

KATAHDIN RAILCAR SERVICES, LLC.  
CONDITIONS OF CARRIAGE



TERMS AND CONDITONS  
FOR  
RAIL TRANSPORTATION OF COMMODITIES  
VIA  
KATAHDIN RAILCAR SERVICES, LLC.

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ISSUED June 3, 2020

EFFECTIVE July 1, 2020

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ISSUED BY

KATAHDIN RAILCAR SERVICES, LLC  
700 Main Street Suite 3 Bangor, ME 04401

## Contents

RULE 100 – DEFINITIONS..... 3

Rule 110 - APPLICATION OF PEFERENCED PUBLICATIONS..... 4

Rule 120 – General Application ..... 4

RULE 130 – ROUTING VIA KATAHDIN RAILCAR SERVICES, LLC ..... 5

RULE 140 – ABSORPTON OF CONNECTING LINE SWITCHING..... 6

RULE 150 – BILL OF LADING ..... 6

RULE 200 – TRANSPORTATION SERVICES ..... 6

RULE 210 – UNLOADING AND RELEASE OF EQUIPMENT AT DESTINATION ..... 7

RULE 230 – TRANSPORTATION CHARGES TO APPLY..... 7

RULE 240 – TRANSIT, DIVERSION, RECONSIGNMENT..... 8

RULE 250 – PAYMENT OF TRANSPORTATION CHARGES..... 8

RULE 280 – OVERCHARGE, OVER COLLECTION OR DUPLICATE PAYMENT CLAIM PROVISIONS..... 9

RULE 290 – LOSS OF AND DAMAGE TO SHIPMENTS ..... 10

RULE 300 – EXTENSION OF CREDIT ..... 12

RULE 310 - MECHANICAL PROTECTIVE SERVICE (MPS) ..... 13

RULE 320 – CHARGES FOR MECHANICAL PROTECTIVE SERVICES..... 14

RULE 330 – MIXED CARLOAD SHIPMENTS..... 14

RULE 420 – AGGREGATE RULE..... 14

RULE 430 – INTERMEDIATE RATES..... 15

RUEL 440 – ALTERNATION OF RATES..... 15

RULE 480 – DISCLAIMER OF CONSEQUENTIAL AND SPECIAL DAMAGES..... 15

RULE 500 – CHANGE IN PROVISION..... 16

RULE 510 – PRIVATE EQUIPMENT..... 16

RULE 520 - SECURITY SEALS..... 16

RULE 530 – NON-WAIVER ..... 17

RULE 540 – GOVERNING LAW..... 17

RULE 550 - NO THIRD PARTY BENEFICIARIES..... 17

RULE 560 – NORMAL RAIL OOPERATIONS-ORDER/NOTIFY SHIPMENTS..... 17

RULE 570 – SEVERABILITY ..... 18

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RULE 580 – CARGO OWNERS AND COLLATERAL PARTIES .....	18
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## RULE 100 – DEFINITIONS

### **Held in Route**

Held in Route is defined as any car, moving on a through rate which is held in route because of any condition attributable to the consignee, or owner of the lading, including but not limited to storage, partial unloading, to finish unloading, or fabrication.

### **Diversion/Reconsignment**

The term “diversion can be used interchangeably with “reconsignment” and means any request received by KRS that requires a change in the Bill of Lading, Waybill, Service Order or other shipping documents applicable to cars that are in KRS;s possession as a line haul carrier.

### **Private Equipment**

A rail car not bearing Railroad reporting marks.

### **Shipper/Consignor**

Shipper and consignor shall have the same meaning for the purposes of these Conditions of Carriage. The Shipper is the party that enters into the contract of carriage with KRS or the originating rail carrier. The Shipper may be acting on its own behalf or on the behalf of another party; however, whether as principal or agent, the Shipper is bound in its own right to the terms and obligations of the Conditions of Carriage. The Shipper might or might not be the owner of the lading. When acting as a disclosed or undisclosed agent, the Shipper, the Shipper binds not only itself but also its principal to the terms and obligations of these Conditions of Carriage. The Shipper or Consignor may file a claim with KRS for loss or damage to lading under Rule 290 below.

