



## §525 TITLE PAGE

MTO Schedule for Federal Marine Terminals, Inc.

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## TABLE OF CONTENTS

<b>§525.1 PURPOSE, SCOPE, APPLICABILITY, ABBREVIATIONS, AND DEFINITIONS .....</b>	<b>1</b>
ITEM 1: PURPOSE, SCOPE AND APPLICABILITY .....	1
ITEM 2: ABBREVIATIONS .....	2
ITEM 3: DEFINITIONS .....	3
<b>§525.2 MTO SCHEDULE DETAILS .....</b>	<b>6</b>
ITEM 1: TERMINAL HANDLING SERVICES .....	6
ITEM 2: VESSEL AND STEVEDORING SERVICES .....	8
ITEM 3: WHARFAGE .....	13
ITEM 4: HAZARDOUS MATERIALS .....	14
ITEM 5: OVERTIME CHARGES .....	16
ITEM 6: COLLECTION FOR SERVICES RENDERED .....	16
ITEM 7: INSURANCE .....	18
ITEM 8: RELEASE OF CARGO .....	19
ITEM 9: DAMAGE TO TERMINAL EQUIPMENT OR FACILITIES .....	20
ITEM 10: TRUCK PICK-UP/DELIVERY .....	20
ITEM 11: COMMENTS/COMPLAINTS .....	22
ITEM 12: LIMITATIONS OF LIABILITY STATEMENT .....	23
ITEM 13: ADDITIONAL LIMITATION OF LIABILITY STATEMENTS APPLICABLE TO VESSELS AND INDEMNITY FROM VESSELS AND CARGO INTERESTS .....	26
ITEM 14: FREE TIME POLICY .....	29
ITEM 15: LIMIT ON USE OF FACILITIES AND ABANDONED CARGO POLICY.....	29
ITEM 16: TTC COMMODITY RATES.....	30
ITEM 17: ENFORCEMENT OF MTO SCHEDULE.....	31
ITEM 18: PORT SECURITY.....	31
ITEM 19: WAIVER OF WARRANTIES.....	31
ITEM 20: DEFAULT .....	32
ITEM 21: GENERAL PROVISIONS .....	33
<b>§525.3 AVAILABILITY .....</b>	<b>34</b>
ITEM 1: AVAILABILITY TO THE PUBLIC.....	34
ITEM 2: NOTIFICATION .....	34
ITEM 3: FORM AND MANNER.....	34
<b>§525.4 THE MTO QUALITY POLICY.....</b>	<b>35</b>
ITEM 1: THE MTO QUALITY POLICY .....	35

## **§525.1 PURPOSE, SCOPE, APPLICABILITY, ABBREVIATIONS AND DEFINITIONS**

### **ITEM 1: PURPOSE, SCOPE AND APPLICABILITY**

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#### **PURPOSE:**

This Schedule adheres to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and Coast Guard Authorization Act of 1998.

#### **SCOPE:**

The rules, regulations, conditions, commodity rates and/or charges set forth in this schedule apply to or from the following Marine Terminal.

#### **APPLICABILITY:**

This MTO shall apply to the following terminal operated by Federal Marine Terminals, Inc.:  
Federal Marine Terminals, Inc. (Lake Charles, Louisiana)  
Port of Lake Charles  
150 Marine Street, Building 200, Suite C  
Lake Charles, LA 70602  
Phone: 337.433.3362

### **ITEM 2: ABBREVIATIONS**

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\$	Currency	%	Percent
Cont'd	Continued	CBM	Cubic Meter
CWT	Hundredweight or per one hundred pounds	MT	Metric ton (2204.6 lbs.)
FMC	Federal Maritime Commission	GRT	Gross Registered Ton
ISO	International Standards Organization	LBS	Pounds
NOS	Not otherwise specified	LOA	Length overall
<	Less than	>	More than
CFR	Code of Federal Regulations	O/T	Other Than
B/L	Bill of Lading	TTC	Terminal Transfer Charge

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### **ITEM 3: DEFINITIONS**

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The following words may be used in the ensuing Schedule.

**ACT:**

Means the shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and Coast Guard Authorization Act of 1998.

**ATTORNEYS' FEES AND COSTS:**

"Attorneys' fees and costs" shall include, but not be limited to, all legal costs and expenses, attorneys' fees, expert witness fees, paralegals' fees, court reporter fees, filing fees, copying charges, and charges relating to document production incurred by the MTO in relation to the investigation and/or defense of any loss, damage, expense, claim, liability, suit, fine, and/or penalty, including, but not limited to, attorneys' fees and costs incurred for appellate and/or bankruptcy proceedings.

**BULK CARGO:**

Means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the requirement of this part.

**CHECKING:**

Means the service of counting and checking cargo against appropriate documents for the account of the cargo, the vessel, or other person requesting same.

**COMMISSION:**

Means Federal Maritime Commission (FMC).

**DOCKAGE:**

Means the charge assessed against vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed.

**EFFECTIVE DATE:**

Means the date a schedule or an element of a schedule becomes effective. Where there are multiple publications on the same day, the last schedule or element of a schedule published with the same effective date is the one effective for that day.

**EXPIRATION DATE:**

Means the last day, after which the entire schedule or single element of the schedule, is no longer effective.

**FOREST PRODUCTS:**

Means forest products including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp on rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets, liquid or granular byproducts derived from pulping and papermaking, and engineered wood products.

**FREE TIME:**

Means the period specified in the terminal schedule during which cargo may occupy space assigned to it on terminal property, including off-dock facilities, free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel.

**HANDLING:**

Means the service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of vessel's tackle.

**HEAVY LIFT:**

Means the service of providing heavy lift cranes and equipment for lifting cargo.

**LOADING/UNLOADING:**

Means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters or vessels or any other means of conveyance to or from the terminal facility.

**MARINE TERMINAL OPERATOR (MTO):**

Means a person engaged in the United States or a commonwealth territory, or possession thereof, in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. A Marine Terminal Operator includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads who perform port terminal services not covered by their liner haul rates; common carriers who

perform port terminal services; and warehousemen who operate port terminal facilities. For the purposes of this part, marine terminal operator includes conferences of marine terminal operators.

Where the term MTO appears throughout this Schedule, it shall refer to Federal Marine Terminals, Inc. ("FMT").

**ORGANIZATION NAME:**

Means an entity's name on file with the commission and for which the commission assigns an organization number.

**PARTY RECEIVING THE MTO SERVICES:**

Party receiving the services shall include the party ordering the MTO services from FMT; the owner of the cargo; the shipper; the consignor; the consignee; the ocean carrier, including owners and charterers of the vessel; any other party having any interest in the cargo and/or receiving, directly or indirectly, any benefit from the services rendered; and, any vessel, vehicle, conveyance of any kind, and the owners and operators thereof, and person and/or entity that requests, is provided with, and/or receives any terminal services of any kind or description.

**PERSON:**

Includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees, and personal representatives.

**RATE:**

Means a price quoted in a schedule for providing a specified level of marine terminal service or facility for a stated cargo quantity, on and after a stated effective date or within a defined time frame.

**SCHEDULE:**

Means a publication containing the actual rates, charges, classification, regulations, and practices of a MTO. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the rates, charges or services provided by a MTO.

**TERMINAL FACILITIES:**

Means one or more structures comprising a terminal unit, which include, but not limited to, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, grain elevators and/or bulk cargo loading and/or structures, landings, and receiving stations, used for the transmission, care, and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers.

**TERMINAL SERVICES:**

Includes checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage, as defined in this section. The definitions of terminal services set forth in this section shall be set forth in terminal schedules, except that other definitions of terminal services may be used if they are correlated by footnote, or other appropriate method, to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefore shall be shown in the terminal schedule.

**TERMINAL STORAGE:**

Means the service of providing warehouse or other terminal facilities for the storage of inbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage.

**USAGE:**

Means the use of terminal facility by any rail carrier, lighter operator, trucker, party receiving the MTO services or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified.

**VESSEL(S):**

Means any ship, boat, barges or water craft of any kind or description.

**WHARF DEMURRAGE:**

Means a charge assessed against cargo remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage.

**WHARFAGE:**

Means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at a wharf or when moored in a slip adjacent to a wharf. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

**§525.2 MTO SCHEDULE DETAILS**

**ITEM 1: TERMINAL HANDLING SERVICES**

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- A. The terminal handling services commence at the end of vessel's tackle, unless stevedoring services are provided, (see §525.2 ITEM 2). The normal terminal handling services performed by the MTO shall be considered to mean:
  - 1. The delivery of cargo by bills of lading as described in the vessel's manifest.
  - 2. The responsibility of custodianship of all cargo.
  - 3. The obligation to deliver all cargo in the same condition as received.
  
- B. For the foregoing services, a Terminal Transfer Charge (TTC) is assessed. All other services, which are performed by the MTO, are subject to special services charges.
  
- C. The MTO may negotiate TTC for volume lots of cargo and such rates will supersede rates named in §525.2: **ITEM 16** of this Schedule.
  
