



## **CUSTOMER SERVICES AGREEMENT**

If Matson Logistics, Inc. ("Matson Logistics") and customer ("Customer") have not signed and executed a separate agreement pertaining to the services provided by Matson Logistics, the services described herein and in the Matson Logistics rate quote or other Matson Logistics-authorized document ("Matson Logistics Document") provided to Customer by Matson Logistics shall set forth the rights and obligations of Matson Logistics and Customer, and shall be governed by this online Customer Services Agreement (the "Agreement"). This Agreement has been authorized by representatives of Matson Logistics and Customer as of the date the service was first provided to Customer by Matson Logistics (the "Effective Date"). The term of this Agreement is for a period commencing on the Effective Date and until such time the services have been terminated.

Matson Logistics may change the terms of this online Agreement at any time. You, the Customer, must review the Agreement on a regular basis. The changed Agreement is in effect immediately. If you do not agree to the terms of the changed Agreement, then you must stop using the Services. If you do not stop using the Services, then your use of the Services will be considered your constructive consent and the Services will be governed under the terms of the changed Agreement.

### **1. SERVICES.**

1.1 - Matson Logistics, Inc. ("**Matson Logistics**") shall perform transportation brokerage services (the "**Services**") in arranging on behalf of the "**Retail Customer**" (beneficial owner, household goods forwarder, household goods carrier, steamship line, etc.), or "**Wholesale Customer**" (intermodal marketing company, logistics company, broker or other transportation intermediary, or any entity doing business under a brokerage license and/or a freight forwarder license, etc.), collectively where applicable, "**Customer**," noted in the statement provided by Matson Logistics to Customer setting forth pricing and terms for the intended Services (the "**Rate Quotation**") for the transportation of containers and/or trailers which may or may not include cargo (the "**Units**") between points in the continental United States (including Alaska), Hawaii, Canada, Mexico and Puerto Rico, per the terms and conditions set forth in this Customer Services Agreement (the "**Agreement**"). The terms set forth in the main body of this Agreement shall be considered in coordination with the additional terms set forth in **Exhibit A**, (Wholesale Customer-specific terms), and **Exhibit B** (household goods-specific terms), where applicable. If the terms and conditions set forth in the main body of this Agreement conflict with the terms of Exhibits A or B, the terms which provide Matson Logistics the most benefit shall govern. In the absence of written acceptance, the act of using Matson Logistics' Services shall constitute acceptance of this Agreement by Customer.

1.2 - Matson Logistics will act on behalf of Customer in arranging for the transportation of the Units. Matson Logistics does not itself provide transportation or assume carrier or insurance obligations. Matson Logistics shall use commercially reasonable efforts to obtain satisfactory performance from the underlying carriers for the Services provided. The above notwithstanding, Matson Logistics does not guarantee rail or trucking service on any schedule, whether published, projected, implied or otherwise. Furthermore, unless otherwise agreed to in writing, Matson Logistics does not guarantee the performance of the underlying carriers, and Customer shall not have any right, claim or cause of action against Matson Logistics resulting from the failure of underlying carriers to fulfill their obligations. Prior to the provision of Services, Matson Logistics and Customer shall agree to the origin and destination points of the transportation to be arranged for each Unit. All shipments are subject to the terms and conditions of this Agreement in effect at the time of the shipment. This is a non-exclusive agreement. Matson Logistics may offer its Services to other customers.

### **2. CHARGES. PAYMENTS. REMEDIES.**

2.1 – The rates for Services provided by Matson Logistics, and the time such rates shall remain in effect, shall be set forth in the Rate Quotation. Domestic rates can only be used for domestic traffic. Unless specifically stated otherwise, Matson Logistics Wholesale Customer rates include only ramp-to-ramp rail linehaul charges. Matson Logistics rates are confidential and shall not be disclosed to any other party without the prior written consent of Matson Logistics.

2.2 - The rates for Services may be adjusted if the underlying carrier(s) pass on to Matson Logistics unexpected rate increases, such as fuel surcharges or demurrage fees, at which time Matson Logistics shall have the right, upon providing written notice, to increase its rates to Customer to recover such increases imposed upon Matson Logistics. Customer may not present a claim for an overcharge or overpayment unless such invoice or claim is submitted within one (1) year of the original shipment date. Customer shall, upon Matson Logistics' request, submit to Matson Logistics evidence of any applicable performance bond or other credit information. Customer shall, within thirty (30) days from the date of each applicable invoice, remit payment in full to Matson Logistics or send a written notification of dispute of such invoice. Customer's failure to submit a written notice of dispute within such thirty (30) day period shall be considered Customer's admission that the charges set forth in the applicable invoice are correct as billed. Customer is solely responsible for paying all charges for the Services and agrees to pay the full amount of the invoice without deduction or offset of any kind. If Customer fails to pay any invoice on or before its due date, Customer shall be subject to, and agrees to pay, a late charge of the lesser of 1.5% per month or the maximum rate permitted by law until paid in full. Customer shall also be liable for any expenses, including attorney fees, Matson Logistics incurs from collecting payment from Customer.

