodities or prohibited commodities that are not declared as such are subject to greater mis-declaration charges assessed by SAKONNET and the underlying transportation providers. If mis-declarations continue, SAKONNET reserves the right to cancel the CUSTOMER's rate quotes and refuse to provide service.

#### **5.15 STANDARD ACCESSORIAL MATRIX**

In addition to the line haul rates, the transportation services are subject to Accessorial Charges applied by the underlying transportation providers. Where possible these charges will be included with the original quote. However, should the requirements or services change from the original request then additional Accessorial Charges may apply.

SAKONNET will endeavor to provide notice when driver detention charges are incurred, but unless otherwise agreed to by SAKONNET in a written agreement signed by an authorized SAKONNET representative, SAKONNET will not be required to provide notice of any other accessorial charges. Upon your written request or if agreed to in a written agreement signed by an authorized SAKONNET representative, SAKONNET will provide you with a periodic report showing the number of days that trailers or containers have been used by you and subject to per diem or storage charges. SAKONNET may provide notice of these charges by facsimile, EDI, e-mail, telephone or by website posting. SAKONNET may also agree with you to provide such notice by another method. The CUSTOMER will be responsible for the following accessorial charges to the extent incurred, whether or not SAKONNET provides any notice of them.

#### **5.16 CREDIT AND COLLECTIONS**

##### **5.16.1 PRE-PAID SHIPMENTS**

CUSTOMERS that (a) choose to pay in advance of their shipments, (b) are required to pay in advance because SAKONNET has not had the opportunity to review their credit information for the establishment of open credit terms or (c) have not established credit privileges due to credit worthiness issues must submit their payment via lockbox submission or wire transfer. (Note: The amount quoted for a pre-paid delivery may not include all of the accessorials necessary for moving the load. Please see Section 5.15: Standard Accessorial Matrix for a listing of SAKONNET's standard accessorial charges. Additional dollars may be due after the initial payment is made.)

Sakonnet Consulting Group, Inc.  
P.O. Box 5060

Fall River, MA 02723

#### **5.16.2 CREDIT APPLICATION**

New CUSTOMERS must obtain SAKONNET's credit approval before SAKONNET will arrange for transportation. A credit application may be found on SAKONNET's website:

[www.sakonnetconsulting.com](http://www.sakonnetconsulting.com). Completed applications should be submitted to:

Sakonnet Consulting Group, Inc.  
P.O. Box 5060  
Fall River, MA 02723

(a) A completed credit application signed by an owner (in the case of a sole proprietor or partnership) or a corporate officer (in the case of a legal corporation or limited liability corporation) of the prospective CUSTOMER.

(b) "Bill To" information, including physical address, phone number, and contact name of the CUSTOMER.

#### **5.16.3 UPDATING OF CREDIT INFORMATION**

SAKONNET may update CUSTOMER'S credit information from time to time using available public information. In addition to public data, SAKONNET may request that CUSTOMERS provide additional financial data to demonstrate the CUSTOMER's creditworthiness. If CUSTOMERS tender freight to SAKONNET for transportation services, CUSTOMERS will be deemed to have consented to SAKONNET's use of financial data about you to verify your creditworthiness.

#### **5.16.4 REVOCATION OF CREDIT**

SAKONNET 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.

#### **5.16.5 PAYMENT TERMS / FINANCE CHARGE**

Unless SAKONNET has agreed otherwise in a written agreement signed by a SAKONNET authorized representative and subject to SAKONNET's credit approval, payment will be due within 15 days of invoice date. If an invoice is not paid on or before the 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 law. If SAKONNET is required to utilize the services of a collection agency or attorneys to collect any amounts due, the CUSTOMER will be responsible for reasonable collection costs, attorney fees, court costs and other reasonable expenses incurred in collecting amounts owed.

#### **5.16.6 OFFSET PROHIBITED**

A customer may not withhold payment as a set off, because of a dispute or claim with SAKONNET or its underlying transportation providers, including claims for overcharge, duplicate payment or other invoice-related disputes or claims for loss, damage or delay of freight or equipment.