- D. Charges for the performance of special services will be for the account of the party receiving the MTO services.
  
- E. Nothing contained herein shall be construed as requiring the MTO to perform without charges any service not specifically provided for herein. The charge for any such service shall be mutually agreed upon.
  
- F. The MTO has no temperature or humidity control under cover in sheds. Goods which are or may be subject to damage or deterioration through temperature or humidity conditions or changes, or climatologically causes of any nature whatsoever, or other causes incidental to storage will be received solely at the risk of the party receiving the MTO



services, and the MTO shall have no liability with regard to any such damage or deterioration.

- G. The MTO cannot store cargo greater than the dimensions of the warehouse doors inside a warehouse. The dimensions of the warehouse doors are available from the MTO upon request, and it is the responsibility of the party receiving the MTO services to ensure that the cargo does not exceed the dimensions of the warehouse doors for any cargo that is to be stored within a warehouse. Special arrangements must be made with the MTO to protect weather sensitive cargo exceeding these dimensions. The MTO is not responsible for any damage caused by the weather if these arrangements are not made and the MTO shall have no liability with regard thereto.

H.

- 1. In addition to the other terms and conditions of the MTO Schedule, commercial bagged food goods and/or packaged food goods, including, but not limited to, United States Government Export Food Aid Commodities, PL-480 USDA food commodities, USAID food commodities, and/or food commodities for the World Food Programme (collectively "food cargo") are received by the MTO subject to the provisions of this paragraph. The Port of Lake Charles is located in Lake Charles, Louisiana, in southwestern Louisiana. Lake Charles is one of the most humid cities in the contiguous United States. The average daily humidity in Lake Charles is 78% and the average humidity in the morning is 90%. The MTO has no temperature or humidity control under cover in sheds. Food cargo that is or may be subject to damage or deterioration, including, but not limited to, mold and/or mildew, through temperature or humidity conditions or changes, or climatological causes of any nature whatsoever, or other causes incidental to storage will be received solely at the risk of the party receiving the MTO services, and the MTO shall have no liability with regard to any such damage or deterioration. The party receiving the MTO services is solely responsible for ensuring that the food cargo is properly bagged and/or packaged in such a manner as to prevent damage or deterioration, including, but not limited to the development and/or growth of mold and/or mildew on or in the food cargo and/or on or in the bag or packaging for the food cargo, when stored in sheds that are not temperature or humidity controlled in the climatological conditions that can or do exist in Lake Charles. The party receiving the MTO services is solely responsible for ensuring that the bagged and/or packaged food cargo is properly loaded into an inland means of conveyance (railcar, truck, or trailer) that has been properly prepared to prevent damage or deterioration, including, but not limited to the development and/or growth of mold and/or mildew, during transit to Lake Charles and until such time as the food cargo is unloaded from the inland means of conveyance. When handling food cargo damaged or deteriorated by improper packaging and/or

loading, water, humidity, weather conditions, inherent vice, etc., the party receiving the MTO services shall be responsible for all additional charges related thereto.

2. The party receiving the MTO services agrees to be responsible for, and to defend, indemnify and hold harmless the MTO, its officers, agents, and employees and all related entities and their officers, agents and employees, from and against, any and all loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from or in any way relating to such food cargo and/or their handling and/or transportation, including without limitation any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from or in any way relating to the party receiving the MTO services' failure to comply with the requirements and responsibilities allocated to it above and/or under any federal or state laws or regulations, including attorneys' fees and costs incurred by the MTO in defending against any such loss, damage, expense, claim, liability, suit, fine and/or penalty.

## **ITEM 2: VESSEL AND STEVEDORING SERVICES**

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A. Stevedoring services provided by the MTO shall be considered to mean:

1. Loading of cargo from place of rest in the terminal and stowing into the vessel as directed by the vessel's Master and/or party receiving the MTO services. Special stowing not included.
2. Unloading cargo from the vessel and delivering to an agreed place of rest in the terminal in bill of lading lots to be readily available for delivery.

B. Labor And Equipment: In performing the stevedoring services, the MTO will provide:

1. All normal gear and equipment deemed reasonably necessary by the MTO if and when available.
2. Sufficient labor and such supervision reasonably necessary for the due execution of the stevedoring services in accordance with prevailing Collective Bargaining Agreement, but always contingent upon labor being available to the MTO thereunder.
3. The MTO shall provide dunnage board placement as required during loading, for proper stowage of cargo, except where full platforms must be laid on cargo for the carriage of general cargo or where dunnage is carried as cargo.
4. Provide number of gangs as practicable in consideration of safety, efficiency, and customary practice at terminal location.

C. For the foregoing services specified in paragraphs A and B, above, a Stevedoring Commodity Rate (SCR) is assessed. All other stevedoring services that are performed by the MTO are subject to special service charges as set forth in paragraph D, below.

1. Any SCR provided applies only to cargo vessels suitable to the type of cargo being handled by the MTO.
  2. Rates for other stevedoring services are available upon request.
  3. All SCR's apply only to the specific job quoted unless otherwise stated.
- D. Extra labor, material, and equipment services (referred to above as "special service charges"). When authorized to supply extra labor, material, and/or equipment, the MTO will render its charges therefore at cost including fringe benefits plus a service charge. Extra labor, materials, and/or equipment services include, but are not limited to, the following:
1. The removing and replacing of hatch covers and beams and the rigging necessary to work cargo in each respective hatch when such work is performed by the MTO.
  2. Handling vessel's lines and gangways.
  3. Discharging dunnage or debris and disposing of such.
  4. Loading or discharging vessel's stores, dunnage, material or equipment other than vessel's cargo.
  5. Carpenter or coopering work of any nature.
  6. Handling or placing flooring timbers for heavy lifts or for use by carpenters.
  7. Bolting and unbolting tank lids.
  8. Battening down hatches when called upon to do so upon completion of the vessel.
  9. Rigging and unrigging heavy lift booms and hatch tents.
  10. Lashing and Securing: Unless otherwise agreed between the Parties, where the party receiving the MTO Services requires lashing or securing of cargo on board the vessel, on deck or elsewhere, all labor and materials shall be for the account of the party receiving the MTO services. The services shall be performed under the direction, control and supervision of the vessel's Master and/or other authorized personnel who shall have ultimate responsibility for the sufficiency of such lashing and securing. The party receiving the MTO services expressly agrees to defend, indemnify, and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees, from and against any claims, demands or suits whatsoever relating to insufficiency or alleged insufficiency of such lashing and/or securing of cargo, including attorneys' fees and costs incurred by the MTO in defending against any such claim, demand, or suit. Without limiting the foregoing language, the MTO shall be entitled to be defended, indemnified, and held harmless, as set for the above, in all instances where the MTO followed the instructions of the Master , Chief Mate, crew and/or port captain.
  11. Supplying extra labor for any other services when authorized.

12. If the condition of the cargo or packages is other than in customary good order, thereby delaying prompt handling, special arrangements shall be agreed upon in lieu of the SCR.
13. When material (i.e. Dunnage, Banding, Lashing Chains, other Port's Cargo, etc.) becomes an obstacle during cargo operations, said material will be moved/removed at the MTO's discretion. Costs for the aforementioned service will be charged at the prevailing "Stand-by" rate and standard disposal costs and will be for the account of the party receiving the MTO services.
14. Free Time – The Port Authority must be contacted regarding Free Time.

E. Rehandling, sorting, and shifting of cargo:

A SCR applies to one handling of cargo. When rehandling, sorting, or shifting of cargo is necessary through no fault of the MTO, the time required for such work will be charged for by the MTO at cost including fringe benefits plus a service charge, for the above described services.

F. Detention, stand-by time, lay time:

Whenever work is interrupted after starting and detentions not over 15 minutes duration occur, the MTO will make no charge for reimbursement thereof. Should detention time exceed 15 minutes duration, the MTO will charge for the full detention time at cost including fringes. When men are employed and unable to work through causes beyond the MTO's control, or when men are to be paid for a minimum working period in accordance with the labor agreement or as is the custom of the MTO, the cost of such waiting or idle time will be charged by the MTO at cost including fringes.

G. Damaged cargo:

When handling cargo damaged or deteriorated by improper packaging, loading and/or securement, fire, water, humidity, weather conditions, inherent vice, oil, etc. and where such damage or deterioration causes distress or obnoxious conditions, or in all cases where the men are called upon to handle cargo under distress conditions, the MTO's charges can be based on the cost in accordance with the Labor Agreement, including fringe benefits, plus a service charge, plus the SCR, together with the cost of the gear destroyed and the cost of the equipment for the protection of the men as may be required.

H. Sorting cargo:

Extra sorting other than bill of lading lots, separations to fill individual orders, or any service beyond the normal delivery by bill of lading lots, including any sorting of allegedly damaged cargo, shall be for the sole account of the party receiving the MTO services.