2.3 - In the event a Customer fails to remit full payment of any Matson Logistics invoice within the allowable time set forth herein, such Customer and any designated consignee shall not be entitled to possession or delivery of cargo shipments in Matson Logistics' possession or control until all such unpaid invoices, whether or not the invoices relate to such cargo shipments, have been paid in full, and Matson Logistics shall have a lien upon on all cargo shipments in its possession or control until all unpaid invoices have been paid in full. In addition, as a precondition of delivery of any shipment, Matson Logistics may demand prepayment of its charges in the event Customer has failed to comply with the payment term provisions set forth herein for previous shipments. The Customer is liable for all

charges incidental to the Services provided herein, including, but not limited to, demurrage, detention, storage, and return freight on any undelivered Units.

### 3. INSURANCE.

3.1 – When purchased by Customer, Matson Logistics will maintain and administer for such Customer, all-risk cargo insurance (**Shipper's Interest All-Risk Cargo Insurance**) covering Customer's cargo, subject to the policy's terms and conditions. This insurance, provided by an independent insurance company (the "Insurance Company"), is summarized at [www.matson.com/logistics/pdf/Insurance.pdf](http://www.matson.com/logistics/pdf/Insurance.pdf). Shipper's Interest All-Risk Cargo Insurance is, when purchased by Customer, provided for a flat fee per container or trailer, except for special commodities and shipments that will require approval in writing by Matson Logistics prior to shipment and be individually insured under the **Shipper's Premium Insurance**. Neither Shipper's Interest All-Risk Cargo Insurance nor Shipper's Premium Insurance is available for certain less-than-truckload shipments (in which case the Matson Logistics Rate Quotation will list the underlying carrier's liability limits) or for the transportation of household goods.

3.2 - If all-risk cargo insurance applies to the loss, the provided insurance is limited to ONE HUNDRED THOUSAND DOLLARS (\$100,000) for any one container or trailer unless a higher limit has been requested by Customer and approved in writing by Matson Logistics prior to the loss. The Customer must file a claim with Matson Logistics in accordance with applicable claim procedures required by Matson Logistics. If Customer does not purchase Shipper's Interest All-Risk Cargo Insurance, or the coverage does not apply to the loss, Matson Logistics' sole obligation is to process a proof of claim and present the claim to the underlying carriers. The Customer's sole remedies for cargo damage or loss in such instances are either (i) a claim under the Customer's own insurance policy showing the Customer as assured or (ii) a claim or lawsuit against the underlying carrier(s).

### 4. LIABILITY. CLAIMS.

4.1 - Matson Logistics is not a carrier or freight forwarder and has no liability for loss or damage to the cargo or Units. Under no circumstances shall Matson Logistics be liable for (i) cargo loss or damage or other claims related to the cargo or Units, (ii) any claim arising from the negligent or willful acts of Customer, the consignee, the underlying shipper, or the underlying carriers, or their respective employees, agents or contractors, or (iii) any claim for lost profits or any other incidental, consequential or punitive damages.

4.2 - Unless otherwise agreed to in a written agreement between Customer and Matson Logistics entered into prior to the date of the loss, neither Matson Logistics nor the Insurance Company shall be liable for, or required to accept, administer or present, any damage claim arising out of the Services unless: (i) notice of a potential claim is given to Matson Logistics with respect to visible or obvious damage at the time of the discovery of the damage, and in no event later than one (1) business day after such discovery, and with respect to concealed damage, no later than five (5) business days after delivery, and (ii) a detailed claim is presented to Matson Logistics in writing within eight (8) months of the delivery date (or intended delivery date) for the Services. After eight (8) months, Matson Logistics shall assign claim rights to Customer so that Customer may directly pursue claim with underlying carrier(s) and/or equipment provider(s). In instances where Customer alleges cargo damage caused by a defect in the equipment, Matson Logistics will file a formal claim for damage on behalf of the Customer against the underlying equipment provider. However, if Customer does not notify Matson Logistics within twenty four (24) hours from the time of its discovery of the alleged damage or give Matson Logistics an opportunity to arrange for an immediate in-container survey on behalf of Matson Logistics, then the underlying equipment provider shall have no liability for such damage and Matson Logistics will not present the claim for resolution.

4.3 - Customer agrees to defend, indemnify and hold harmless Matson Logistics, its employees and agents, from and against any and all losses, claims, damages and liabilities, costs, expenses and fees, including attorney's fees, however caused or arising out of, or in connection with (i) the negligence or intentional acts or omission of the Customer, consignee, or underlying shipper, where applicable, or (ii) any breach of this Agreement by Customer.

