

Transportation of Food: In addition to all other terms herein, the following terms apply to any shipment of food or dietary supplement intended for human or animal consumption and all raw materials and ingredients thereof covered under the Sanitary Transportation of Human and Animal Food rule issued under the Food Safety Modernization Act, currently codified at 21 USC 2201 (Chapter 27) and the Food, Drug & Cosmetic Act, currently codified at 21 USC 2201 (Chapter 9) (referred to as “FSMA”) (each a “Food Shipment”).

A. Shipper must provide Hub written notice at the time of tender if a shipment is a Food Shipment, and include any specifications for transporting or handling the Food Shipment, which specifications will be effective upon written acceptance by Hub executed by a duly authorized representative of Hub (“Special Instructions”). As between the parties, shipper is solely responsible for identifying any Special Instructions and Hub shall have no such obligation. Hub’s sole responsibility with respect to any Special Instructions is limited to providing such Special Instructions to the underlying motor carrier and to the underlying rail carrier as may be commercially feasible, provided, however, shipper acknowledges and agrees that all Food Shipments are subject to the terms and requirements set forth in the rail circulars notwithstanding any Special Instructions to the contrary.

B. It is the sole responsibility of shipper and shipper warrants and represents that it will inspect the equipment used to transport each Food Shipment prior to loading to confirm that the equipment is in compliance with all Special Instructions and FSMA requirements applicable to each Food Shipment, and if the consignor or any other third party makes available for shipper any Food Shipment, shipper will ensure such consignor or third party so confirms compliance with such Special Instructions and FSMA requirements. Hub is not liable for the condition or the effects of use of any transportation equipment (including, without limitation, pallets, totes, and packaging).

C. Neither the failure nor alleged failure by the underlying carrier to comply with Special Instructions or any FSMA requirements nor the lack of the original seal at the time of delivery shall, in and of itself, result in any presumption that a Food Shipment is unsafe, contaminated, adulterated, damaged or otherwise unfit for its intended use or purpose unless there is evidence of actual, physical loss or damage to a Food Shipment, in which case Hub’s liability for such loss or damage shall be as stated in Section III of these terms. To the extent not otherwise prohibited by law, shipper confirms it is obligated to mitigate damages for any loss or damage to a Food Shipment.

D. With respect to a Food Shipment for which Special Instructions include temperature control service, shipper acknowledges and agrees that Hub’s sole responsibility is to communicate the equipment temperature ranges to the underlying motor carrier and that the following carrier procedures are sufficient to ensure safe and sanitary handling of such Food Shipment: (a) pre-cooling of transportation units as set forth in the Special Requirements and (b) temperature readings, in the form of ambient air temperature taken inside the trailer or container, if any, will be the responsibility of the loader or receiver. Food Shipments will not be loaded by shipper at origin if the ambient air temperature within the trailer or container is not in accordance with Special Requirements.

E. If the ambient equipment air temperature or any other equipment condition materially fails to comply with any of the Special Requirements, such non-compliance must be noted by the receiver or consignee on the shipping document at the time of delivery and if the Food Shipment is unsafe as a result of such material non-compliance (in accordance with the standard set forth in sub-section C above), then shipper shall be solely responsible to ensure that such Food Shipment is not entered into commerce for consumption. Shipper is liable for any damages, claims, liability, fines or penalties that may arise from shipper’s failure to comply with any of the requirements stated in these sections A - E or its obligations under the FSMA and shipper shall defend, indemnify and hold Hub harmless against same.

Effective Date: April 1, 2017