I. Description and tender of goods

1. The party receiving the MTO services shall be solely responsible for providing MTO with, and hereby warrants the completeness and accuracy of, all information, descriptions, particulars and instructions relating to the goods, including as to their nature, characteristics, markings, number, count, weight, dimensions, volume and quantity, as well as any special instructions or conditions applicable to the goods, their handling and/or transportation, upon all of which MTO shall be entitled to rely. The party receiving the MTO services shall be responsible for, and agrees to defend, indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees, from and against, any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from any false, inaccurate and/or incomplete information, descriptions, particulars and/or instructions respecting the goods, including attorneys' fees and costs incurred by the MTO in defending against any such loss, damage, expense, claim, liability, suit, fine, and/or penalty.
2. The party receiving the MTO services shall tender goods to MTO at the date, time and place agreed by MTO in good order, count and condition, and packaged, protected, packed and stowed sufficiently to withstand the contemplated terminal services, handling and subsequent transportation, including by vessel, rail car, motor vehicle and/or any other mode of conveyance, as applicable.

J. Vessel Requirements:

Unless otherwise agreed, the party receiving the MTO services shall ensure that the vessel will supply booms hoisted in position and automatic hatches opened and ready to work; adequate winches and/or vessel's cranes with sufficient steam or current for their efficient operation; blocks, guys, preventers, and wire or rope in good condition and of sufficient strength for falls; dunnage, hatch tents, and gantlines; adequate lighting for night work; tugs; derricks or cranes and slings for any cargo which cannot safely be handled by vessel's gear, or when vessel's gear is not adequate to handle cargo in a normal and safe manner according to the custom of the port; all materials required for dunnaging, bracing, reeving, shoring, lashing, protection, or bulkheading of cargo. All vessels shall provide the MTO with gear certifications upon request.

K. Safety and health regulations:

The party receiving the MTO services warrants that each of the vessels for which such services are provided for the party receiving the MTO services and all equipment is maintained in such condition as to comply with the United States Department of Labor Safety and Health Regulations for Longshoring, as published in the Federal Register, which became effective on July 1, 1998, and all amendments thereto, all provisions of the Occupational Safety and Health Act, and all amendments thereto, and all regulations adopted and orders issued pursuant thereto, all Coast Guard regulations, and all state statutes, regulations, and orders for safety and health, and all amendments thereto. The party receiving the MTO services agrees to reimburse the MTO for any and all fines assessed to the MTO pursuant to citation, warrant, or order from any federal, state or local court, tribunal or agency where such fines are the result of the party receiving the MTO services failing to comply with the applicable act, regulations, statutes or orders immediately upon notification thereof in writing by the MTO

L. Stowage plans:

1. Inbound stowage plan and manifest must be in the MTO's possession forty-eight (48) hours (business days) prior to arrival of vessel, and provisional stowage plan for outbound cargo must be in the office of MTO superintendent forty-eight (48) hours (business days) prior to start of loading operations (ref Item 16-C: Extra services A).
2. Where practical, the party receiving the MTO services will advise in writing the MTO prior to the beginning of each year the expected quantities and proposed schedule for shipment and receipt of materials. This schedule is to be used for planning purposes only and is subject to change and, therefore, is not a commitment on the party receiving the MTO services to meet said schedule. The party receiving the MTO services will endeavor to advise as soon as known; tonnages and vessel lay days for each shipment through the MTO. Normally, at least one month advance notice will be given.

M. Merchandise information and manifest:

1. Merchandise of any kind arriving at MTO's docks must be adequately marked and the MTO's office must previously have been advised of such cargo; otherwise, the MTO may, at its sole discretion, refuse to accept the cargo at the dock.
2. The party receiving the MTO services, in all cases is to furnish the MTO with cargo manifest showing weights and measurements of cargo as manifested.
3. Sorting within Bills of Lading will only be performed by special agreement, and only when complete packing list information is provided and where cargo is

adequately marked to match packing list data, and subject to the provisions of Item 2 H.

4. Manifest on outbound cargo must be in the MTO's possession within seven (7) days after completion of vessel. In the event a manifest is not received within that time, the MTO will invoice by dock receipt information.
5. Manifests for all inbound as well as outbound cargo must clearly indicate whether said cargo was freighted on either a weight or a measurement basis and, if not, the MTO will invoice on whichever basis will be greater.

N. Consignments:

Outbound shipments must be consigned to the appropriate person and/or vessel c/o Federal Marine Terminals, Inc.

O. Vessel Berthing:

1. The Port Authority shall have the exclusive right to assign berths.
2. Vessels may be required to move or shift at MTO's/Port Authority's discretion, in order to load/unload other vessels, for efficient use of MTO facilities, or for other good cause.
3. All vessels assigned to berths shall be responsible and liable for any damage to such property by reason of such occupancy or use.

P. Valuable or Special Cargo:

1. In the event the party receiving the MTO services delivers or authorizes delivery of valuable or special cargo to the MTO for terminal services and such cargo requires particular security or special handling, the party receiving the MTO services must notify the MTO expressly of the cargo's valuable or special nature in advance, in default of which the MTO will have no responsibility whatsoever in the event of loss or damage to the cargo, howsoever caused.
2. Unusual cargo - perishable, bulk, loose lumber, unpackaged goods, obnoxious and other unusual cargo, including, but not limited to, ammunition, explosives and dangerous cargo will be handled by special arrangement and special rates.

Q. Work to be done by MTO:

1. All stevedoring and terminal services required by the vessels or the party receiving the MTO services shall be done by or arranged through the MTO, when working at the MTO facilities.
2. Any penalty or compensation payment arising due to vessel's crew's actions in contravention of prevailing collective bargaining agreement shall be for the account of the party receiving the MTO services.

### **ITEM 3: WHARFAGE**

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A wharfage charge will be assessed against all cargo passing or conveyed over or onto wharves or between vessels when berthed at a wharf or when moored in a slip adjacent to a wharf.



## ITEM 4: HAZARDOUS MATERIALS

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- A. As used herein, the term "hazardous materials" refers to any goods which have any hazardous, dangerous, explosive, flammable, poisonous, infectious, noxious, spontaneously combustible, radioactive, corrosive or oxidizing character or effect whatsoever, including without limitation any material or substance listed on the U.S. federal Hazardous Material Table (49 C.F.R. §172.101), as amended, or otherwise identified by any federal or state hazardous materials law as being a marine or other pollutant, an explosive, a dangerous or hazardous material, or a hazardous waste.
- B. Shipments of regulated hazardous materials via the MTO must be documented, marked, labeled and/or placarded according to U.S. Department of Transportation regulations. Details of the D.O.T. regulations are set forth in the Code of Federal Regulations, Title 49, Parts 100 to 199 (in particular, Part 172)
- C. MTO may refuse to handle any hazardous materials which it believes, in its sole discretion, may present an unreasonable risk of damage to any vessel, vehicle, equipment or property, and/or unreasonable risk of injury or illness to any person; in such an event, MTO shall notify the party receiving the MTO services, and the party receiving the MTO services shall promptly thereafter, at its risk and expense, alleviate MTO's concerns to MTO's satisfaction or promptly retrieve and remove the hazardous materials from the terminal facility.
- D. The party receiving the MTO services shall be solely responsible for offering, describing, identifying, naming, classifying, documenting, packing, packaging, marking and labeling all hazardous materials tendered in strict compliance with any federal or state hazardous materials law. Each bill of lading respecting the goods must contain a shipper certification as required by any federal or state hazardous materials law.
- E. The party receiving the MTO services shall be solely responsible for providing the MTO with complete, comprehensive and approved shipping papers with respect to any hazardous materials tendered hereunder, which papers shall include all information, descriptions, instructions, disclosures and documentation required by any federal or state hazardous materials law and a full description and identification of the hazardous materials, including their type, quantity, proper shipping name, classification, packing group, chemical group, identification number(s) and hazardous and subsidiary hazardous nature(s), and including all relevant Material Safety Data Sheets.

Without limiting the foregoing, the party receiving the MTO services shall obtain and provide the following to MTO prior to the performance of any terminal services whatsoever: registration under 49 U.S.C. §5108 as an offeror of hazardous materials for interstate transportation (or an applicable federal approval/exemption); full name and street address, telephone and contact name for the owner, shipper/consignor and consignee of the hazardous materials; a full description of the hazardous materials, as above; booking confirmation number(s); complete and clear written instructions for the loading, handling, storing, movement, transportation and unloading of the hazardous materials, as well as for response, cleanup, mitigation, remediation, alleviation, removal

and restoration in the event of a spill or release; and the full name, address and telephone number for a contact person who has comprehensive knowledge with respect to the hazardous materials, including their hazardous nature and emergency incident response requirements. The contact person must be immediately available at all times during the performance of terminal services.