#### **5.16.7 CREDIT HOLD**

SAKONNET will place an account on credit hold if satisfactory arrangements are not made on past due balances.

#### **5.16.8 DISPUTE PROCEDURE FOR INVOICES**

Customers must notify SAKONNET in writing of any dispute regarding a SAKONNET invoice, whether regarding line haul rates, accessorial charges, fuel surcharge or other amounts, within sixty (60) days of the date of SAKONNET's invoice. If the customer fails to timely notify SAKONNET of the dispute, SAKONNET's original invoice will be deemed to be final, and the 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. SAKONNET will work with its customers to resolve invoice disputes promptly. If SAKONNET fails to respond to a documented invoice dispute within sixty (60) days of the customer's notice, the dispute will automatically be deemed to be resolved in favor of the customer. As a condition precedent to collecting such a claim, customers must initiate arbitration or lawsuit for overcharges, duplicate payment, over-collection or other invoice-related dispute within eighteen (18) months of delivery or tender of delivery of the shipments involved.

#### **5.16.9 RIGHT OF DETENTION AND LIEN**

All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies owing either in respect of such goods, or for any particular or general balance or other monies owed, whether then due or not, by the Customer, sender, consignee, or owner of the goods to the Company. If these monies remain unpaid for 30 days after the Company sends notice of the exercise of its rights to these persons by any means of communication reasonable in the circumstances, the goods may be sold by private contract or otherwise at the sole discretion of the Company, and the net proceeds applied on account of the monies owing. The Company will not be liable for any deficiencies or reduction in value received on the sale of the goods nor will the Customer be relieved from the liability merely because the goods have been sold.

### **5.17 NO TRANSIT OR EQUIPMENT GUARANTEES**

#### **5.17.1 SAKONNET'S MONITORING OF SHIPMENTS**

SAKONNET monitors the progress of your shipments using our automated systems and data from the transportation providers. The data that we endeavor to collect from the transportation providers includes verification that the shipment has been picked-up, estimated arrival time, information about delays affecting the shipment and automated rail carrier car location messages. Using this information, SAKONNET tracks the shipments and makes this information available to

you via email request to BCoulombe@sakonnetconsulting.com. This information will not prevent or alleviate delays, but should enable you to better plan for the arrival of your shipment.

#### **5.17.2 NO LIABILITY FOR TRANSIT DELAYS**

SAKONNET will use commercially reasonable efforts to obtain on-time performance from the underlying transportation providers; however, unless otherwise agreed to by us in writing before the time of shipment, SAKONNET and the underlying transportation providers do not guarantee adherence to any particular transit schedule and will not be liable for failure to transport any shipment by any particular schedule or in time for any particular market or appointment. SAKONNET can assist you in working to improve substandard performance by any underlying transportation provider. Improving on-time performance may require a change in the transportation provider and may affect the rates assessed for transportation services.

#### **5.17.3 NO EQUIPMENT AVAILABILITY GUARANTEES**

Unless otherwise agreed to in a writing signed by a SAKONNET authorized representative, SAKONNET does not guarantee equipment availability.

### **5.18 RESPONSIBILITIES OF USERS OF TRANSPORTATION SERVICE**

#### **5.18.1 SHIPPING INSTRUCTIONS**

Customers must provide accurate, proper and complete shipping instructions in a form acceptable to us 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 SAKONNET office arranging for the transportation. Your SAKONNET customer service representative can provide you with information regarding our shipping instruction requirements. SAKONNET and the underlying transportation providers will rely on the information that you provide and its accuracy and completeness. All shipping instructions should include the following information:

- (a) Name of the 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); Please see Section 5.20.1: Need for Specific Commodity Descriptions for more information on the specificity required in commodity descriptions.
- (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; and

(i) Seal number on the equipment (if available).