4.4 - Carrier liability for loss or damage to cargo, where applicable, is limited to a maximum of \$100,000 per any one container or trailer unless otherwise requested by Customer prior to shipment to increase cargo liability. There will be an additional charge for increased carrier cargo liability above \$100,000. The terms and conditions governing an underlying carrier's liability are contained in the underlying carrier's governing rules, tariffs, regulations, circulars, etc. (in the case of the rail carriers), and in the contractual provisions executed between the carrier and Matson Logistics (in the case of the motor carriers). It is the Customer's responsibility to take all necessary steps to mitigate a loss.

4.5 - As described in Section 3.1, above, Customer may obtain all-risk cargo insurance covering Customer's cargo. Customer agrees and understands that Matson Logistics provides Services across a North American, domestic network utilizing the services of rail and motor carriers and, in providing such Services, Matson Logistics is acting solely as Customer's nominee. As such, Matson Logistics shall have no liability to Customer for cargo loss, damage or delay occurring while a shipment is in the custody of a carrier. Further, Customer hereby waives any and all rights to claim, however so arising under law or contract, against Matson Logistics for cargo loss, damage or delay.

4.6 - In the event Customer failed to obtain all-risk cargo insurance, Matson Logistics will, at the Customer's request and solely for the Customers' convenience, file formal claims on behalf of Customer with rail carriers, motor carriers or any other potentially liable parties. If the Customer wishes to file a claim directly with the rail and/or motor carrier, then upon its written request and where necessary, Matson Logistics will issue an Assignment of Claim Agreement, giving over all rights, title and interest in cargo damages that occurred while in the rail and/or motor carrier's care.

In instances where Customer discovers damage or loss of cargo upon accepting delivery, if at all possible, devanning the container should cease immediately upon discovery of cargo damage or a shortage. Matson Logistics reserves the right to call for an independent survey, although the cargo insurer may also call for a survey of its own. Any survey ordered by Matson Logistics is strictly for Matson Logistics' internal use only.

Claims must be filed in writing to the address below:

The following documents must be submitted by the Customer to the Matson Logistics Claims department in order for Matson Logistics to file a formal claim with the proper party:

- A written, formal notice of claim on Customer's company letterhead noting, Matson Logistics domestic booking number, container number(s), commodity and claim amount, approximate date the shipment was initiated and the actual customer's and receiver's names and locations. Claim notifications and supporting documents may be e-mailed to [1milclaims@matson.com](mailto:1milclaims@matson.com), faxed to (510) 628-7382, and/or mailed to:

Matson Logistics, Inc.  
 Claims Department  
 Eighth Floor  
 555 12<sup>th</sup> St.  
 Oakland, CA 94607

- Paid freight bill.
- Commercial invoice and packing list.
- Itemized claim statement (detailing claim amount)
- Signed proof of delivery receipt or record showing the condition and quantity of the cargo at the time it was unloaded.
- Survey report, verification of loss or damages and photos of damage. Digital pictures are acceptable and should be forwarded via e-mail to the Claims department. When taking pictures, take good photos of the container depicting the container number, loaded contents in the container prior to devanning, and the damage cargo in details (proof of the damaged boxes and photos of the damaged cargo within the box).
- Warehouse loading tally/packing list & unloading tally sheet.
- Shortage claims should also include that seals applied by the actual Customer and documents to show the number of pieces that were loaded and seals that were recorded at time of unloading as well as documents to show the number of pieces that were unloaded and the quantity and type of product that was noted short.
- Proof of salvage or disposition, if applicable.
- Any and all applicable supporting documents not mentioned

above. In addition, the following documents are required by the Wholesale

Customer:

- Interchange documents of out-gate and in-gate at origin and destination. They must be furnished prior to filing a claim with the individual railroad.
- Original rail billing that was sent to Matson Logistics.

**5. COMPLIANCE WITH LAWS.** Customer is responsible for tendering the Units in compliance with all state, federal and local laws and regulations and the requirements of the underlying carriers, including, but not limited to, (i) all state, federal and carrier weight and dimensional requirements, (ii) international, federal and state laws and regulations and carrier requirements governing the transportation of hazardous materials, (iii) U.S. Customs laws and regulations, and (iv) rules and regulations governing the safety of the Units (collectively the "Requirements"). Matson Logistics shall not be responsible for and Customer shall defend, indemnify and hold harmless Matson Logistics and any underlying carrier or depot operator from any loss, costs, fines, penalties or other expenses and any claims which result from non-compliance of the cargo or Units with the Requirements. Matson Logistics shall not be responsible for any rejection of the Units by the underlying carriers for any reason, including non-compliance with the Requirements. Customer shall advise Matson Logistics, at the time Customer requests Services, if a Unit requires handling as hazardous materials, in which case Customer represents and warrants that the Unit and its content are in compliance with all applicable dangerous goods and hazardous material regulations.. Customer also shall provide Matson Logistics with all information and certifications regarding the Units necessary for Matson Logistics to arrange transportation of the Units in compliance with the Requirements.