### **Consignee**

The Consignee is the party entitled to receive the lading under the Bill of Lading contract regardless of whether the lading is actually delivered to an “in care of” or other party pursuant to the directions of the Shipper or Consignee. The Consignee may file a claim with the KRS for loss or damage to lading under Rule 290. By accepting a shipment or by the acceptance of the shipment by a party on behalf of or by direction of the Consignee, the Consignee agrees to be bound by the terms and conditions of these Conditions of Carriage.

### **Payor**

The Payor is the party primarily responsible for the payment of freight and other charges arising pursuant to these Conditions of Carriage. The Payor may be the Shipper, Consignee or some other party who has entered into a credit or payment arrangement with the KRS pursuant to Rule 300.

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## Rule 110 - APPLICATION OF PEFERENCED PUBLICATIONS

Except where (i) inconsistent with a provision of this document or (ii) inconsistent with governing contractual terms specifically agreed to by KRS or (iii) otherwise inapplicable under their own terms, the rules, regulations, charges and allowances of the following named publications shall. Along with the terms of carriage specified herein, apply to all rail transportation undertakings of KRS as specified in Rule 120 herein.

Official Railroad Station List OPSL 6000 Series

Standard Transportation Commodity Codes STCC 6001

Official Railway Equipment Register RER 6412 Series

KRS Mileage Tariff

Uniform Freight Classification UFC 6000 Series

KRS Switching 8000 Series

Rules and Charges on Assessorial Services KRS 8000 Series

Demurrage Rules and Charges KRS 6000 Series

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References to specific publications herein include successor publications.

## Rule 120 – General Application

1. The provisions of this Document apply
  - a. To transportation when such transportation
    - i. Originates on KRS and
    - ii. Moves under single line rates or single factor, joint line, through rates offered by KRS itself or in conjunction with a connecting railroad as an exempt rate or as a regulated common carrier rate; and
  - b. To the KRS portion of through movement under AAR Accounting Rule 11 or other combination or proportional exempt or common carrier rates. In the absence of a separate contract specifically covering the transportation, the terms and conditions of the Conditions of Carriage constitute a unilateral offering of such terms and conditions of a bilateral contract between KRS and its connecting lines on the one hand, and the terms user of the transportation services on the other upon acceptance by such user. Subject to the qualifications set forth in subsection (2) below, tender of shipments to

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the origination carrier shall constitute acceptance of both the terms of service as set out in these Conditions of Carriage and the rate governing the shipment.

2. Except where specifically provided otherwise by the governing contract or rate quotation, the rate or rates for shipments moving under a single line rate or single factor joint line through rate, where the transportation originates on KRS, do not include non-line haul services (including, but not limited to demurrage, drayage, diversion, inspection, reconsignment, stopping, storage, switching, transfer, weighing and other terminal or accessorial services). Such services performed by KRS shall be governed by Rule 200 of these Conditions of Carriage. Such services performed by a non-originating carrier or carriers shall be governed by the offering comparable to the KRS conditions of Carriage of the carrier performing these services and will be billed and collected by the carrier performing the services.
3. When KRS is not the originating carrier, but does participate in a movement under single factor or joint through rates, the Conditions of Carriage or comparable offering of the originating carrier shall, along with the exempt or common carrier rates, apply to such transportation performed by KRS unless specified otherwise in the terms of a rate quotation or separate contract specifically covering the transportation involved. When such originating carrier does not issue or have in effect such an offering, the terms of carriage contained herein shall apply. Terms of these Conditions of Carriage not inconsistent with the origin carrier's contract or offering shall also apply.
4. The provisions of this Document are not applicable to shipments moving in TOFC or COFC intermodal services.
5. If a shipment is tendered with different or additional terms and conditions submitted by Shipper, such different or additional terms and conditions shall be deemed rejected by KRS unless electronically confirmed, or agreed in a document executed on behalf of KRS by a Marketing officer of KRS, regardless of whether the shipment is accepted by KRS.

## RULE 130 – ROUTING VIA KATAHDIN RAILCAR SERVICES, LLC

1. Except as otherwise specified, rates applicable via KRS apply only over the most direct lines of KRS, forming the shortest possible KRS mileage, from the first point at which KRS receives the shipment (from consignor or other railroad). KRS reserves the right to actually handle shipments via any route over KRS lines. If customer requests movement over KRS lines where

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mileage exceeds the shortest possible KRS distance, shipment will be subject to a combination of rates applying via the route requested by customer.