(j) Origin and Destination terminal

(k) Beneficial Owner

(l) Shipment Value

### **5.18.2 CANCELLATION, CORRECTIONS AND OTHER CHANGES TO ORIGINAL SHIPPING INFORMATION**

#### **5.18.2.1 General**

Cancellations, corrections or other changes to previously submitted shipping instructions must be submitted in writing to SAKONNET at [BCoulombe@sakonnetconsulting.com](mailto:BCoulombe@sakonnetconsulting.com). You should also call your 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. Along with the requested changes, CUSTOMER must provide either their PO Number or SAKONNET's load number for the shipment requiring the change. Sending a new set of shipping instructions without notifying us that it is a correction or change to an existing order and/or not providing either the PO Number or Load Number will result in a duplicate shipment because SAKONNET will believe the revised shipping instructions to be a new order. Corrections must specify the original and corrected shipping instructions. SAKONNET reserves the right to assess an administration and handling charge for each correction or cancellation.

#### **5.18.2.2 Cancellations**

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 SAKONNET to notify the motor carrier of the cancellation before the driver is dispatched to the origin location. Your SAKONNET customer service representative can help you determine the amount of advance notice needed to cancel a shipment. If the cancellation request is not timely submitted, SAKONNET will nevertheless use commercially reasonable efforts to accommodate the cancellation request. Additional charges may apply per SAKONNET's Standard Accessorial Matrix.

### **5.18.2.3 Corrections to Shipping Information other than Origin, Destination or Notify Party**

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. Please see Section 5.19.2.1: General above for more information about correcting shipping instructions. Additional charges may apply per SAKONNET's Standard Accessorial Matrix.

### **5.18.2.4 Corrections to Origin**

A request to change the origin must be received sufficiently in advance to allow SAKONNET to inform the motor carrier before dispatch to the original origin. Your SAKONNET customer service representative can help you determine the amount of advance notice needed to correct the origin of a shipment. After the carrier has arrived at the origin point, additional charges may apply per SAKONNET's Standard Accessorial Matrix.

### **5.18.2.5 Expenses Associated with Changed or Cancelled Instructions and Limitation on SAKONNET's Liability**

In any event, SAKONNET will not be liable if its attempts to cancel a shipment or implement corrections are unsuccessful. Additional charges may apply per SAKONNET's Standard Accessorial Matrix.

## **5.19 COMMODITY DESCRIPTIONS**

### **5.19.1 Need for Specific Commodity Descriptions**

Customers must provide detailed and accurate descriptions of commodities due to the heightened focus on transportation security. Descriptions such as "FAK (Freight All Kinds)," "SLAC (Shippers Load and Count)," chemicals, household goods, sporting goods and consolidated cargo are no longer acceptable. Those descriptions are too vague and do not specifically describe a commodity. Customers should avoid use of vague catch-all phrases and industry jargon. An example of an improved description may be "golf clubs" and "golf balls" instead of "sporting goods"; or "television sets" instead of "electronics." Failing to provide accurate and detailed descriptions may result in delays at the origin pick-up or rail point. Additional charges may apply per SAKONNET's Standard Accessorial Matrix.

### **5.19.2 No Liability for Mis-declared or Mis-described Freight**

In any case where SAKONNET or the underlying transportation provider reasonably determine you have mis-declared or mis-described freight, neither we nor the underlying transportation providers will have any liability for any loss or damage to that freight that in any way results, directly or indirectly, from such mis-declaration or mis-description or that could have been avoided had such freight been accurately and completely declared or described in accordance with these Terms and

Conditions. Such shipments will also be subject to the provisions of Section 5.14: Consequences of Misapplication of Rates or Mis-declared Shipments and other provisions of these Terms and Conditions.

## **5.22 CROSS BORDER SHIPMENTS**

Special rules and requirements apply to shipments that must cross the borders between the United States and Canada. Additional time should be allowed for SAKONNET and its transportation providers to process shipping information on cross-border shipments. The rail transportation providers assess additional charges for shipments that do not comply with Customs requirements or that must be set-off from the train in transit due to inspection, paperwork or other Customs-related issues. It is your responsibility to become aware of and comply with applicable customs and import, export and transportation laws, rules, practices and regulations of the governmental authorities of the countries involved in a shipment; to complete all required documentation; and to apply and pay for all licenses, permits or authorities required by governmental authorities to conduct the business and transportation contemplated by you.