- F. If the hazardous materials include hazardous waste, the party receiving the MTO services must give prior written notice to MTO and obtain express authorization from MTO at least thirty (30) days in advance of tender of such hazardous waste goods. In addition, the shipping papers must include original Manifest(s) and all other paperwork required by any federal or state hazardous materials law and/or any government, terminal and/or port agency or authority applicable to the transportation of hazardous waste. The party receiving the MTO services shall be solely responsible for the ultimate disposal/destination of any hazardous waste shipment.
- G. The party receiving the MTO services shall be responsible for obtaining and providing any and all transit or movement notices, permits, authorizations and confirmations for the hazardous materials and/or their handling and transportation, in accordance with and as required by applicable any federal or state hazardous materials law and/or any government, terminal and/or port agency or authority.
- H. Security Plans: If the hazardous materials include those enumerated in 49 C.F.R. §172.800 or otherwise require a security plan, the shipping papers must also include a security plan conforming to 49 C.F.R. §172.802 and other applicable federal or state hazardous materials law.
- I. The party receiving the MTO services agrees to be responsible for, and to defend, indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees, from and against, any and all loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from or in any way relating to such hazardous materials and/or their handling and/or transportation, including without limitation any loss, damage, expense, claim, liability, suit, fine, and/or penalty resulting from or in any way relating to the party receiving the MTO services' failure to comply with the requirements and responsibilities allocated to it above and/or under any federal or state hazardous materials law, including attorneys' fees and costs incurred by the MTO in defending against any such loss, damage, expense, claim, liability, suit, fine and/or penalty. The foregoing allocation of responsibility and agreement to defend and indemnify specifically includes, but is not limited to, property damage and bodily injury, illness and/or death claims, as well as all pollution and/or environmental matters such as response, cleanup, mitigation, remediation, alleviation, removal and restoration.
- J. The party receiving the MTO services shall have all environmental and/or pollution insurance required by the government of the United States, including, but not limited to, all insurance required by the Comprehensive Environmental Response, Compensation & Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 *et seq.* and the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, and all insurance required by the state where the terminal facility is located. The party receiving the MTO services shall provide the MTO with all

certificates of insurance prior to any access to or use of the terminal facility and/or terminal services. The failure of the MTO to request or obtain a certificate of insurance shall not excuse the party receiving the MTO services from obtaining such certificate or obtaining such insurance.

#### **ITEM 5: OVERTIME CHARGES**

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- A. The rates provided herein are for work performed during the normal straight-time working period on Monday through Friday, inclusive. All holidays specified in the collective bargaining agreement in effect are excepted. A list of holidays from current collective bargaining agreements is available upon request.
- B. Overtime work (work performed outside normal working hours specifically set forth in the collective bargaining agreement or work performed on holidays) will be charged at the prevailing man-hour differential and will be for the account of the party requesting the overtime work.
- C. Overtime will only be worked when ordered by the party receiving the MTO services.

#### **ITEM 6: COLLECTION FOR SERVICES RENDERED**

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- A. The party receiving the MTO services shall pay for all services based upon the rates and charges as specified in the MTO's Rate Quote. The Rate Quote shall be deemed accepted by the party receiving the MTO services upon commencement of any performance by either party, including without limitation any access to and/or use of the terminal facility and/or terminal services of the MTO whatsoever by or on behalf of the party receiving the MTO services. Upon any such acceptance, this MTO schedule shall be deemed fully incorporated into the Rate Quote and binding upon the parties. Except as otherwise stated herein, charges are for the account of the party receiving the MTO services. Payment must be assured prior to release of the goods through any one of the following methods deemed satisfactory to the MTO.
  - 1. Charges to be paid at the time of delivery, in advance until proper credit has been established with the MTO.
  - 2. Charges advanced by the inland carrier picking up or delivering the cargo at the terminal.
  - 3. Charged to the account of the party receiving the MTO services when prior arrangements have been made with the terminal.
- B. All charges for any services, including stevedoring, rendered by the MTO for which credit is granted shall be due and payable upon receipt of invoice, without any setoff, compensation, or counterclaim. Interest at the rate of one and one-half percent per month (18% per annum) will accrue against any invoice which has not been paid in accordance with the terms previously set forth until such invoice is paid in full.

- C. The MTO reserves the right to withhold the delivery of goods until all accrued stevedoring charges, terminal charges, overtime charges, special services charges, or storage charges against said cargo have been paid in full, or acceptable guarantee of payment has been arranged.
- D. The vessel, its owners, charterers, and agents, Grantees of Berth Privilege, party receiving the MTO services, or in instances of outside operators functioning as set forth in this Schedule, shall permit the MTO access to all cargo documents, including, but not limited to, bills of lading, charter parties, contracts of carriage or affreightment, cargo manifests, delivery tickets, dray receipts, hatch lists, or invoices for services and furnish to the MTO such other documentation, reports or information as it may require, for purpose of audit so as to secure necessary data to permit correct billing for charges incurred under this Schedule. Failure to provide such information upon request will constitute cause for denial of use of MTO facilities.
- E. Advances made by, and/or liabilities incurred by, the MTO are permitted for storage, stevedoring, transportation, terminal charges, insurance, labor, charges present and future in relation to the cargo, as well as expenses necessary for preservation of the cargo, whether or not such advances are required or permitted by this schedule, and such expenses reasonably incurred in the judicial sale of cargo pursuant to law. The MTO has a lien on all of the depositor's property (including the cargo) for such charges, including those reasonably incurred in enforcing such lien, including without limitation any attorneys' fees and costs incurred by the MTO in relation to such charges.
- F. Rates and charges that are based on inaccurate or incomplete information, descriptions, instructions, or particulars may be recalculated at any time and without notice to the party receiving the MTO services.
- G. Any dispute regarding any invoice or any charges contained within an invoice from MTO must be submitted to MTO in writing within ten (10) days of presentation of said invoice. Failure to give written notice within ten (10) days shall be deemed conclusive evidence that the invoice is accurate, valid, and accepted by the party receiving the MTO services.
- H. In the event the party receiving the MTO services fails to pay any invoice when due, the MTO may engage a collection agent and/or attorney, or file suit to collect the amounts due and the party receiving the MTO services shall be responsible for all fees and costs relating thereto, including attorneys' fees and costs.
- I. The party receiving the MTO services grants the MTO a general contractual lien on all cargo, goods, and/or property (collectively referred to as "cargo" in this section) in the possession of the MTO as security for the payment of amounts due MTO hereunder and for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, past, present or future, in relation to the cargo against which the lien is asserted and/or arising from the MTO's provision of any previous services to the party receiving the MTO services, and for expenses necessary for preservation of the cargo or reasonably incurred in their sale. If the MTO elects to hold the cargo of the party receiving the MTO services based on these lien rights it will provide written notice of that election to the party receiving the MTO services. If the party receiving the MTO services fails to make payment of all amounts

due or fails to post security to the MTO's satisfaction within 30 days of the date of such notice, then the MTO shall have the right to sell such cargo at public or private sale or auction. The proceeds of any such sale or auction shall first be applied to the sale costs, including attorneys' fees and costs, then to amounts due MTO, with the remaining net balance, if any, to be remitted to the party receiving the MTO services. The party receiving the MTO services shall provide notice to any other parties having an interest in the cargo of the MTO's lien rights and if any exercise of those rights by the MTO.

- J. For the purposes of this MTO, payments shall only be considered received by the MTO once the funds have cleared the bank accounts of both the MTO and the party receiving the MTO services.

## **ITEM 7: INSURANCE**

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- A. All rates quoted include workmen's compensation and liability insurance, state unemployment insurance and social security tax. The MTO has complied with the Federal Longshoremen's and Harbor Workers' Compensation Act.
- B. The MTO carries property damage insurance covering liability for damage to property arising out of the MTO's negligence and public liability insurance in respect to injuries arising from the MTO's operations, including stevedoring. The MTO does not provide any insurance whatsoever for the benefit of the party receiving the MTO services, nor any insurance whatsoever covering the party receiving the MTO services' goods, property or personnel.
- C. Inland carriers may be required to furnish the MTO with certificate of insurance.
- D. The party receiving the MTO services shall maintain workers compensation insurance, including, where appropriate, coverage under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et seq.*, on all of its employees. The party receiving the MTO services and its workers compensation insurer waive any right of action against the MTO for subrogation or reimbursement of any payments made pursuant to any workers compensation claim. The party receiving the MTO services waives any immunity from suit, exclusive remedy provisions, and/or limitations upon liability under any state or federal workers compensation act or similar law, including, but not limited to, the Longshore and Harbor Workers' Compensation Act.
- E. The party receiving the MTO services shall maintain a commercial general liability insurance policy providing coverage for personal injuries and property damage with respect to the party receiving the MTO services' access to or use of the terminal facility and/or terminal services, including contractual liability coverage for the party receiving the MTO services' liabilities and obligations as set forth in this Schedule, with limits of not less than \$5,000,000 per occurrence. The MTO shall be named as an additional insured on said policy, and said policy shall include a waiver of subrogation against the MTO. The additional insured endorsement shall provide coverage for the MTO for personal injuries, including injuries to employees of the named insured under the policy, and property damage with respect to the party receiving the MTO services' access to or use of the terminal facility and/or terminal services. Any insurance provided by the party

receiving the MTO services shall be primary to any insurance carried by the MTO. The party receiving the MTO services shall provide the MTO with a certificate of insurance prior to any access to or use of the terminal facility and/or terminal services. The failure of the MTO to request or obtain a certificate of insurance shall not excuse the party receiving the MTO services from obtaining such certificate or obtaining such insurance and naming the MTO as an additional insured. In the event the party receiving the MTO services fails to maintain such insurance or fails to name the MTO as an additional insured on such insurance, then, the party receiving the MTO services shall be liable to the MTO for all claims, liabilities, judgments, and costs, including attorneys' fees and costs, that would have been covered by said insurance if the insurance had been maintained and/or the MTO had been named as an additional insured on said insurance.