2. When shipment is made in heavy duty flat cars, or in special train service, rates will be applicable via the actual route movement.

## RULE 140 – ABSORPTION OF CONNECTING LINE SWITCHING

Rates making reference to this document will include full absorption of connecting line reciprocal switching unless otherwise agreed to in separate contracts, tariffs, or stated in a rate quotation. (See item 1080 of KRS 8000)

## RULE 150 – BILL OF LADING

Service provided by KRS and other rail carriers are subject to these Conditions of Carriage and shall also be subject to the terms of the Uniform Bill of Lading as contained in the Uniform Freight Classification UFC 6000 Series. Such services are subject to modifications as may from time to time be established under separate agreement or by changes to the Conditions of Carriage, and apply regardless of whether a Bill of Lading is actually executed pursuant to Rule 200.

Except where in conflict with the terms and conditions of a written agreement contract between KRS and Shipper, the terms and conditions of these Conditions of Carriage shall govern all the transportation services provided by KRS to Shipper. In the event of a conflict between the terms and conditions of these Conditions of Carriage and the terms and conditions of a written contract between KRS and User, the terms and conditions of the written contract shall take precedence over these Conditions of Carriage. The order of precedence for the application of terms and conditions for transportation services provided by KRS shall be as follows:

1. Written Contract
2. KRS Customer Specific Rate Quotations
3. General Rate Tariffs and General KRS Rate Quotations
4. Conditions of Carriage
5. Rule 110 Publications
6. Uniform Bill of Lading

## RULE 200 – TRANSPORTATION SERVICES

1. Shipper will notify KRS when loading of equipment is completed and ready for movement or when loaded equipment is made empty and ready for release to KRS. Unless otherwise

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mutually agreed upon by Shipper and KRS, Shipper shall prepare and both parties shall execute the transportation documents to cover the line haul transportation service requested by Shipper. Shipper will provide instructions for the transportation services requested for the shipment. KRS will arrange for the transportation and delivery in accordance with instructions shown on the Bill of Lading, which instructions shall be governed by the Conditions of Carriage.

2. Shipper will arrange separately with KRS independent of the Bill of Lading for non-line haul accessorial services such as weighing, and such other services as may be referenced in the publications listed in Rule 110. Unless specifically agreed to by KRS, KRS will not be liable for any loss, damage, cost or expense arising in connection with such series performed by parties other than KRS.

## RULE 210 – UNLOADING AND RELEASE OF EQUIPMENT AT DESTINATION

1. Upon arrival and placement of equipment for unloading at destination, consignee will be responsible for unloading such equipment in a manner which does not damage the equipment, and for releasing equipment in a condition clear of debris and material not part of such equipment and suitable for reloading by another shipper (cars released in other than clean condition will be subject to the provisions published in Tariff KRS 8000 Series).
2. Whether KRS is the delivering carrier, consignee must have advised KRS Customer Service Center by email, facsimile, EDI or other such form as may be required by KRS, that the equipment is unloaded and available for release. Information provided must include identity of consignee, name of person furnishing data, and car initial and number. Equipment will be considered released on the date and time such advice is received from the consignee. No release shall be accepted by telecommunication.

## RULE 230 – TRANSPORTATION CHARGES TO APPLY

1. The charges applicable to the transportation from origin to destination will be those established by the governing quotation, contract or tariff on the bill of lading date for shipment. Any change to the information of the Bill of Lading (including, but not limited to, the shipper, consignee, origin or destination) shall be invalid and without effect unless received and approved by KATAHDIN RAILCAR SERVICES, LLC's Customer Service Department. Any such change to the bill of lading must be transmitted to KATAHDIN RAILCAR SERVICES, LLC in such form as may be required by KRS (including but not limited to, email, facsimile, EDI) and may be subject to additional charges pursuant to KRS 8000 Series.