By tendering freight to SAKONNET, customers will be conclusively presumed to agree to cooperate and to require the beneficial cargo owners, consignors and consignees to cooperate reasonably with each other, SAKONNET and the underlying transportation providers in defending against claims or proceedings by governmental authorities alleging violations of customs, import, export, border crossing, transportation or related laws or regulations or breach of customs bond conditions. Such cooperation will include investigating the allegations; searching for and providing relevant shipping, customs and other documents; obtaining signatures for applicable customs and other documents; providing sworn affidavits relating to the movement of cargo and equipment and similar matters; and, if required, providing witnesses to testify at legal proceedings.

For intermodal shipments, SAKONNET and the underlying rail transportation provider will hold shipments at the origin ramp or at intermediate ramps or may prevent the shipment from entering the terminal gate if customs information and other documentation are not provided at the time that the container or trailer arrives at the origin terminal. The customer will be responsible for all origin storage charges, equipment per diem use charges and other costs until complete and accurate documentation is received. You must meet any established deadlines for such documentation in order to meet the train cut-off time and be transported in accordance with the anticipated schedule. Your SAKONNET customer service representative is available to provide information about documentation requirements, the responsibilities of the various entities involved in the transportation and applicable deadlines for shipment documentation.

There will be delays if the Customs agency in Canada or the United States decides to inspect a shipment. The customer is responsible for all drayage, loading and unloading charges; customs brokerage costs; filing costs; and other costs associated with the government inspections or documentation requirements with respect to cross-border shipments.

For more information, you should review the applicable Intermodal Circulars (please see Section 3.2 for website addresses for such circulars) and contact your SAKONNET customer service

representative.

## **5.21 HAZARDOUS SHIPMENTS**

### **5.21.1 Applicability of Federal Regulations**

All shipments of hazardous materials and hazardous substances are subject to, and you must comply with, United States Department of Transportation (“DOT”) regulations, 49 CFR Parts 100 to 185, the Canadian *Transportation of Dangerous Goods Act, 1992*, the Consolidated Transportation of Dangerous Goods Regulations and to any further restrictions found in the Bureau of Explosives’ Tariff No. BOE-6000 series as in effect on the date of shipment. The BOE-6000 Series can be ordered through the following website: [www.boepublications.com/6000U.html](http://www.boepublications.com/6000U.html).

### **5.21.2 Shipping Information for Hazardous Materials**

In tendering a shipment of hazardous materials to SAKONNET, customers must do all the following:

- (a) Provide accurate and complete shipping information for the hazardous materials as required by law, 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);
  - vi. 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:
    - 1. Proper shipping name of the material;
    - 2. Immediate hazards to health;
    - 3. Risk of fire or explosion;
    - 4. Immediate precautions to take in case of an incident;
    - 5. Methods of handling fires;
    - 6. Methods for handling spills or leaks; and
    - 7. Preliminary first-aid information.
  - vii. Emergency response information such as a materials data info sheet or emergency response guidebook; and
  - viii. Whether the commodity is a marine pollutant (if applicable).

- (b) Certify that the materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation in accordance with DOT regulations.
- (c) Affix to the trailer or container the proper placards identifying the type of hazardous material in the trailer or container.
- (d.) 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.
- (e.) Must comply with AAR Intermodal Loading Guide.
- (f) For shipments originating or destined to Canada, CUSTOMER will comply with all Canadian regulatory requirements as may be applicable including, but not limited to, all safety requirements, packaging, safety mark and security requirements applicable under the Transportation of Dangerous Goods Act and the Consolidated Transportation of Dangerous Goods Regulations including the provision of all required shipping documentation.

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

SAKONNET is not responsible for reviewing any shipping instructions provided by you, for classifying commodities to a hazardous materials class or for verifying whether the commodity is subject to any hazardous materials regulation or is properly classified. Information regarding hazardous materials can be obtained through the website of the Department of Transportation. If you have questions regarding SAKONNET's processes for hazardous materials shipments, you may contact your customer service representative.