## **ITEM 8: RELEASE OF CARGO**

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- A. Proper documentation proving ownership must be presented to the MTO prior to the delivery of any and all cargo.
- B. Copies of pick-up/delivery orders must be presented to the MTO at least seventy-two (72) hours prior to the arrival of a vessel and must include the following:
  - 1. Name of inland carrier.
  - 2. Description of cargo enumerating vessel, bill of lading, all identifying marks and numbers, quantity, and weights per bill of lading.
  - 3. Notation indicating party responsible for payment of terminal transfer charges and wharf demurrage, if applicable. The notation of inland carrier and/or parties not on current credit list will not be acceptable as being responsible for these charges.
  - 4. The exclusion of the aforementioned will constitute an improperly constructed pickup/delivery order and will be rejected by the MTO. Failure to comply with these documentation requirements could result in delays and extra costs to process cargo for delivery and the MTO shall not be responsible for such delays and extra costs.
- C. Any shipping variations from the original pick-up/delivery order received subsequent to the seventy-two (72) hour requirement may necessitate additional handling charges. These charges will be for the account of the party receiving the MTO services.
- D. The MTO will not be responsible for mis-deliveries of individual packages within a bill of lading unless a packing list is provided a minimum seventy-two (72) hours prior to the vessel's arrival.
- E. The MTO will not be responsible for mis-deliveries if cargo is insufficiently marked.
- F. Under no circumstance shall the MTO be liable for any costs, including but not limited to, fines, debts, defense costs, to which the MTO may become exposed or for which the

MTO may become responsible, arising in connection with improper cargo releases and/or hold notifications being placed on cargo by the Bureau of Customs and Border Protection, U.S. Department of Homeland Security, unless due to the negligence of the MTO.

## **ITEM 9: DAMAGE TO TERMINAL EQUIPMENT OR FACILITIES**

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The party responsible for damage to sheds, warehouses, structures or other equipment is responsible for payment for such damage. The MTO must be reimbursed for the total cost of restoration, repair, or replacement in the event damage is beyond repair. In the event the party responsible fails or refuses to pay for such damage, and the MTO files suit to recover the damage, then the party responsible shall, in addition to its liability for the damage, be liable to the MTO for the MTO's attorneys' fees and costs incurred in recovering the damage and prejudgment interest from the date of the damage at the rate of 18% per annum, compounded annually.

## **ITEM 10: TRUCK PICK-UP/DELIVERY**

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- A. Any motor carrier, including, but not limited to, owner, operator, and/or driver, shall be considered a party receiving the MTO services and shall be subject to the provisions of this Schedule.
- B. The MTO reserves the right to require the party designating a trucker to be responsible for insuring that every driver has available on each and every pick-up/delivery the following document(s):
  - 1. Truck pick-up order describing cargo, enumerating vessel, bill of lading, identifying marks and numbers, driver's name, and commercial driver's license number, legal load limit as well as tractor and trailer license numbers.
  - 2. For loads requiring a state permit(s), copies of such permits(s) (covering entire route) must be presented prior to being loaded.
- C. The loading or unloading of cargo shall be under the supervision and responsibility of the driver of the truck. The inspection of the load is the motor carrier's responsibility. The motor carrier assumes all liability for safety and securement of the load. The MTO assumes no responsibility for loading and securing of cargo on vehicles of any type. Motor carrier warrants that he has inspected the safety and securement of the loaded cargo and has ensured himself that the loaded cargo is properly and safely loaded and secured, and that it complies with all safety regulations and applicable laws, including, but not limited to, the rules and regulations relating to the transportation and securement of cargo contained within the Federal Code of Regulations, including, but not limited to, 49 CFR Parts 390 et seq., 391 et seq., 392 et seq., and 393 et seq. Motor carrier agrees to defend, indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees, from any and all claims arising from or relating to (a) any failure to comply with said regulations or applicable laws, (b) failure to properly secure the load, or (c) any claim of any kind or nature whatsoever made against the MTO, caused by, arising from or relating to a failure to properly secure the cargo loaded and/or any breach of these terms and conditions.



- D. Prior to entering the terminal facilities, each truck must be properly equipped to properly and safely load, secure, and transport the cargo it will receive.
- E. Failure to comply with the aforementioned requirements may result in loading/unloading delays for which the MTO shall not be responsible.
- F. The MTO will not assume any responsibility for dispatching of trucks.
- G. Policy of truck loading sequence:
  - 1. Where practicable, all trucks are loaded on a "first come first serve basis." However, it must be understood that daily operations dictate a truck loading sequence to best service all customers in a productive manner. A diligent effort is always made by our supervisory personnel to avoid congestion, provide continuity, and best utilize manpower and equipment to maximize efficiency.
  - 2. The dispatcher must notify the terminal by 3:15 p.m., one day in advance, for truck loading. The amount of loads will be entered on a truck list, and any trucks not on the list will be turned away if we cannot accommodate extra trucks.
  - 3. The truck driver must pick-up a cargo pass from the traffic department and then will be instructed by the traffic department as to the location of their cargo.
  - 4. Proper information is a must. The driver should know the vessel's name, Bill of Lading marks, customer name, and release number if applicable.
  - 5. A commercial driver's license must be produced if requested by the MTO.
  - 6. Only one cargo pass will be given to a driver unless the loading of his truck requires otherwise.
  - 7. Once a cargo pass is completed by a checker, the driver responsible for the load must return to the traffic department with the pass and a valid driver's license in order to sign for a dock tally.
  - 8. Each driver must have wood for blocking. Drivers may not remove our wood from the MTO's facilities. The MTO does not supply dunnage, chains, coil racks, or binders.
  - 9. Drivers may not use the driveways beside the vessel when a vessel is in port. The roads are reserved for cranes and lift trucks used for the unloading of the vessel.
  - 10. Drivers may not congregate in warehouse doorways or block forklift access to storage areas.
  - 11. It is the responsibility of the motor carrier and truck driver to properly secure cargo before moving his/her truck.
- H. The party receiving the MTO services and any party that instructs a motor carrier to enter the terminal for the purpose of pick-up or delivery of cargo at the terminal shall ensure that the motor carrier has knowledge of and abides by all rules of the terminal as well as any applicable Federal Motor Carrier Safety Regulations, OSHA regulations and any local, state or federal rules, regulations or laws governing the operation of motor vehicles. Any party receiving the MTO services and any party that instructs a motor carrier to enter the

terminal for the purpose of pick-up or delivery of cargo at the terminal shall defend, indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees, for any and all claims, including, but not limited to, claims for personal injury, including claims by the truck driver, claims for property damage, any breach of the motor carrier's responsibilities set forth herein, and all other liabilities, including attorneys' fees and costs, arising from or related to the failure of the truck driver to abide by said rules.

- I. For their own safety and the safety of others, truck drivers must obey the following truck rules:
  1. All truck drivers must remain not less than twenty (20) feet away from any truck, trailer and/or chassis while the truck, trailer and/or chassis is being loaded or unloaded.
  2. All truck drivers must stay a safe distance (not less than twenty (20) feet) away from any area where loads are being suspended overhead.
  3. The posted speed limit within the terminal facility must be complied with;
  4. Come to a complete stop at all stop signs and yield at unmarked crossings and/or intersections;
  5. Terminal equipment has the right of way at all times;
  6. Do not try to pass, drive, walk, or stand behind terminal equipment that is backing up;
  7. No unauthorized pedestrian traffic is allowed on the terminal. Drivers must stay close to their vehicles while in terminal and should be out of their vehicle only for actual operating needs;
  8. The use of cell phones and other electronic devices while driving is strictly prohibited;
  9. All truck/motor vehicle operators, drivers, and/or occupants are required to wear the following personal protective equipment at any time they are out of the truck/motor vehicle:
    - A high visibility reflective safety vest;
    - Hard hat;
    - Safety glasses; and,
    - Steel-toed safety boots.
  10. It is the responsibility of the motor carrier and truck driver to properly secure cargo before moving his/her load.

## **ITEM 11: COMMENTS/COMPLAINTS**

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- A. Complaints regarding rules, rates, and regulations in this schedule must be presented in writing with supporting documents to the parties of this schedule.
- B. Deposition of all matters so presented will be given in writing.