**6. RAIL CARRIER(S) TERMS AND CONDITIONS.** Except where indicated, this Agreement does not govern or determine the contract of carriage between the rail carrier and the Customer, which Matson Logistics arranges as Customer's nominee. Liability, freight claims, storage charges, weight of lading, released valuation, hazardous materials rules, articles not accepted for shipment and other conditions of the rail carrier contract of carriage are as set forth in the individual rail carriers' rules and regulations, circulars, agreements, directories, memorandums and other documents as published by the rail carriers to govern intermodal shipments on their railroads.

Customer agrees and acknowledges that rail carriers have special rules and regulations pertaining to the shipment of restricted commodities, as that term is defined by each rail carrier, and that each rail shipment tendered through Matson Logistics under this Agreement is subject to such rules and regulations. Customer agrees to indemnify, defend and hold Matson Logistics harmless from and against any liability, losses, damages, claims, judgments, fines, penalties, lawsuits, expenses/costs, including, but not limited to reasonable attorney fees, related to death or personal injuries, property damage, environmental contamination, violation of local, state or federal laws or regulations or freight loss/damage resulting from or arising out of Customer's or its agent's negligence in the preparation and transportation of restricted commodities or any violation of the rail carrier's rule and regulations pertaining to such commodities.

In addition, Customer agrees to comply with rail carrier rules which stipulate, among other matters, standards for loading, blocking and

bracing standards, prohibitions and restrictions on certain types of commodities, limitations of liability, requirements for shipping hazardous materials, procedures and limitations on cargo claims, and requirements for proper descriptions of commodities.

**7. HAZARDOUS MATERIAL.** Customer shall comply with all national, federal, state and local laws, rules and regulations, as well as all underlying carriers' rules, regulations and requirements pertaining to the loading, packaging, marking, placarding and transportation of all hazardous materials, including explosives and dangerous articles. In the event Customer intends to tender hazardous material for transportation under this Agreement, Customer shall provide Matson Logistics and/or the underlying motor carrier with advance written notice of the product and a current Material Safety Data Sheet for the hazardous material shipment. The underlying carrier shall not be liable for damages incurred as a result of transporting hazardous materials, including damages resulting from any accident, leakage, or spillage of such materials, clean-up costs or damages claimed by third parties, unless such hazardous materials are: 1) declared in the shipping instructions, 2) correctly identified or certified pursuant to the requirements of the underlying carrier(s), and 3) loaded and secured to meet all requisite blocking and bracing requirements, including those set forth by the underlying carrier and the American Association of Railroads. Matson Logistics shall have no liability in connection with the transportation of hazardous material. All obligations set forth above shall be borne by Customer.

**8. WEIGHT RESTRICTIONS.** Customer, not Matson Logistics, shall ensure that loaded Units meet all federal, state, and local highway loading and weight restrictions and requirements, as well those requirements set forth by the underlying carriers, where applicable. Customer shall forward all required information to Matson Logistics, which shall in turn forward the information to the underlying carrier(s). Matson Logistics shall in not be responsible for the accuracy or completeness of such information.

**9. DIVERSION OR RECONSIGNMENT.** Upon receiving written notice from Customer, Matson Logistics will use commercially reasonable efforts to have the underlying carrier execute a request for diversion or reconsignment, but will not be responsible if such service cannot be executed. Diversion or reconsignment requests must be confirmed in writing, including confirmation of agreement to pay specific charges (amount must be stated) quoted at time of request. These charges will be in addition to previously agreed charges for the shipment.

**10. CONFIDENTIALITY.** As part of their business relationship under this Agreement each party may come into possession of confidential business and trade information, trade secrets or other proprietary information belonging to the other party. Matson Logistics and Customer will each exert its best efforts to maintain the confidentiality of such information. Neither party shall disclose the terms of this Agreement or the Rate Quotation to a third party except: 1) when disclosure is required by law, or 2) to third parties engaged to perform professional services for either party.

**11. FORCE MAJEURE.** Neither party shall be deemed to be in default in the performance of this Agreement to the extent that the failure to perform is beyond such party's control and not occasioned by such party's fault or negligence; provided, however, that the parties shall make all reasonable efforts to continue to meet their obligations for the duration of the force majeure condition.

**12. TERMINATION.** Either party may terminate the Agreement at any time with thirty (30) days written notice to the other. Such termination shall not relieve either party of any obligations incurred prior to termination.

**13. INDEPENDENT CONTRACTOR RELATIONSHIP.** The parties understand and agree that Matson Logistics is entering into this Agreement as an independent contractor. As a result, no Matson Logistics employees are to be considered employees of Customer.