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2. If it is ascertained that the commodity shipped is not as described on the Bill of Lading or other shipping document, KRS at its option may
  - a. Return such shipment to shipper at origin at a charge equal to the charge that would have applied had the commodity properly described and transported to the destination named in the Bill of Lading;
  - b. Choose to move said shipment to the destination named in the Bill of Lading or other shipping document at the transportation rate quoted; or
  - c. Choose to move said shipment to the destination named in the Bill of Lading or other shipping document at a charge equal to the charge that would have applied had the commodity been properly described, plus an additional charge of \$350.00 USD.

## RULE 240 – TRANSIT, DIVERSION, RECONSIGNMENT

Except as specifically agreed, KRS will not provide transit or stop-off privileges, but will provide diversion or reconsignment as provided for in the publications listed in rule 110. Provisions of Rules 29 and 24 of UFC 600-Series will not apply. (See item 100 for definition of transit, diversion, and reconsignment)

## RULE 250 – PAYMENT OF TRANSPORTATION CHARGES

1. Shipper or consignee shall be liable for payments of the transportation charges accruing on a shipment as established by law and these Conditions of Carriage, and nothing herein shall limit the right of KRS to require at time of shipment the prepayment or guarantee of charges. Shipper will pay KRS if shipment is prepaid or be responsible for payment if shipment is made collect, and will pay immediately upon presentation of a bill therefore by KRS unless credit has been granted pursuant to Rule 300 of these Conditions of Carriage. If Shipper or consignee has entered into an agreement for credit with KRS, the terms and conditions of the credit agreement will supersede any prepayment or payment upon demand requirement. If transportation charges have not been prepaid, or shipper or consignee has not entered into an agreement for credit with KRS, KRS shall not make delivery of shipment without payment or guarantee by shipper or consignee of all charges. Placement of equipment by KRS under credit agreement for unloading shall be deemed acceptance of shipment for the purposes of incurring freight charges under a credit agreement.
2. Acceptance of shipment by consignee or beneficial owner shall be deemed acceptance of responsibility for payment of all charges accruing on the shipment, including, but not limited to, demurrage and switching services performed at destination. Such payment shall be in such currency that is the billed currency by KRS and cannot be reduced to offset claims, damages to property, or for other reasons.

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3. Demurrage, switching and other assessorial and/or incidental charges are payable by Shipper and/or Consignee as applicable pursuant to the publications set out in Rule 110.
4. All payments from customers in Canada or the United States should be mailed to the below address. Ensure to provide backup documentation that lists your company's name and what invoices you are paying. If you do not send backup documentation, we will post the payment to your account as an unapplied payment. The payment will not be applied until we receive instructions to what you intended to pay. If you prefer to remit by wire, ACH or other means, please contact us for the necessary information.

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## RULE 280 – OVERCHARGE, OVER COLLECTION OR DUPLICATE PAYMENT CLAIM PROVISIONS

Claim requirements/Time Limits – KRS will accept a whole or partial claim for overcharge, over collection or duplicate payment only if the claim is in writing and contains sufficient information for KRS to conduct an investigation, including the following:

- Name of the claimant (which must be the payee)
- Claim number
- Amount of the claim
- Freight bill
- Freight bill payment information
- Supporting documents which show, among other things, that KRS collected all of the charges at issue and, in the case of overcharges,
  - Rates
  - Weight
  - Commodity description
  - Supporting authority (quotation, etc.) claimed to be applicable.

The claim must be filed within three (3) years of the date of delivery or tender of delivery by KRS or delivering rail carrier of the subject shipment.

Where the movement over KRS forms a segment of a through movement involving other carries and time limitations for filing overcharge claims differ among the carries involved in the through movement,

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the time limitation contained in the comparable offering of the price publishing carrier will apply for overcharge claims against KRS if inconsistent with these Conditions of Carriage.