#### **5.21.3 Consequences of Failure to Comply with Procedures**

Failure to disclose to SAKONNET the presence of hazardous materials or to comply strictly with the requirements for transporting hazardous materials will relieve SAKONNET and its transportation providers of any liability for loss or damage directly or indirectly caused to or by the hazardous materials. The customer will be responsible for and will defend, indemnify and hold harmless SAKONNET and the underlying transportation providers for any liabilities, costs and expenses arising out of your failure to properly declare the presence of hazardous materials or to comply strictly with the requirements for transporting hazardous materials. Furthermore, any hazardous materials found to have been mis-declared may be warehoused at your risk and expense or destroyed without compensation. In addition to all other charges that may apply to that shipment, the customer will be responsible for any penalties or charges assessed by the underlying transportation provider arising out of your failure to comply with hazardous materials requirements. For instance, Union Pacific Railroad Company may assess a charge of \$3,000 for any shipment of hazardous materials that is not declared as containing hazardous materials. See UPRR - MITA Item (530)

#### **5.21.4 Surcharge for Hazardous Materials Shipments**

SAKONNET may assess a surcharge on shipments of hazardous materials. This surcharge may be applied to each shipment governed by the Department of Transportation's hazardous materials

regulations, 49 CFR Parts 100 to 185. All intermodal equipment types and sizes are subject to the surcharge. The per shipment hazardous materials surcharge will be assessed in addition to all applicable freight charges and will appear as a separate line item in invoices sent to customers. Shipments originating or destined outside the continental United States are subject to a Hazardous Materials Surcharge dependent on specific commodities and weight, provided on an individual shipment basis.

## **5.22 FOOD SHIPMENTS; REFRIGERATED AND TEMPERATURE CONTROLLED SHIPMENTS**

**5.22.1.** CUSTOMERS tendering shipments of food subject to the provisions of the Food Safety Modernization Act (FSMA) must specify to SAKONNET, in writing, all necessary sanitary requirements for the carrier's vehicle and transportation equipment, including any specific design requirements and cleaning procedures to ensure that the vehicle is in appropriate sanitary condition for the transportation of the food, e.g., that will prevent the food from becoming filthy, putrid, decomposed or otherwise unfit for food, or being rendered injurious to health from any source during the transportation operation and otherwise comply with the provisions of 21 CFR § 1.900-1.934, as may be amended from time to time, and also must comply with the applicable Canadian laws and regulations.

**5.22.2** Upon a customer's prior written request, SAKONNET will arrange for transportation of shipments requiring protection from heat or cold at a special rate for such transportation services. Such services are subject to the limitations of liability and may be considered restricted shipments as established by the underlying transportation provider. SAKONNET will not be liable for the performance, condition, inspection, refueling or return of the temperature-controlled equipment or for commodities shipped using temperature-controlled equipment or devices (such as thermal blankets or cargo quilts) in any event, whether or not the shipping instructions or bill of lading note that the shipment requires protection from heat or cold. Shipper assumes all liability for damage and spoilage due to incorrect thermostat setting, or malfunction of any temperature controlled devices, units, recorders, or gauges on the Trailer(s), this includes but is not limited to refrigerant and fuel.

## **5.23 LOADING REQUIREMENTS**

### **5.23.1 Acceptance of Container Not a Waiver**

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 your liability or of SAKONNET's or the underlying transportation provider's right to seek indemnity from you for noncompliance with your loading obligations or to exercise other rights and remedies. Nor does it cause SAKONNET or the underlying transportation provider to be responsible for any loss or liability related to such shipment. The presence during loading or participation by an employee or agent of any transportation provider will not in any way change or lessen your responsibility to properly and adequately package, load, unload, secure, block and brace the freight within the container or trailer.

### **5.23.2 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 the CUSTOMER'S expense. SAKONNET will work with the underlying transportation provider and the CUSTOMER in an effort to minimize the expense and delay due to such adjustment or trans loading of the freight, and upon your request, will facilitate communications with the underlying transportation providers to provide the customer (and its consignor) with information and guidance so that it will be able to properly prepare future shipments. If a load shift occurs during transportation and it is determined that improper or insufficient loading, blocking and bracing proximately caused the load shift, SAKONNET and the underlying transportation providers may hold the CUSTOMER liable for all expenses and charges arising from the load shift, including the repair of damaged equipment, loss or damage to freight, fines, penalties 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 the parties that caused the container or trailer to be overloaded or improperly loaded.