**14. TRANSPORTATION OF FOOD.** Notwithstanding any other provisions of these Terms and Conditions, with respect to any food intended for human or animal consumption ("Food") with respect to which services are provided by Matson Logistics, the provisions of this section shall apply:

14.1. Notice of Consignments Containing Food. Any Customer tendering, receiving or otherwise requesting services with respect to any shipment consignment containing Food shall, at the time of the initial request for services with respect to the individual consignment in question is made, provide written notice to Matson Logistics that the consignment contains Food (hereinafter, the "Notice"), which Notice must also include any special instructions or handling requirements to be imposed on the underlying motor carrier, including, but not limited to, any requirements related to condition, design, maintenance or type of transportation equipment; sealing of trailers; cross-contaminant restrictions; segregation/isolation of Food consignments; records relating to equipment (such as prior use or cleaning); temperature range requirements; temperature records (including method of measuring, monitoring and documenting temperature); pre-cooling requirements; required transit-times, etc., (any such instructions, hereinafter the "Specialized Instructions") regardless of whether such requirements are imposed by private parties or by any applicable law, rule, regulation. Temperature requirements must be stated solely in degrees Fahrenheit. Notice shall be submitted via email or fax. Notice will not be effective unless confirmation of receipt of such Notice is confirmed by Matson Logistics. Any such Notice shall specifically identify the consignment to which it relates and in no event shall any Notice purporting to apply to multiple consignments (including any Notice purporting to apply to any specifically enumerated commodities, any category of commodities, or commodities moving to or from specified locations) be binding on Matson Logistics or otherwise apply to services provided by MATSON LOGISTICS, regardless of whether receipt of such general Notice has been confirmed by MATSON LOGISTICS. BY REQUESTING SERVICE WITH RESPECT TO ANY SHIPMENT OF COMMODITIES, CUSTOMER WARRANTS AND REPRESENTS THAT IT HAS INSPECTED THE CONVEYANCE IN QUESTION AND DETERMINED THAT THE EQUIPMENT IS IN COMPLIANCE WITH ANY APPLICABLE STANDARDS APPLICABLE TO THE COMMODITIES IN QUESTION. ANY THIRD PARTY MAKING CUSTOMER'S COMMODITIES AVAILABLE FOR TRANSPORTATION IS FULLY AUTHORIZED TO ACT ON BEHALF OF CUSTOMER WITH RESPECT TO DETERMINING WHETHER THE TENDERED CONVEYANCE IS SUFFICIENT TO MEET CUSTOMER'S REQUIREMENT. CUSTOMER

ACKNOWLEDGES AND AGREES THAT, AS BETWEEN IT AND MATSON LOGISTICS, CUSTOMER IS SOLELY RESPONSIBLE FOR IDENTIFYING AND IMPOSING ANY SPECIALIZED INSTRUCTIONS AND MATSON LOGISTICS SHALL HAVE NO OBLIGATION TO ARRANGE ANY SPECIAL HANDLING OR SERVICES WITH RESPECT TO ANY CONSIGNMENT, INCLUDING ANY CONSIGNMENT CONTAINING FOOD, UNLESS CUSTOMER HAS PROVIDED NOTICE OF SPECIALIZED INSTRUCTIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION, AND MATSON LOGISTICS HAS CONFIRMED RECEIPT OF SUCH NOTICE IN WRITING. FURTHERMORE, MATSON LOGISTICS' SOLE RESPONSIBILITY WITH RESPECT TO ANY SUCH SPECIALIZED INSTRUCTION IS LIMITED TO PROVIDING SUCH SPECIALIZED INSTRUCTION TO THE UNDERLYING CARRIER. MATSON LOGISTICS IS NOT LIABLE FOR THE CONDITION OR THE EFFECTS OF USE OF ANY TRANSPORTATION EQUIPMENT (INCLUDING PALLETS, TOTES, PACKAGING, ETC.).

14.2. Failure to Comply with Written Instructions. ANY FAILURE OR ALLEGED FAILURE BY THE UNDERLYING CARRIER TO COMPLY WITH SPECIALIZED INSTRUCTIONS PROVIDED AND ACKNOWLEDGED IN ACCORDANCE WITH THE PROVISIONS OF THESE TERMS AND CONDITIONS SHALL NOT, IN AND OF ITSELF, RESULT IN ANY PRESUMPTION THAT THE CONSIGNMENT IS UNSAFE, CONTAMINATED, ADULTERATED, OR OTHERWISE UNFIT FOR ITS INTENDED PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT WILL LACK OF THE ORIGINAL SEAL AT THE TIME OF DELIVERY RESULT IN ANY PRESUMPTION THAT THE CONSIGNMENT IS UNSAFE, CONTAMINATED, ADULTERATED OR OTHERWISE UNFIT FOR ITS INTENDED PURPOSE. TO THE EXTENT NOT OTHERWISE PROHIBITED BY LAW, CUSTOMER CONFIRMS ITS OBLIGATION TO MITIGATE DAMAGES.