## RULE 290 – LOSS OF AND DAMAGE TO SHIPMENTS

### 1. General

- a. Unless modified in a transportation contract or a general or customer specific rate quotation
  - KRS will assume liability for loss and damage under the terms of 49 USC 11706 and the terms of the Uniform Bill of Lading as specified in Rule 150 herein
  - The level of liability assumed by the origin carrier will apply, provided, however, that such level of liability shall not exceed the level of liability assumed under the Carmack Amendment.
- b. As a condition precedent to any right to recovery for loss or damage to cargo, a written claim must be filed within nine (9) months after delivery of a shipment (or if delivery is not made, within nine (9) months after a reasonable time for delivery). A claim must include a demand for payment of a specific amount and information sufficient to identify the shipment, as described in this Rule. A claim may be filed by either Shipper or Consignee. Any other party who desires to file a claim with KRS must first secure an assignment of claim from the Shipper or Consignee.
- c. KRS does not guarantee delivery by a particular train or within a particular time and does not guarantee rail services on any schedules, published, projected or implied. KRS will not be liable for failure to transport any shipment by any particular train or in time for any particular market.
- d. KRS will not be liable for loss or damage caused by:
  - An act of God
  - Public enemy or terrorism
  - The authority of law
  - Riots
  - Strikes
  - Acts of civil disobedience
  - An inherent quality or characteristic in the commodity
  - Natural shrinkage
  - An act or default of Shipper, consignor, consignee, owner, or any contracting party, including but not limited to, the failure of the Shipper or any other party to properly block or brace the lading' or the stoppage an holding in transit of lading at the request of the shipper, consignor, consignee, owner, or any contracting party.
- e. KRS's liability will not extend beyond the actual physical loss or damage to the cargo itself, including any costs reasonably incurred in efforts to mitigate the loss or damage.

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- f. **In no event shall KRS be liable for any incidental, special, indirect or consequential damages whatsoever (including but not limited to lost profits, business interruption expenses and shipper or consignee's liability to their own customer for liquidated damages or other damages arising out of or related to the services provided under these Conditions of Carriage, even if advised of the possibility of such damages.**
- g. KRS does not make any representations as to the suitability of cargo for rail transportation. The Shipper acknowledges also that there are significant forces exerted on the cargo in rail transportation that may require additional packing measures for the cargo to move safely.
- h. KRS will not be liable for damage arising from atmospheric conditions when such damage occurs to lading loaded in open-top or on flatbed rail cars. Protective covering sufficient to protect such lading just be furnished and installed by the Shipper. KRS will not be liable for the durability and suitability of the protective covering.
- i. Claims or lawsuits for less than \$250.00 will not be processed. No Claim will be paid if the amount of the loss or damage is found to be less than \$250.00 per shipment.
- j. Failure of the destination railroad to inspect damaged cargo for any reason will not relieve the claimant from the requirement of establishing that cargo was delivered in a damaged condition and was properly blocked and braced. Failure of the destination railroad to inspect damaged cargo for any reason will not be considered an admission of liability by KRS.
2. Filing of Claims
- a. In any claim for loss or damage claimant shall include
- Equipment initials and numbers
  - Shippers name
  - Consignee's name
  - Notify party's name
  - Shipping date, shipment origin and destination location
  - Commodity description and STCC or other identifying code
  - Records (such as Bill of Lading, Shipping Manifest, Purchase or Sales documents) or certification to establish
    1. Delivery to KRS
    2. The level of KRS cargo claim coverage contracted for the shipment if other than the Standard, and
    3. Condition and quantity of cargo at origin
  - Supporting documentation for the amount claimed, such as weight and grade certificates, repair bills or certified invoices
- b. Except where otherwise necessitated by wreck or derailment, claimant shall also include in any such claim

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- Records verifying condition and quantity of the cargo when received at the destination stated in the shipping instructions
- Origin and destination seal records, if applied, and
- Evidence of disposition of any damaged cargo in compliance with requirements of this section.

c. Claimants must file any claims for loss or damage with:

KATAHDIN RAILCAR SERVICES, LLC  
 ATTN: Manager, Freight Claim Settlement  
 700 Main Street Suite 3  
 Bangor, ME 04401

d. Where a Bill of Lading covers only one railcar, a claim for loss or damage must be submitted for the lading moving in only that one railcar and may not be combined into a single claim with damage to lading moving in other railcars covered by other Bills of Lading. Where loss or damage occurs to lading moving in more than one railcar and the multi-car movement is covered by a single Bill of Lading, one claim can be filed to cover all damage to lading in railcars moving under that same Bill of Lading.