## **5.24 SHIPPER'S RESPONSIBILITY TO COUNT AND SEAL THE TRAILER OR CONTAINER**

### **5.24.1 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 underlying transportation provider. Furthermore, a consignor's or consignee's failure to record the seal number of a shipment will not render SAKONNET or the underlying transportation provider liable for shortage in that shipment.

### **5.24.2 Sealed Shipments**

Ordinarily, the underlying transportation providers will not accept liability for shortages unless there is physical evidence of unauthorized entry into the freight vehicle while it was in the possession of the underlying transportation provider. The underlying transportation providers will require that shortage claims be supported by seal records and actual loading and unloading records. Even in connection with shipments for which the driver performed the freight count, if the seal was intact upon delivery, any shortage claim is likely to be declined unless there is physical evidence of unauthorized entry into the freight vehicle while it was in the possession of the underlying transportation provider.

By tendering the shipment to SAKONNET for transportation, you agree 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 federal, state, municipal, or provincial laws, rules, and regulations.

The consignee may not refuse delivery of a shipment solely because the seal on the container or

trailer is broken. Any refusal to accept delivery will be subject to the provisions of Section 5.29.4.2: Consequences of Failing to Accept Freight.

## **5.25 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. Customers should promptly notify SAKONNET 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.

## **5.26 USE OF EQUIPMENT**

If SAKONNET arranges for containers or trailers to be dropped at a location for your convenience and left unattended by the motor transportation provider, you will be responsible for any loss or damage to the equipment occurring during or as a result of the possession or use of the equipment by you or your consignees or consignor or their agents or employees.

Equipment use is subject to the Uniform Intermodal Interchange agreement (UIIA). [www.uiia.org](http://www.uiia.org). In the case of an unloading pool, it is your responsibility to report any owner responsible damage as stated in UIIA section E. within 6 days of the receipt of the equipment. Any unreported damage after the 6th day will be your responsibility.

## **5.27 LIABILITIES**

### **5.27.1 NON-LIABILITY FOR FREIGHT LOSS, DAMAGE OR DELAY**

#### **5.27.1.1 SAKONNET 's Non-Liability**

Without limiting the effect of the provisions of section 2.1 above, unless SAKONNET has expressly agreed otherwise in a written agreement signed by a SAKONNET authorized representative, SAKONNET is not liable for any freight loss or damage caused by the services of the underlying transportation provider or arising out of the negligence or intentional misconduct of the underlying transportation provider. The negligence or intentional misconduct of the transportation provider will not be imputed to Sakonnet.

#### **5.27.1.2 Underlying Transportation Provider Liability**

Rail and intermodal circulars, motor carrier tariffs or service guides, and air bills and air carrier terms and conditions typically establish limits of liability for loss, damage or delay to cargo. The underlying transportation providers 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 motor carrier tariff or service guide, the applicable Intermodal Circular or the contract between SAKONNET and the transportation provider, or if not covered



in these Terms and Conditions, the applicable Intermodal Circular, the applicable motor carrier tariff or service guide or a SAKONNET contract, under federal transportation law. 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. If you would like information regarding the Intermodal Circulars of the major rail transportation providers, you can review the Intermodal Circulars at the website addresses listed in Section 3.2. Customers may also contact your customer service representative or freight claims representative.

#### **5.27.2 Defenses to Liability for Freight Loss or Damage**

Without limiting the effect of the provisions of sections 2.1 and 5.28.1.1: SAKONNET's Non-Liability above Neither SAKONNET nor the underlying transportation providers will be liable for the following: (1) damage to freight or equipment to the extent due to packaging, loading, unloading, blocking, bracing or securing of the freight; (2) 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; (3) force majeure events as described in Section 5.5; (4) an act, omission or default of any customer, shipper, consignor, consignee, beneficial owner or other third party logistics provider; (5) shipments stopped and held in transit at your request; or (6) loss or damage of freight that violates any federal, state or local law, ordinance or regulation 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.