**15. SERVICE TO MEXICO AND CANADA.** Any other agreement of any form or nature between Customer and Matson Logistics notwithstanding, Customer acknowledges and agrees that Matson Logistics shall not be liable for any loss, damage or expense, including cargo loss or damage, that takes place in Mexico, including a loss, damage or expense event that takes place while the cargo is in the possession of an international or domestic Carrier in Mexico.

Matson Logistics does not assume any liability for, and Matson Logistics' insurance coverage does not extend to cover, shipments outside the United States or Canada. Cargo loss and damage occurring while in the possession of underlying transportation providers in Mexico are subject to Mexican law and the rules and policies of the Mexican carriers, which differ from the law, rules and policies applicable in the United States and Canada.

Matson Logistics is not liable, and U.S. or Canadian underlying transportation providers generally provide that they are not liable, for cargo loss or damage that occurs while the cargo is in the possession of an international or domestic carrier in Mexico. While Matson Logistics will use commercially reasonable efforts to facilitate the filing of cargo claims with the underlying Mexican carriers, cargo loss or damage claims in Mexico may be subject to substantial delays and irregular processing. Matson Logistics explicitly encourages customers to work with their insurance providers to insure that they have adequate coverage for cargo moving in Mexico and the limitations set forth herein.

**16. MISCELLANEOUS.** The interpretation, construction and enforcement of this Agreement shall be governed by the laws of the State of California, exclusively, without reference to the laws of any other state, subject to the laws or regulations of the United States of America to the extent applicable. In the event a dispute between the parties arises concerning any matter under this Agreement, the party claiming the existence of a dispute shall notify the other party in writing, and both parties shall negotiate in good faith to attempt to resolve such dispute. In the event that the parties cannot promptly settle a dispute, both parties consent to the exclusive jurisdiction of the state and federal courts in San Francisco, California. Any notice required or permitted by this Agreement shall be given in writing, delivered by hand, by facsimile or mailed by first class air mail, postage prepaid to the addresses of Matson Logistics and Customer set forth in the Rate Quotation. The notice shall be deemed to have been duly given on the date of delivery, if delivered personally or by facsimile, or on the third business day after the date of mailing, if mailed. Any notice pertaining to matters of an emergency, including obvious damage claims, should be given as soon as possible, by any reasonable means. If given orally, the emergency notice shall be confirmed in writing as soon as possible by the party giving such notice. If any provision of this Agreement shall be held by any court or agency to be unenforceable, illegal, or against public policy, such provision shall be considered null and void and shall have no effect on the remaining provisions. Waiver by either party of any breach of this Agreement does not constitute a waiver of any subsequent non-performance or other breach of the same or any other provision. This Agreement, in coordination with Customer's Rate Quotation, contains the entire understanding between the two parties with respect to the subject matter hereof and merges and replaces all prior negotiations, discussions, representations, warranties, promises, and agreements of the parties with respect to such subject matter, and cannot be amended except in writing and signed by an authorized representative of each party. Notwithstanding the foregoing, the particular Services provided at a given time under this Agreement may be updated and agreed to orally between Matson Logistics and Customer in each instance, contingent upon such orally agreed upon update being confirmed in writing via fax or letter as thereafter as commercially reasonable. The most updated terms and conditions of the Matson Logistics Customer Services Agreement are set forth on the Matson website. As such, if the Matson Logistics Customer Services Agreement set forth on the Matson Logistics website is in conflict with Matson Logistics Customer Services Agreement set forth elsewhere, including the back of a Matson Logistics invoice, the Matson Logistics Customer Services Agreement set forth on the Matson Logistics website shall govern.

## Exhibit A

### WHOLESALE CUSTOMERS

The terms and conditions in this Exhibit A shall be considered in coordination with the terms and conditions of the main body of this Agreement. If there is a conflict between the main body of this Agreement and this Exhibit A, the terms which provide Matson Logistics the most benefit shall govern. Matson Logistics reserves the right to revise and/or update the prices, rates and charges set forth herein at any time upon publishing and/or setting forth in some other form of writing and making as such available to Customer.

#### **A1 - Wholesale Service Parameters and Requirements**

In arranging for the transportation of the Units on behalf of Customer, Matson Logistics does not itself provide transportation or assume carrier or insurance obligations. As such, Matson Logistics shall have no liability to Customer for cargo loss, damage or delay, or any other claim, occurring at any time. If Customer desires to purchase Shipper's Interest All-Risk Cargo Insurance (as more fully described in Section 3 of the main body of this Agreement), Customer may contact Matson Logistics to coordinate Customer's purchase of such insurance, which will include and require Customer signing a **Shipper's Interest All-Risk Cargo Insurance Election Form**.

Upon request by Wholesale Customer, Matson Logistics will furnish the Wholesale Customer with the use of suitable containers, whether owned or on lease to Matson Logistics, or made available to Matson Logistics by other "Equipment Providers" by way of pool arrangements.