## **ITEM 12: LIMITATIONS OF LIABILITY STATEMENT APPLICABLE TO ALL PARTIES RECEIVING THE MTO SERVICES**

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- A. The MTO shall not be liable for any expenses, losses, or claims whatsoever caused by or resulting from: failure or delay in performance of services including stevedoring and/or terminal services; bursting of pipes; an act of God; fire; flood; storm; frost; heat; leakage; evaporation; sweat; moisture; loss of weight; breakage; insufficient cooperage, boxing, crating, car bracing, bagging, packing or wear and tear; inherent vice of the goods; insufficiency of packing; insufficiency of markings; failure of building; theft; rodents; insects; parasites, or other vermin; elements; strikes; walkouts; picketing; labor disputes; shortages of labor; acts of war; terrorism; riots; insurrections; the order of any governmental authority; necessities of war or disaster; unseaworthiness of any vessel; errors in the navigation or management of any vessel; or any cause beyond the MTO's control. The MTO is not responsible for any delay in delivery of cargo to or receipt of cargo from carriers. All storage and handling charges must be paid on goods lost or damaged. Nothing herein above shall relieve the MTO of liability resulting from its own negligence.
- B. Iron and steel rates are based on open-pier, uncovered handling and storage. The MTO will not be liable for any loss, expense, or damage, including rusting, pitting, etc., whatsoever, caused or contributed to by cargo being partially or wholly unprotected during handling or storage. Acceptance for use of an open-pier by a party receiving MTO services, or receiver of goods, is a recognition that cargo landed on such dock is at the risk and expense of the party receiving the MTO services.
- C. The MTO shall not, in any event, be or become liable for any loss or damage to goods in an amount exceeding the per package amount set forth in the Carriage of Goods at Sea Act, 46 U.S.C. Section 1304 (5), (\$500 (US) per package) or in case of goods not shipped in packages, the per customary freight unit amount set forth in the Carriage of Goods at Sea Act, 46 U.S.C. Section 1304 (5), unless the party receiving the MTO services, prior to the commencement of such services, declares a higher value to the MTO and pays to the MTO a premium computed at 1% of the declared value of each package in addition to the other charges for such services as herein set forth. The declaration of a higher value by the party receiving MTO services shall be only prima facie evidence of the true value of the cargo. In the event the actual value of the cargo is greater than the declared value, the liability of the MTO shall not exceed the declared value. In the event the actual value of the cargo is less than or equal to the declared value of the cargo, the liability of the MTO shall not exceed the actual value. In no event shall the MTO be liable for any damage unless said damage results solely from the failure of the MTO to exercise due and proper care in performing the services contracted. For the purpose of this limitation, an intermodal shipping container will be considered a package and the contents therein will not be considered separate packages. For the purpose of this limitation, if the cargo includes machine(s) or machinery(ies), the entire composite machine shall be deemed a single "package," regardless of how shipped or received.

- D. The MTO will not be liable for damage in the loading, off-loading or unloading of cargo not packed to meet import/export packing standards, nor for concealed damages and/or concealed shortage, and all receipts issued are subject to these provisions. Perishable merchandise or merchandise susceptible to damage through temperature changes or other causes incidental to either handling or general storage, will be accepted only at the risk of the party receiving the MTO services.
- E. In addition to any other defenses which the MTO may have, the MTO shall also be entitled to the benefit of all the rights, immunities and defenses available or stated to be available to the carrier under its bill of lading or contract of carriage without regard to whether the MTO is hired by the carrier or some other party. The party receiving the MTO services undertakes that any bill of lading or other contract of carriage for cargo to be handled by the MTO will contain an express provision stating that the MTO is to be deemed a servant of the carrier and as such to be entitled to rely on all of the rights, immunities and defenses available to the carrier under such bill of lading or other contract of carriage, and that this express provision and entitlement will extend to cover all services provided by the MTO, including any services provided after discharge of the cargo; and the party receiving the MTO services shall defend, indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees, against any failure to comply with this undertaking. In the event that the additional defenses available to the carrier under its bill of lading or other contract of carriage conflict with any other defenses available to the MTO, the MTO shall have sole discretion to choose which defenses it will assert.
- F. With respect to cargo carried by truck, the loading or unloading of cargo shall be under the supervision of the truck driver of the truck. It shall be a primary duty of the trucking company and/or its drivers to take delivery of the cargo for which the trucking company entered the operator's premises. The MTO shall not be responsible for any trucking costs resulting from the trucker taking other than their intended cargo from the MTO's premises.
- G. The MTO shall not in any event be responsible for special or consequential damages, including without limitation, damages for or arising from delay, extra expense, loss of sale(s), loss of contract(s), loss of charter, loss of hire, loss of profits, loss of market value, loss of business, interruption of business, dead freight, and loss of use whether resulting from negligence, breach of this Contract by the MTO, failure to discharge cargo, delay in discharge of cargo, damage to vessels, and any other cause, and even if the possibility of such special or consequential damages or damages from delay were foreseeable to the MTO or were made known to the MTO.
- H. Under no circumstance shall the MTO be liable for vessel, railroad car, or truck demurrage or for delays resulting from any cause beyond its control, including, but not limited to, strikes, weather conditions, Act of God, failure of the railroad to spot or remove equipment in a timely manner, or when cargo does not lend itself to being unloaded from railroad equipment or trucks to dock or shed awaiting arrival of a vessel. The MTO's

liability for demurrage and/or delay shall be limited to the sum of \$50 per hour for a maximum period of 24 hours.

- I. Under no circumstance shall the MTO be liable for any infestation of cargo. Any costs incurred in eliminating the infestation, including but not limited to, stand by, extra labor costs, extermination costs, governmental penalties, fines or corrective actions, will be for the account of either the cargo owner, consignee of the cargo or party receiving the MTO services.
- J. Under no circumstance shall the MTO be liable for spoilage of cargo within a reefer container which is in the care, custody or control of the MTO, caused by an electrical shortage/outage or failure or malfunctioning or defect of the reefer container itself or its refrigeration systems as well as any failure of the electrical plug located at the MTO's facility. The MTO shall not be liable, under any circumstances whatsoever, for any loss, damage, expense, claim, liability or suit relating to such goods when incorrect or inadequate information was provided to it, and/or when such goods were tendered with improper or inadequate temperature protection, or with improper or inadequate wrapping, packing, packaging, and/or with improper or inadequate stowage within the container.
- K. In any event, the MTO shall be discharged from all liability in respect of loss or damage unless suit is brought within eight (8) months after delivery of the cargo to MTO or six (6) months from the date of delivery of the cargo to the consignee or its agent or the date on which the cargo should have been delivered, whichever period is lesser, and only if written notice describing the general nature of the loss or damage has been given to the MTO within five (5) days of the date of delivery of said cargo from the MTO. Any motor carrier that receives the cargo for transport from the MTO's facility shall be deemed to be the agent of the Consignee. The only exception shall be if arrangements for storage are made in writing and agreed upon by all parties. In the event such arrangements are made, suit must be brought within six (6) months of the date set forth in the written agreement for delivery of the cargo from the MTO. Failure to take delivery on the date set forth in the written agreement shall not excuse the failure to bring suit within six (6) months of that date. Failure to give written notice within five (5) days after delivery of said cargo from the MTO describing the general nature of the loss or damage of said cargo shall be prima facie evidence of good delivery of the cargo by the MTO in good condition. Written notice as provided for herein shall be a condition precedent to the institution of any lawsuit against the MTO.
- L. The written notice of loss or damage referenced above must include and attach copies of the following, as applicable: all bill(s) of lading, transportation agreement(s), receipt(s) and other document(s) identifying the goods, consignor, consignee, vessel, voyage, shipping date, etc.; all manifests, packing lists, stow plans, loading/discharge reports, tally/count sheets, cargo receipts, etc.; all agreements, invoices and receipts respecting any sale of the goods; all correspondence respecting the goods and/or their transportation; all inspections, surveys, photographs, claim bills, invoices and statement of losses respecting the goods and/or the loss/damage being claimed, including documents supportive of any mitigation, salvage, market analysis and disposition efforts; and all other documents, instruments, records, data, drawings, photographs and information of any kind or nature whatsoever which may be pertinent or helpful to an

understanding of the nature of the goods, the particulars of their transportation and/or the loss/damage being claimed. Failure to include any of the foregoing items with the written notice of claim shall render the notice of claim invalid and unenforceable.

## **ITEM 13: ADDITIONAL LIMITATION OF LIABILITY STATEMENTS APPLICABLE TO VESSELS AND INDEMNITY FROM VESSELS AND CARGO INTERESTS**

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All vessels delivered for loading and/or unloading by the MTO are subject to the following terms and conditions. Delivery of a vessel for loading and/or unloading by the MTO constitutes acceptance of these terms and conditions by the owner, charterer and/or operator of the vessel, vessel agent, the party delivering the vessel, the party ordering its delivery and/or the party ordering its loading/unloading by the MTO (collectively referred to as the "vessel owner").