#### **5.27.3 SAKONNET'S NON-LIABILITY FOR PERSONAL INJURY OR PROPERTY DAMAGE**

SAKONNET is not liable for any injury (including death) to persons or damage to property, including loading docks, facilities or other property, that arises out of the negligence, willful misconduct or other acts or omissions of the transportation providers or others in the course of the transportation services that we arrange at your request.

### **5.28 FREIGHT CLAIM PROCESSING**

#### **5.28.1 SAKONNET'S ASSISTANCE WITH FREIGHT CLAIMS PROCESSING**

SAKONNET will use commercially reasonable efforts to assist and cooperate with the CUSTOMER to investigate and process any freight loss or damage claims against the underlying transportation providers and any claim for damage to the CUSTOMER'S property occurring in the course of the transportation services rendered to such customer. SAKONNET will encourage the underlying 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, SAKONNET will provide the CUSTOMER with status updates upon request. SAKONNET reserves the right to assess an administrative charge for SAKONNET's assistance to the customer in handling freight claims.

#### **5.28.2 NOTIFICATION OF DAMAGES**

If a shipment arrives with visible or obvious damage or loss of cargo, the customer must make a note accordingly on any transportation document, including a bill of lading, provided by the delivery carrier for signature and SAKONNET promptly (in no event later than the time limit established in the applicable Intermodal Circular) in writing advising SAKONNET of the nature and extent of the loss or damage. Prompt notification is required to enable SAKONNET to comply with its underlying agreements with the transportation providers, to allow the removal of damaged trailers and containers from further use until repairs can be made, and to permit SAKONNET and the transportation providers to inspect the shipment. The transportation providers may consider you to have waived and released the claim if there is a failure to provide this prompt notification. The customer will (or will cause its consignee to) preserve and make available to SAKONNET'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 your obligation to mitigate damages nor will it be considered an admission of liability by SAKONNET or the transportation provider. For claims please email [BCoulombe@sakonnetconsulting.com](mailto:BCoulombe@sakonnetconsulting.com) or contact your customer service representative.

### **5.28.3 TIME LIMITS ON FREIGHT CLAIMS AGAINST MOTOR AND RAIL TRANSPORTATION PROVIDERS**

Generally, the transportation providers require that freight claims be submitted to them in writing no later than nine months after the date of delivery or in the case of a lost shipment, nine months after the expected delivery date. Generally, motor transportation providers require that you initiate lawsuits on freight claims within two years after any portion of the claim is disallowed. Through the Intermodal Circulars, the rail transportation providers impose different time limits for initiating lawsuits on a freight claim, ranging from six months after disallowance to eighteen months after delivery. Generally, for rail carriage in Canada there is a four (4) month deadline for notice of loss to be given in printed or electronic form. The transportation providers will not pay freight claims that do not meet these time limits.

Should the CUSTOMER wish for SAKONNET to assist in recovery for freight loss or damage from the underlying transportation provider, the CUSTOMER must submit the claim to our freight claims department within sixty (60) days of date of delivery or in the case of a lost shipment, within sixty (60) days of the expected delivery date for shipments originating in the UNITED STATES OR within thirty (30) days within the date of delivery or within thirty (30) days of the expected date of delivery for shipments originating in CANADA. The claim should include the information set forth below in Section 5.29.5: Claim Filing. If the freight claim is not timely filed, the underlying transportation providers may consider your failure to timely file the claim as a release by you the underlying transportation providers from responsibility to pay that freight claim, and your claim may be declined. CUSTOMERS may proceed by filing the written claim directly with the applicable transportation provider, but SAKONNET has no responsibility for the timeliness of the filing or the payment or processing of that claim.

SAKONNET has these time limits due to the deadlines imposed on us by the underlying transportation providers discussed above. SAKONNET's time limits are intended to allow us time to

resubmit your claims with the underlying transportation provider within the deadlines imposed by the Intermodal Circulars or our agreements with the transportation providers.