### 3. Lawsuits

- a. As a condition precedent to any right of recovery, any lawsuit involving a claim for loss or damage to cargo must be commenced within two (2) years one (1) day from the date of declaration of the claim.
- b. Lawsuits shall be filed only in courts of competent jurisdiction and venue as set out in 49 USC Section 11706.
- c. No party other than the Shipper or the Consignee shall have standing to bring a lawsuit regarding a shipment moving under these Conditions of Carriage.

## RULE 300 – EXTENSION OF CREDIT

1. Acceptance by KRS of a tender of a shipment by Shipper does not constitute the extension of credit by KRS to Shipper or to a party responsible for payment of KRS freight charges (Payor). Credit shall only be extended through the Credit Department of KRS. If KRS extends credit, it is granted only as a convenience to the Shipper or Payor and may be revoked by KRS at any time as to any shipment (including that in transit) without notice by KRS. In the event of a revocation of credit affecting any cars in transit, Shipper or Payor must either pay all charges for the cars in transit or make provision for payment, satisfactory to KRS, before the cars will be delivered. Any

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changes in Shipper's or Payor's ownership or financial condition which materially will affect Shipper's financial standing must be reported to KRS's Credit Department.

2. If your organization has been extended credit, payment terms are **Net 15** days from the invoice date unless otherwise stated. All accounts exceeding 60 days past initial statement date will be put on hold until payments are made to bring the account to a current status and your credit privileges will be negatively impacted. These terms are for all freight, switching, diversions, re-bills, extra train charges, storage, demurrage, car repair, car hire, car cleaning, fuel surcharge, and weighing. Where credit has not been extended to Shipper or Payor, payment of transportation charges must be made to KRS in advance.
3. Invoices will be emailed. Arrangements can be made to fax or mail invoices for those that prefer. If you receive an invoice that you believe to be inaccurate please contact our Finance and Accounting Department. Invoices are to be entered for dispute within **30** (thirty) days of receipt. If payment of the invoice becomes due prior to the problem being resolved, please do not withhold payment. Pay the portion of the invoice that is not in the dispute and include a note detailing the portion that you believe to be in error. This will help ensure your account will not be considered past due for the amounts that are in dispute.
4. KRS shall have the right to recover from Shipper or Payor all reasonable costs of collection, including but not limited to reasonable attorney's fees, in the event of any violation of the credit terms of KRS by Shipper or Payor.
5. Finance Charges will be assessed on all balances exceeding 30 days of invoice date. The finance charge is calculated at 1.5% of the outstanding balance not to exceed an annual percentage rate of 18%, or the maximum permitted by law, whichever is greater. All uncollectable accounts will be referred to collection agencies. Additionally, we submit past due open AR balances to a National Commercial Credit Reporting Bureau on a monthly basis.
6. Our check return policy is to charge a \$35 administrative fee for each check returned from the customer's financial institution, plus any charges assessed by our bank.

## RULE 310 - MECHANICAL PROTECTIVE SERVICE (MPS)

1. Shipments requiring protection from heat or cold will be handled in accordance with rules and provisions (other than charges for services) for protective services. Mechanical protective services, including detention of equipment, are separate and distinct services, and charges therefore will be in addition to charges applicable for line haul and other transportation services. (See Rule 320)

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- **Exception:** KRS will not provide portable heater service. To the extent cars are received from connections with heaters already installed, such heaters will be allowed to move through to destination without service by KRS.
2. Shipper shall specify on the Bill of Lading whether the commodities loaded in the equipment are perishable in nature requiring protection against heat or cold. If no such specification is made, KRS shall not be responsible for any loss or damage arising from the lack or failure of such protection.
  3. Subject to the conditions of this rule for shipper owned or leased cars where mechanical protective service is required; KRS will provide reasonable maintenance to mechanical protective service (MPS) units including minor repairs, fuel, lubrication and other supplies. The expense of operating repairs will be borne by the shipper, and the actual cost of labor for any maintenance, service or repairs, and for material (plus 15% material handling charge), fuel, lubricating oil and all other supplies furnished to such MPS units shall be billed against the shipper directly by the railroad incurring the cost of furnishing such services.