### **A. Limitation of Liability as to all Vessels and Indemnity from Cargo Interests for Damages Caused by Insufficiency of Packing**

1. In no event shall the MTO be liable for any damage to vessels in the loading, off-loading and/or unloading of cargo and all handling incident thereto that is caused directly, or indirectly, in whole or in part, by insufficiency in packing of the cargo and/or failure to supply proper handling instructions for the cargo. The shipper, consignor, consignee, and cargo owner shall defend, indemnify, and hold harmless the MTO, its officers, agents, and employees and all related entities and their officers, agents, and employees from and against any and all claims, demands, actions, losses, and damages, including, but not limited to, claims for personal injury or death, claims for loss of or damage to vessels, and claims for property loss or damage of any kind or description, including, but not limited to, pollution or environmental damage, and all expenses, including attorneys' fees and costs incurred by the MTO, arising from or in any matter related to any such claims, demands, actions, losses, and damages caused by or related to insufficiency of packing of the goods for loading, off-loading and/or unloading and all handling incident thereto and failure to supply proper handling instructions for the cargo.
2. The MTO shall not, in any event, be or become liable for any loss or damage to vessels in an amount exceeding the lesser of the amount charged by the MTO for the stevedoring services or the actual costs of repairs to the vessel. In no event shall the MTO be liable for any damage to vessels unless said damage results solely from the failure of the MTO to exercise due care in performing the services contracted for.
3. In any event, the MTO shall be discharged from all liability in respect of loss or damage to vessels unless suit is brought within six (6) months of the date of loading or discharge of the vessel, and only if written notice describing the general nature of the loss or damage has been given to the MTO within five (5) days of the date of loading or discharge of the vessel. Written notice as provided for herein shall be a condition precedent to the institution of any lawsuit against the MTO.



B. Indemnity from Vessels for Damages Caused by the Negligence of the Vessel

1. The vessel and its owner(s), charterer(s) and/or operator(s) shall defend, indemnify and hold harmless the MTO, its officers, agents, and employees and all related entities and their officers, agents, and employees from and against any and all claims, demands, actions, losses, and damages, including, but not limited to, claims for personal injury or death, claims for loss of or damage to cargo, and claims for property loss or damage of any kind or description, including, but not limited to, pollution and/or environmental damage and damage to property of the MTO, and all expenses, including attorneys' fees and costs incurred by the MTO, arising from or in any manner related to the negligence of the vessel and/or its crew and/or the failure of the equipment, machinery, and appurtenances of the vessel, and in defending against any such claim, demand, or suit.
2. Nothing herein shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for its own negligence.

C. Additional Limitations of Liability Applicable to Vessels

1. It is the responsibility of the vessel owner to monitor the prevailing and expected weather conditions in and around the MTO facility at all times when its vessel is present at the MTO facility, and to take all action necessary to safeguard, reposition or otherwise protect the vessel at any time when weather conditions may pose a danger to vessels. The MTO will not be responsible for any damages of whatsoever nature arising due to weather conditions and/or the vessel owner failing to take such preventive action.
2. All vessels delivered to the MTO shall be berthed at a location designated by the Port Authority. The vessel owner is responsible for ensuring that the vessel is properly moored at the designated location. Proper mooring includes, but is not limited to, ensuring that the vessel is moored with sufficient lines in number and strength to withstand any weather conditions that might arise at any time the vessel is berthed at the MTO facility. Vessel owner shall inspect the fendering system in the area where the vessel is to be moored to determine that the fendering is sufficient to protect the vessel and shall supplement the fendering system with additional protective devices, if necessary. The MTO is not responsible for inspecting or caring for any vessel at the terminal facility, nor for securing or watching any such vessel. The MTO is not responsible for providing any mooring lines, bumpers, fenders, or other gear used for berthing, does not accept the vessel for storage and shall not otherwise be held responsible for the vessel under bailment or any other legal theory. All responsibility for watching, securing, and protecting the vessel, and all liability for any loss or damage to the

vessel, shall rest solely with the vessel and its owners, charterers and/or operators, and the party receiving the MTO services.

3. An officer of the vessel shall be in attendance at all times during operations to monitor vessel trim and stability and to observe and/or be notified of any accident or damage. The party receiving the MTO services shall be responsible for reporting any claim for MTO damage to the MTO's attending supervisor immediately and for acknowledging receipt of reports. If MTO has additional requirements for the vessel to improve working conditions, the party receiving the MTO services and the vessel shall fully cooperate.
4. In the event a condition develops that has the potential to jeopardize the safety of loaded vessels or their cargo at the terminal, the MTO may in its sole discretion, and without prior consultation with the party receiving the MTO services, exercise any means necessary to unload any such vessel and, in the event the MTO incurs additional expenses, including overtime, in unloading any such vessel, the party receiving the MTO services shall be liable for all such additional expenses. Any party that delivers a loaded vessel to the MTO for unloading does thereby consent to this provision and to the imposition of any such additional expenses. Nothing herein shall be construed as imposing upon the MTO any duty to take any additional measures to unload vessels.
5. The MTO will provide notice to the vessel owner of the time when loading or unloading of the vessel has been completed. Notice by fax or email will be deemed proper notice and the fax or email transmittal form or confirmation shall be conclusive evidence of the receipt of the notice by the party(ies) to whom it is addressed. The vessel owner shall pick up the vessel and remove it from the terminal within two (2) business days from receipt of such notice.
6. At the conclusion of the two-day notice period stipulated in paragraph 7 above:
  - A. All duties or responsibilities of the MTO with respect to the vessel or its cargo whether as wharfinger or bailee or otherwise shall terminate, and bailment shall be deemed to have ceased. The MTO will have no duty or responsibility to monitor the condition of the vessel or its mooring lines, to ensure that the vessel is adequately moored, or to take any action whatsoever to prevent the vessel from breaking away from its moorings.
  - B. The vessel owner shall have sole and exclusive responsibility for the vessel, including, but not limited to, the duty to monitor the condition of the vessel and its mooring lines, to ensure that the vessel is adequately moored, and to take all action necessary to prevent the vessel from breaking away from its moorings.
  - C. The MTO shall have no liability for any losses, expenses, damages or claims whatsoever related to the vessel or its cargo or caused thereby, including but not limited to damage to vessels or cargo or to any other property of any kind or description, pollution or environmental damage, personal injury or death. The vessel owner shall defend, indemnify and hold harmless the

MTO, its officers and employees and all related entities and their officers, agents and employees from and against any and all claims, demands, actions, losses, damages, including, but not limited to, claims for personal injury or death and claims for property loss or damage of any kind or description including pollution or environmental damage and all expenses, including attorney's fees and costs, arising from or in any matter related to the presence of the vessel at the terminal or its breaking away from its moorings after the conclusion of the two-day notice period.

7. Nothing herein shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for its own negligence.

#### **ITEM 14: FREE TIME POLICY**

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- A. Free time is allowed for a party receiving the MTO services to assemble his/her cargo on the pier prior to export and to schedule delivery of import cargo to inland carrier.
- B. The minimum amount of free time allowed is ten (10) calendar days. For import cargo, free time commences upon vessel departure. For export cargo, free time commences, for the full manifested quantity, upon receipt of cargo at terminal facilities and pro-rated based on the date of arrival of individual pieces.
- C. An extended amount of free time, as may be required for volume lots, or in special circumstance, may be requested by the party receiving the MTO services and may be granted by the MTO at its discretion when assembly of export cargo and delivery of import cargo is taking place. Any agreement to extend free time will be confirmed in writing by the MTO to the party receiving the MTO services.
- D. Any cargo remaining on terminal facilities beyond the expiry of free time may be subject to a "transfer to storage" charge as per the storage rate schedule herein or, where applicable, a Port Authority's published wharf demurrage charges.
- E. No extended free time shall in any event be allowed on cargo remaining in storage for a period greater than 4 months, counted from the commencement of free time.

#### **ITEM 15: LIMIT ON USE OF FACILITIES AND ABANDONED CARGO POLICY**

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- A. All cargo received in a given calendar year must be removed from the MTO within (six) 6 months from the date the cargo arrived at the MTO's facility, unless the MTO and the party receiving the MTO services have entered into a written agreement to extend the time. The MTO will give written notice to the person ordering MTO services of any cargo that is subject to this provision and that has not been removed within such date.

- B. Unless the cargo has been picked-up or special arrangements are made with the MTO within two (2) weeks of the issue of the notice in the preceding paragraph A, the MTO shall have the right to deem the subject cargo abandoned. MTO's acceptance of storage charges on the cargo after the date the cargo is deemed abandoned shall not alter the cargo's status as abandoned cargo. The MTO reserves the right to dispose of any such abandoned cargo, in any manner whatsoever, including transfer of the cargo, without regard to laws affecting property, without any further notice being given to the party receiving the MTO services.
- C. In no event shall the MTO be held responsible for any loss or damage to cargo once it has been deemed abandoned in accordance with the preceding paragraph B.
- D. The MTO shall not be liable for any expenses, losses, or claims whatsoever caused by or resulting from disposal of abandoned cargo. The party receiving the MTO services agrees to indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees, in respect of any claims, actions or costs, including but not limited to attorneys' fees and costs, to which the MTO may become exposed or for which the MTO may become responsible, arising in connection with a loss, damage or disposal of abandoned cargo.