Wholesale Customer agrees and understands that it is responsible to inspect all equipment upon its receipt and to promptly notify Matson Logistics before loading of any defective equipment. Absent any written notice of a defect to Matson Logistics, Wholesale Customer agrees and warrants that its use of the equipment shall serve as its acknowledgement that it has received equipment in good order and condition, suitable for the shipment's intended move.

#### **A2 - Requirement for the Tender of Each Shipment**

Wholesale Customer must provide complete and accurate shipping instructions to Matson Logistics prior to the time the container is tendered to the carrier. Shipping instructions may be submitted either on Matson Logistics' form or its equivalent. Shipping instructions must include the following:

- Container Identification (Initial and Number)
- Origin Rail Terminal
- Destination Rail Terminal
- Matson Logistics Booking Number
- Name of Wholesale Customer
- Notify Party
- Equipment Size
- Seal Number
- Commodity
- Hazardous Material Description (if applicable)
- Beneficial Owner/Actual Receiver of Goods/Actual Shipper (only required on Special Price Quotes)

Matson Logistics may audit the information submitted by Shipper as to commodity, beneficial owner of goods, actual receiver of goods, actual origin, actual destination, applied rate, and other applicable information. Wholesale Customer will, upon reasonable request, make available to Matson Logistics sufficient documentation to substantiate the above information. If a rate does not apply to the service actually provided, then Matson Logistics will notify Wholesale Customer, who then must correct such information immediately.

#### **A3 - Uniform Intermodal Interchange Agreement**

Matson Logistics requires the interchange of shipments to motor carriers who maintain a Uniform Intermodal Interchange Agreement (UIIA). Wholesale Customer is responsible for ensuring that all truckers used by Wholesale Customer maintain a UIIA on file and Wholesale Customer is responsible for all claims, losses or damages resulting from failure of a trucker to have a UIIA on file, including attorney's fees and costs, and will indemnify and hold harmless Matson Logistics and equipment owner(s) against same.

In those instances where Matson Logistics is contracted to provide for the door pick-up and/or door delivery of our Wholesale Customer's cargo, Matson Logistics will use UIIA certified truckers to affect the pick-up and/or delivery process.

#### **A4 - Free Time and Per Diem Charges**

The following free time shall be allowed and the following use charges, if applicable, shall be assessed to the Wholesale Customer when equipment is in interchange for domestic shipments pertaining to movements loaded to or discharged from Matson Logistics-arranged train service:

On all empty containers and chassis, the first two (2) working days excluding the day of interchange will be considered days of grace during which no charges will be made for the use of the equipment (container and/or chassis). Weekends and national holidays are excluded during the initial grace period, but will be included once free time has lapsed. The per diem charges as per "TABLE OF CHARGES" will be assessed for each day or portion thereof until the equipment is returned.

On all loaded containers and chassis, the day of pick-up and the first two (2) working days thereafter, commencing from 12:00 A.M. Midnight of the day of notification, will be considered days of grace during which no charges will be made for the use of the equipment (container and/or chassis). Weekends and national holidays are excluded during the initial grace period, but will be included once free time has lapsed. Per diem charges of \$47.00 per day will be assessed for each day or portion thereof until the equipment is returned. If the Wholesale Customer is re-loading the equipment for further movement arranged by Matson Logistics, then an additional one(1) day grace will be allowed for free time. Per diem charges are subject to change with thirty (30) days' notice.

#### **A5 - Penalty Charges**

Equipment provided by Matson Logistics is for domestic cargo use only with the requirement that the empty unit be returned to the approved West Coast terminal, any furtherance by any ocean carrier is strictly prohibited. A \$1000.00 penalty fee will be assessed for any unit loaded to a vessel for furtherance by any ocean carrier. The Wholesale Customer will also be responsible for all associated costs and per diem charges in returning the unit to the approved location.

On any equipment that is interchanged from its owner, held and returned empty, a flat penalty fee of \$250.00 will be charged for a container not used.

On any equipment that is interchanged from its owner, loaded and in-gated at origin ramp but cancelled, a penalty fee of \$250.00 plus the detention charges ('Table of Charges' above) beginning at the time of empty pick up to its empty return at origin after devanning loads will be charged. No grace period is allowed.

On any equipment that is interchanged from its owner, loaded and does not load on Matson Logistics arranged train service, but moves to destination via another route, a penalty fee of \$500.00 plus the detention charges ('Table of Charges' above) beginning at the time of empty pick up to its empty return at destination will be charged. No grace period is allowed.

#### **A6 - Railroad Storage Charges**

Wholesale Customer is responsible for all railroad terminal storage charges. Storage charges will be calculated based upon the underlying rail carrier's applicable rules and regulations.

#### **A7 - Container Use Restrictions**

Wholesale Customer shall not load the containers via rail service to any destination not agreed to by Matson Logistics. Wholesale Customer agrees to route containers only over Matson Logistics approved routes and via approved rail carriers.