## RULE 320 – CHARGES FOR MECHANICAL PROTECTIVE SERVICES

Unless specifically indicated in a rate quotation or contract price for line-haul transportation rates, carload shipments originating on KRS do not include a protective service charge payable to third parties. To determine the charge applicable for mechanical-protective service for equipment not owned by KRS, charges specified in service offerings by the owners or lessees of the MPS equipment will apply.

## RULE 330 – MIXED CARLOAD SHIPMENTS

Except as otherwise provided in written contracts, quotes or tariffs, when two or more commodities for which the same or different rates apply are shipped in a single carload, and the weight of the predominant article is greater than 50% of the total weight of the shipment, the rate to be assessed on the entire shipment will be that applicable on the predominant article.

## RULE 420 – AGGREGATE RULE

Unless specifically authorized in writing by KRS, point-to-point rates may not be combined to provide a through rate.

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Example: Customer has a rate quote from Point A to Point C (the A to C Rate). Customer also has a rate quote from Point A to Point B (the A to B Rate) and from Point B to Point C (the B to C Rate). The A to C Rate applies, and Customer may not combine A to B Rate with the B to C Rate unless specifically authorized in writing by KRS.

## RULE 430 – INTERMEDIATE RATES

Except as otherwise specifically provided in individual contracts or rate quotations, rates will not apply from or to points intermediate to the origins or destinations specified in such individual contracts or rate quotations.

## RUEL 440 – ALTERNATION OF RATES

1. Customer specific rates (contracts or specific quotes) will take precedence over open or non-customer specific rates (general quotes). Within each of those two categories, point-to-point rates will apply regardless of any group or scale rates available, and group rates will be applied to the exclusion of any scale rates available, and group rates will be applied to the exclusion of any scale rates.
2. Where a rate authority contains more than one carload rate at varying minimum weights for the same movement, the rate that produces the lowest charges for that authority will apply.
3. Unless otherwise agreed upon by KRS and the purchaser of transportation subject to this publication, where KRS can serve both origin and destination (either directly or through switching by another carrier), KRS single-line rates will apply to the exclusion of any joint-line rates.

## RULE 480 – DISCLAIMER OF CONSEQUENTIAL AND SPECIAL DAMAGES

Notwithstanding any provision in these Conditions of Carriage to the contrary and regardless of the nature of the cause of action, whether in tort, contract or otherwise, in no event shall KRS be liable for any consequential, incidental, special, or indirect damages whatsoever (including but not limited to lost profits, cost of capital or interruption of business expenses) arising out of the services provided under these Conditions of Carriage, even if advised of the possibility of such damages.

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## RULE 500 – CHANGE IN PROVISION

Subject to all notice requirements established by law, KRS reserves the right at any time to change the terms and conditions of these Conditions of Carriage; provided, however, any such change shall be effective only with regard to any transportation services provided under the Conditions of Carriage for freight tendered after the effective date of the changes. KRS will make available on its website these Conditions of Carriage in their latest amended form. Shipper should review these Conditions of Carriage before tendering freight to KRS.

## RULE 510 – PRIVATE EQUIPMENT

1. Upon request, KRS may from time to time assist its customers in developing the appropriate size and mix of the customer's fleet of Private Equipment. In giving such assistance, KRS does not warrant or guarantee the accuracy and results of such assistance. All determination of size and mix of the customer's fleet of Private Equipment are solely and ultimately the responsibility of the customer and are made at the sole risk and expense of customer.
2. KRS does not guarantee or promise that Private Equipment will make or will be available to make any particular Cycle Time (round trip between two points) or any particular number of movements within any specified time period, regardless of whether KRS had actual knowledge, or would have reasonably know, of shipper's past or expected Cycle Times, the size of shippers Private Equipment fleet, or shippers and/or shippers customers commercial business.
3. Shipper is solely responsible for determining the suitability of the Private Equipment to move the respective lading in issue. KRS shall have no responsibility for the failure of Private Equipment to adequately protect the lading where the damage to the lading is not due to any act of KRS but to the nature of the Private Equipment.
4. KRS will not pay mileage allowances on private equipment unless specifically agreed to in advance in writing by a Marketing Officer.

## RULE 520 - SECURITY SEALS

KRS will neither inspect shipments for seals and/or a security device intended to prevent unauthorized access to a shipment, nor determines when a security device is appropriate. In the event that a

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shipment requires special security measures (such as high security seals, shrink-wrap, paper coverings and the like), it is the duty of the Shipper to determine and take the appropriate security measures.