## **ITEM 16: TTC COMMODITY RATES**

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- A. Late Documents/Wrong Format:

The MTO strives to provide the highest level of service to our customers and to achieve our goal of providing accurate and proper handling of your cargo, it is important that all documentation be received in correct format and in a timely fashion prior to vessel arrival. Late documents create difficulties to the service you receive and can jeopardize commencement of discharge.

The MTO will now require documents to be received 48 business hours prior to vessel arrival in correct excel or delineated format. If documentation is received between 24 - 48 hours there will be a \$500 per B/L late documents charge, if documents are received less than 24 hours the late documents charge will be \$750 per B/L.

If documents are received in any format other than EDI and/or Excel, there will be a fee of \$250 per B/L. Late or incorrect documentation or EDI files that must be entered manually, can also lead to sorting and/or charges of \$250 per B/L if applicable.
- B. Storage (US Great Lakes):

Inside Storage \$2.85/Outside Storage \$2.05
- C. Re-banding:

Re-banding services to be billed at \$75 per unit of cargo.

D. Rain Cancellation Fee:

A rain cancellation fee will be assessed of \$300 per gang per hour for gang supervisors (supervisors for stevedoring and/or warehouse labor) during their guarantee time. This charge will only apply for the time gang supervisors are hired and the gang has not been ordered or if the gang was knocked off prior to supervisors filling their minimum hourly guarantees.

E. Sorting:

\$95 per man per hour for sorting cargo

F. Photos/Additional Reporting:

If additional reporting or paperwork is required beyond the issued dock tally a fee of \$25 will be applied for the additional paperwork.

If photos of cargo are required there will be a charge of \$2/photo with a minimum amount of \$10 to apply.

## **ITEM 17: ENFORCEMENT OF MTO SCHEDULE**

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- A. This schedule is published in accordance with the Ocean Shipping Reform Act of 1998, 46 USC § 40501(f), and as required by law as set forth in the Code of Federal Regulations, Title 46, Chapter IV, Part 525.2. It therefore creates a contract between the MTO and the party receiving the MTO services and is enforceable in an appropriate court without proof that such party has actual knowledge of the provisions herein. Use of the terminal facilities shall constitute a consent to the terms and conditions of this MTO Schedule and evidences an agreement on the part of the party receiving the MTO services to pay all applicable charges, be governed by all rules and regulations contained herein, and the acceptance of all limitations contained herein. A prevailing contract with the MTO will supersede this Schedule except that any item not covered in the prevailing contract is by default covered by this Schedule.
- B. The MTO shall be the sole judge as to the interpretation of this Schedule.

## **ITEM 18: PORT SECURITY**

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- A. Entering the MTO facility is deemed valid consent to screening or inspection of your personal effects and/or vehicle. Failure to consent to screening procedures will result in denial of entry.
- B. While any person is on the facility, we ask that he/she remain vigilant, and immediately report any suspicious activity to the Facility Security Officer, or to the Assistant Facility Security Officer.
- C. All additional costs or services provided by the MTO, beyond the ones specified in this schedule, due to Port security, will be for the account of the party receiving the MTO services. This includes, but is not limited to, costs associated with mandatory inspections, collecting samples for authorities, and workforce delays and stand/by.

- D. The party receiving the MTO services certifies that the cargo has been inspected and contains no security risks. If the cargo is found to be in violation of the ISPS/USCG standards, the party receiving the MTO services will be responsible for all associated costs/fines.
- E. The MTO reserves the right to levy a Port Security charge to vessels and/or cargo after providing sufficient notice, a minimum of two months, of the forthcoming charges.
- F. Port security fee for non-liner services is \$50 per hour.

## **ITEM 19: WAIVER OF WARRANTIES**

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- A. The MTO makes no warranties of any kind, express or implied, including, but not limited to, the implied warranty of workmanlike service, and specifically disclaims the application to it, its employees or agents of any duty or theory of breach of warranty, strict liability or absolute liability for loss or damage to vessels, trucks, vehicles, cargo, goods, for services performed, or claims for personal injury.
- B. The MTO makes no warranties whatsoever with respect to the terminal facility or the party receiving the MTO services' access or use thereof. Prior to access, the party receiving the MTO services shall conduct a thorough inspection of the terminal facility and the areas which it intends to access or use, including areas adjacent thereto, for the purpose of determining their safety and suitability for the party receiving the MTO services' intended access and use. If the party receiving the MTO services believes there is any problem as to safety or suitability, the party receiving the MTO services shall immediately notify the MTO. If the condition cannot be changed by mutual agreement so as to assure safety and suitability to the party receiving the MTO services' satisfaction, the party receiving the MTO services shall cease all of its operations. Once the party receiving the MTO services begins any access or use of the terminal facility whatsoever, or continues to conduct operations at the terminal facility, it shall be irrevocably presumed that the terminal facility was inspected and accepted by the party receiving the MTO services as both safe and suitable for its operations.
- C. **THE PARTY RECEIVING THE MTO SERVICES SPECIFICALLY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF WORKMANLIKE SERVICE, THE IMPLIED WARRANTY OF MERCHANTABILITY, AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE.**

## **ITEM 20: DEFAULT**

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- A. **Liability for Expenses.** Upon any default by the party receiving the services, in addition to any other remedies available to the MTO under law or in equity, the party receiving the services shall be liable to the MTO for: (a) all expenses, including, but not limited to, attorneys' fees and costs (i) incurred by MTO in curing or seeking to cure such default or in exercising or seeking to exercise any of MTO's rights and remedies with respect to

such default, or (ii) otherwise arising out of such default, plus (b) interest on all such expenses, at the rate of eighteen percent (18%) per annum, all of which expenses and interest will be due and payable by the party receiving the services to the MTO upon written demand.

**B. Jurisdiction and Venue.** Each party hereto agrees that any suit, action or other legal proceeding arising out of or relating to this Schedule, or the Terminal Services provided by the MTO, may be brought in any court of competent jurisdiction in the Circuit Court of Cook County, Illinois, or in the United States District Court for the Northern District of Illinois, Eastern Division, or in any state or federal court in the county or district where the Terminal is located, at the sole discretion of the MTO. Each party hereto consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of venue of any such suit or proceeding in any of such courts.

## ITEM 21: GENERAL PROVISIONS

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- A. This Schedule may be changed by MTO from time to time without notice. The current version of this Schedule is available at the terminal facility main office and on the internet at [fmtcargo.com](http://fmtcargo.com).
- B. If any provision of this Schedule is found to be unenforceable or void, it is agreed that such provision shall be deemed deleted from this Schedule and shall not affect the remaining provisions of this Schedule, which remaining provisions shall remain in full force and effect.
- C. This Schedule, together with MTO's Rate Quote, and any separate written agreements between the MTO and the party receiving the MTO services represents the entire agreement between the MTO and the party receiving the MTO services and supersedes all prior and contemporaneous agreements, written or oral. No waiver, modification, or amendment of the terms of this MTO or any Rate Quote shall be of any force or effect unless made in writing, signed by the MTO and the party receiving the MTO services and/or the party claiming a waiver, modification, or amendment of the terms, and specifying with particularity the nature and extent of such waiver, modification or amendment.
- D. Any waiver by the MTO of any default by the party receiving the MTO service or any other party shall not affect or impair any right arising from any subsequent default.
- E. For any notice required by any provision(s) herein, notice by fax or email will be deemed proper notice and the fax or email transmittal form or confirmation shall be conclusive evidence of the receipt of the notice by the party(ies) to whom it is addressed.
- F. Nothing herein shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for its own negligence.



## **§525.3 AVAILABILITY**

### **ITEM 1: AVAILABILITY TO THE PUBLIC**

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Publication of this MTO Schedule on this web site complies with FMC requirements for electronic access.

### **ITEM 2: NOTIFICATION**

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The Commission's Bureau of Tariffs has been notified, via completion of electronic Form FMC-1, of the publication of this MTO Schedule.

### **ITEM 3: FORM AND MANNER**

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This MTO Schedule complies with Form and Manner as set forth by the commission in §525.3 subchapter B, chapter IV of 46 CFR.

## **§525.4 MTO QUALITY POLICY**

### **ITEM 1: MTO QUALITY POLICY**

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It is the goal and objective of FMT to meet or exceed the needs and expectations of our Customers in a safe and timely manner through consistent provision of quality, personalized service and continual improvement of our internal operations, procedures, and processes.

To achieve our goal and objective, FMT has established an effective Quality Management System based upon specific requirements. These requirements are communicated to all Managers and Employees. Management is committed to ensuring that its Quality Policy is understood, implemented, reviewed for continued effectiveness and maintained throughout the Company by requiring the direct involvement and total participation of each employee.

FMT is dedicated to:

- ✓ Promoting Safety
- ✓ Providing Quality Service
- ✓ Achieving Customer Satisfaction
- ✓ Monitoring All Procedures for Effectiveness
- ✓ Improvement Opportunities

All Managers and Employees adhere to the Quality Management System by performing to their highest possible standards, always bearing in mind that our ultimate objectives are to get it right the first time and continually strive for improvement.

Chris Dugas  
General Manager