Wholesale Customer shall promptly return containers and chassis in good repair and serviceable condition, ordinary wear and tear excepted. Wholesale Customer shall return containers free of debris, lading, blocking, bracing, strapping, paper, unnecessary hazardous materials placards and contaminants, or shall pay Matson Logistics for the cost of their removal.

The Wholesale customer will use Matson Logistics-provided equipment for its own retail purposes only. The Wholesale customer shall not sell Matson Logistics' services or Matson Logistics-provided equipment to another entity ("Re-wholesale"), including, but not limited to, an intermodal marketing company, property broker, etc.

#### **A8 - Loading Responsibility**

Loading of container shall be at the Wholesale Customer's expense, in a manner to prevent damage to container and cargo, and shall comply with Federal, State and Municipal laws and the rules and regulations of the underlying rail carriers as set forth in the individual rail carriers' intermodal agreements, directories, memorandums and other documents.

Wholesale Customer expressly agrees and warrants that it will defend, indemnify and hold Matson Logistics and Equipment Owner(s) harmless for any claims, however so caused by Wholesale Customer's failure to properly load its cargo into containers or resulting from Wholesale Customer's breach of its loading responsibilities as set forth in this item.

The terms and conditions in this Exhibit A shall be considered in coordination with the terms and conditions of the main body of the Agreement. If there is a conflict between the main body of the Agreement and this Exhibit A, the terms which provide Matson Logistics the most benefit shall govern.



## **Exhibit B**

### **HOUSEHOLD GOODS**

The terms and conditions in this Exhibit B shall be considered in coordination with the terms and conditions of the main body of this Agreement. If there is a conflict between the main body of this Agreement and this Exhibit B, the terms which provide Matson Logistics the most benefit shall govern.

#### **B1 – Household Goods Service Parameters and Requirements**

Matson Logistics may arrange for the use of intermodal equipment or the Customer may provide intermodal equipment. Matson Logistics does not guarantee rail or trucking service on any schedule, whether published, projected, implied or otherwise.

Matson Logistics makes no representations as to the suitability of the household goods cargo for rail transportation. As such, Customer will transport all shipments in closed, locked, and secured trailers and/or containers. Further, as a result of significant forces exerted on cargo during rail transportation, additional packing measures may be required for the cargo to move safely. As a result, Customer shall ensure that all household goods and other cargo will be blocked and braced in accordance with the applicable rules and regulations, including those set forth by the underlying Rail Carrier(s).

#### **B2 – Restricted Commodities**

Customer acknowledges that household goods are restricted commodities per the rules and regulations set forth by the underlying Rail Carriers, as well as Matson Logistics' terms and conditions.

Customer further agrees to abide by all of the other terms and conditions set forth in the underlying Rail Carriers' rules and regulations, and to inform the beneficial owners of the cargo and any other shippers involved in the Shipment of the limitations of liability, proper loading obligations, and other provisions set forth herein.

#### **B3 – Indemnification, Liability and Claims**

Customer hereby releases, indemnifies, and holds harmless Matson Logistics and its affiliates, employees, agents, representatives and subcontractors, including underlying carriers and related service providers, from and against all liability, loss, damage, penalties, fees, expenses, suits and claims, including but not limited to attorney's fees, judgments, or settlements, arising out of injury or death of persons, property damage, environmental contamination, or violation of law associated with the transportation of household goods or the performance of services hereunder, from whatsoever cause, including, but not limited to those claims, suits, or causes of action brought by Customer or by any beneficial owner of the cargo.

Customer agrees: 1) to assume defense of any such claim, suit, or cause of action upon request of Matson Logistics, and 2) to reimburse Matson Logistics immediately upon its request for any and all amounts that Matson Logistics incurs or owes to a Rail Carrier (other than linehaul rates, terminal service and other accessorial charges for transportation of household goods) under any release and indemnification arrangement between Rail Carriers and Matson Logistics regarding the transportation of household goods arranged by Matson Logistics on behalf of Customer.

Customer understands and agrees on behalf of itself and any other shipper, consignee, or beneficial owner of the household goods cargo tendered for transportation through Matson Logistics that Matson Logistics, in providing its Services, shall not be liable for any damages that result from cargo loss, or delay or interruption of rail services.

Since shipments of household goods and personal effects are not covered by all-risk cargo insurance, in the event of loss or damage to the shipments during transport, Matson Logistics' sole obligation to Customer is to use commercially reasonable efforts to coordinate with the Customer, upon Customer's request, to process a proof of claim on Customer's behalf and present the claim for such loss or damage to the underlying carrier(s), contingent upon Customer providing Matson Logistics substantiating documentation.

The terms and conditions in this Exhibit B shall be considered in coordination with the terms and conditions of the main body of the Agreement. If there is a conflict between the main body of the Agreement and this Exhibit B, the terms which provide Matson Logistics the most benefit shall govern.