Documentation of the application of security devices at shipment origin is the responsibility of the Shipper. In determining the extent, if any, of KRS's responsibility as a common carrier for loss, damage or liability to a shipment, the absence of or damage to a seal without physical evidence of contamination, loss or theft does not establish injury, loss or damage to a shipment.

## RULE 530 – NON-WAIVER

Any waiver on the part of KRS of any term or condition of these Conditions of Carriage shall not constitute a precedent, nor require KRS to continue waiving such term or condition or to waive any succeeding breach of the same or any other of the terms and conditions of these Conditions of Carriage. No waiver or purported waiver on the part of MQ shall be deemed to bind KRS unless made in writing and signed by an authorized KRS Marketing Officer.

## RULE 540 – GOVERNING LAW

To the extent not governed by United States law, the laws of the State of Maine shall govern the construction and interpretation of these Conditions of Carriage and all rights and obligations of the parties under these Conditions of Carriage.

## RULE 550 - NO THIRD-PARTY BENEFICIARIES

The services provided by KRS under these Conditions of Carriage are intended solely for the benefit of the shipper except to the extent expressly stated otherwise in these Conditions of Carriage and are not intended for the benefit of any third party. Any standards of service contained in this Conditions of Carriage, any transportation contract or offering are solely for the benefit of the shipper or contracting party to the transportation contract or offering.

## RULE 560 – NORMAL RAIL OPERATIONS-ORDER/NOTIFY SHIPMENTS

1. All services provided pursuant to these Conditions of Carriage will be provided by KRS in accordance with any applicable Federal Rail Administration (FRA) and Association of American Railroads (AAR) guidelines, regulations and KRS routing practice (including but not limited to switching, coupling and humping). Specialized rail handling such as “do not hump”, speed restrictions and equipment size are special rail services and not routine rail services. Unless

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agreed to in writing by both KRS and Shipper, any restrictions on rail handling placed by Shipper upon a particular car (including but not limited to, "Do Not Hump" signs, notations as to speed or other restrictions on a Bill of Lading, EDI notations) shall have no effect and be void. Shippers desiring special handling must contact KRS to arrange such special handling.

2. KRS does not provide Order/Notify service. Bills of Lading or shipping instructions tendered to KRS in the form of an order/notify Bill of Lading will be handled as straight Bills of Lading. Instructions to the effect of requiring KRS to not complete delivery of a shipment until either securing authorization for delivery from the shipper or some other party, surrender of the Bill of Lading or notification by KRS to the shipper or some other party shall have no effect and be void regardless of whether such instructions are contained in a straight or an order notify Bill of Lading and KRS shall have no liability for delivering a shipment to the Consignee listed in the Bill of Lading in such circumstances.

## RULE 570 – SEVERABILITY

If any provision of these Conditions of Carriage is held invalid by a court or governmental entity of competent jurisdiction, such provision shall be severed from these Conditions of Carriage and to the extent possible, the Conditions of Carriage shall continue with regard to the remaining provisions.

## RULE 580 – CARGO OWNERS AND COLLATERAL PARTIES

With regard to shipments moving under some type of limitation of liability, the rates, levels of liability and other terms and conditions governing the rail transportation agreed upon between KRS and Shipper represents the essential consideration to the parties. Frequently, the contract for the rail portion of a movement may be only one contract in a series of other contracts between other parties. Pursuant to Rule 550 none of these other parties are intended third party beneficiaries of Shipper and is limited to the terms and conditions set out by these Conditions of Carriage and the governing rail contract. The Shipper acknowledges that the bargain with KRS neither contemplates or creates liability on the part of KRS toward any other party, whether in tort or contract, nor places upon KRS any liability in excess of the liability assumed by KRS under these Conditions of Carriage and the governing rail contract. By tendering the cargo to KRS, the Shipper agrees to indemnify KRS against any claim by the cargo owner or any other person or agent for any amounts that exceed the limited liability assumed by KRS under these Conditions of Carriage and the governing rail contract for loss or damage to the lading plus the reasonable cost of defense and attorney's fees for KRS.

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