#### **5.28.4 MITIGATION OF LOSS/UNCLAIMED OR REFUSED FREIGHT**

##### **5.28.4.1 Duty to Mitigate**

It is important to remember that according to general claims practice; it is the consignee's obligation to mitigate any losses. Therefore, the consignee should accept damaged freight, and if the consignee is unable to salvage the freight, the freight should be made available to the underlying transportation provider for salvage. If the consignee is unable or unwilling to assist in mitigating the loss, SAKONNET will notify the CUSTOMER of the refusal and follow the CUSTOMER'S direction regarding the freight, including shipping it to a location designated by the CUSTOMER for further handling. Costs associated with complying with the CUSTOMER'S direction will be billed to the CUSTOMER.

##### **5.28.4.2 Consequences of Failing to Accept Freight**

If for any reason whatsoever, the consignee refuses the freight or the customer refuses to give timely direction about the disposal of freight rejected by the consignee, SAKONNET may, without further notice or demand, place the freight in storage at the risk and expense of the freight and the CUSTOMER. Such stored freight will be subject to a lien in favor of SAKONNET for any charges. By tendering freight to us to arrange for transportation, you will be conclusively presumed to have granted such a lien to SAKONNET. SAKONNET 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, SAKONNET or the underlying 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, SAKONNET will first give written notice to the CUSTOMER that the freight has been refused or unclaimed and that it will be subject to sale if disposition is not arranged for within three (3) business days. Further failure or refusal to claim or dispose of the freight within this time period will constitute a waiver by you 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 law.

If the receiver of perishable freight fails or refuses to accept it promptly, SAKONNET 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, SAKONNET may sell the freight as authorized by law.

SAKONNET will be entitled to recover from the CUSTOMER, and/or from the proceeds of a sale or disposal of the freight, all costs incurred as a result of the customer's or the 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.

#### **5.28.4.3 Salvage Obligation**

Customers are required to use all reasonable and good faith efforts to mitigate its 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 you prevent or refuse to sell or allow the sale of damaged freight, SAKONNET may deduct our reasonable estimate of the salvage value of the damaged freight from the amount of the claim against the transportation provider and us. In that case, you will be bound by the reasonable salvage deduction determined by SAKONNET.

Furthermore, SAKONNET may recover from the CUSTOMER and/or from the proceeds of a sale of the freight (or deduct from the claim) all costs incurred as a result of the customer's or the consignee's rejection and the 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 us for salvage, we are entitled to, but are not required to, undertake salvage efforts. If SAKONNET, in our discretion, determines that we will not undertake salvage efforts, we in no way waive our right to assert our claim that you failed to mitigate damages by customer's failure to take efforts to salvage the freight.

#### **5.28.5 CLAIM FILING**

Freight Claims should be submitted to the address below or emailed to [BCoulombe@sakonnetconsulting.com](mailto:BCoulombe@sakonnetconsulting.com).

Sakonnet Consulting Group, Inc.  
P.O. BOX 5060  
Fall River, MA 02723

When submitting a claim, the following items must be included. Failure to provide all of the following Information within the time limit set forth in Section 5.29.3: Time Limits on Freight Claims against Motor and Rail Transportation Providers may be considered a waiver and release of the claim by the transportation provider:

(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); and

(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, SAKONNET recommends that you 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.

## **6. ADDITIONAL LEGAL TERMS**

### **6.1 Applicable Law; Choice of Venue; Service of Process.**

(a) These Terms and Conditions, their interpretation, and the performance hereunder as to all matters, including, without limitation, its interpretation, construction, effect and remedies, shall in all respects be governed by the substantive laws of the State of Massachusetts, United States of America, without regard to its conflicts of law rules.

(b) The venue for all disputes arising in connection with these Terms and Conditions shall be brought exclusively in the State Courts of Massachusetts or the United States District Court for Massachusetts, United States of America, including the taking of depositions. CUSTOMER consents to the personal and subject matter jurisdiction of

such courts and waives any defense with respect to any such action based upon forum non convenience or lack of personal or subject matter jurisdiction.