

Crowley Liner Org 023286 Tariff 002	Revision: Ori Publishing Co
Rule Name: Service Contract Terms and Conditions	File Date: 201 Eff Date: 201

Service Contract Terms and Conditions

1. Applicability

This Service Contract (as hereinafter defined, "Contract") is entered into by and between the parties set forth in Sections 2 and 3 of Part I in accordance with 46 C.F.R. § 530.2 and, to the extent stated herein, is subject to the terms and conditions of Carrier's Bill of Lading or Sea Waybill and applicable Carrier's tariff(s) as filed with the Federal Maritime Commission, the Surface Transportation Board or other applicable regulatory body that governs the particular portion of transportation. The covenants, exceptions, limitation and liberties (including those relating to pre-carriage, on-carriage and multimodal through-carriage) set forth in this Contract between Carrier and Shipper with respect to the Goods, Carrier's Bill of Lading and the applicable Carrier's tariff(s) set forth in sub-section 5.6 of Part I are incorporated herein by this reference and, to the extent stated in this Contract, apply to transportation of any Goods hereunder. Except as expressly agreed in this Contract, all compensation, assessorial and other charges (including but not limited to freight, demurrage and detention) set forth in applicable Carrier's tariff(s) shall be due and payable in accordance therewith.

The Shipper accepts such covenants, exceptions, limitations and liberties of this Contract on its own behalf and on behalf of any Affiliates, the Consignee or owner or beneficial owner of the Goods and Shipper warrants to Carrier that Shipper has the authority to bind the Consignee or owner of the Goods to such extent.

Copies of Carrier's Bill of Lading and Sea Waybill forms and applicable Carrier tariffs are available at www.Crowley.com.

2. Definitions

In this Contract, save where the context otherwise requires, words and expressions shall have the same meanings as defined in 46 C.F.R. § 530.3 or hereby assigned to them as follows:

"*Affiliate*" means two or more entities, which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with, or otherwise related to each other through common stock ownership or common directors or officers. Shipper acknowledges its continuing obligation to update Carrier of any changes in the status of Shipper or any of its Affiliates.

"*FMC*" means the U.S. Federal Maritime Commission.

"*STB*" means the U.S. Surface Transportation Board.

"*Duration*" means the period that this Contract is effective which shall be from the Effective Date set forth in subsection 4.4(i) of Part I, or, if applicable, on the date filed with the FMC in accordance with 46 C.F.R. part 530, whichever last occurs, to the Expiration Date set forth in subsection 4.4(ii), unless terminated sooner in accordance with subclause 7.2.

"*Shipper*" means the party set forth in Section 3 of Part I (or its Affiliate) that is a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, a NVOCC or a shippers' association.

"*Contract*" means a Service Contract as defined in 46 C.F.R. part 530.

"*Carrier*" means the company set forth in Section 2 of Part I and named as carrier on the face of a Carrier Bill of Lading (or Sea Waybill) issued for the transportation of Goods hereunder, the Vessel as defined herein and its owners, demise and time charterers, operators, managers and any connecting, substitute or other performing carrier, regardless of mode, and any other person to the extent bound by this Contract, whether acting as carrier or bailee in furtherance of the shipment of the Goods covered by this Contract.

"*Goods*" means the cargo identified in Section 22 on the face of a Carrier Bill of Lading (or Sea Waybill) issued in accordance with this Contract and accepted from Shipper and includes the Commodities set forth in subsection 4.2 of Part I tendered to Carrier hereunder and any containers, vans, trailers, rail cars, and/or rolling equipment whether or not supplied by Carrier.

"*Package*" means any piece, shipping unit, machine or article of any description, whether or not enclosed or boxed in whole or in part, except Goods shipped in bulk; provided, however, that a container, van, trailer, rail car, or rolling equipment is a Package when such is listed on the face of a Carrier Bill of Lading or Sea Waybill issued in accordance

herewith under the column "number of trailers/containers/packages" regardless of the method used to describe the shipment in the description column on its face.

3. Essential Terms

(Terms set forth in Part I, Section 4 to be filed with the FMC and published if required by 46 C.F.R. § 530.12)

Subject to the terms and conditions provided for herein, for the **Duration** of this Contract as set forth in subsection 4.4, Carrier shall perform transportation of the **Commodities** set forth in subsection 4.2 between or among the **Port Ranges** or Geographical Areas set forth in subsection 4.1 with respect to the **Minimum Volume** of Goods committed by Shipper in subsection 4.3.

4. Required Terms

(Terms set forth in Part I, Section 5 to be filed with the FMC if required by 46 C.F.R. § 530.8)

4.1 Rates - Carrier shall charge and Shipper shall pay for all transportation and related services with respect to the Goods tendered under this Contract at the rates set forth in Part I, subsection 5.1.

4.2 Liquidated Damages - If Shipper fails to tender the Minimum Volume Commitment set forth in Part I, subsection 4.3 (unless otherwise agreed, expressed as an annual volume number), Shipper shall be liable to Carrier for liquidated damages in the amount set forth in Part I, subsection 5.2. Liquidated Damages shall be calculated by multiplying the difference between the volume shipped and quantity agreed as set forth in Part I, subsection 4.3 times the charge set forth in Part I, subsection 5.2. This amount shall be in lieu of actual damages, if any, which would be difficult, if not impossible, to ascertain to a reasonable certainty. Bills of Lading, or Sea Waybills as may be issued in lieu thereof, covering shipments of Goods moving under the terms of this Contract shall be annotated by Shipper or its agent(s) with the Contract Number of this Service Contract. Shipments moving on Bills of Lading (or Sea Waybills) not so annotated shall not be counted toward Shipper's Minimum Volume Commitment; provided however, that Shipper shall have reasonable time within which to remedy such omission after the fact. For the purpose of determining whether a movement of Goods took place during this Contract, the pertinent date shall be the date of receipt of the Goods by Carrier or its agent. If there is a disagreement as to the volume of Goods transported under this Contract, the parties shall grant each other access to their records relating to this Contract.

4.3 Affiliates - In the event Part I, subsection 5.3 is left blank, Carrier, by its signature in Section 6, hereby certifies that the legal name and business Address of any Shipper Affiliates' shall be provided to the FMC upon request within (10) business days of such request.

4.4 Records - Carrier shall maintain shipment records to support this Contract, which shall be copies of Bills of Lading (or Sea Waybills), data freight receipts, arrival notice of freight bills, or other documents kept by the parties in the normal course of business that evidence performance of services pursuant to this Contract. The Address, telephone number and title of the person responsible to make such shipment records available to the FMC are set forth in Part I, subsection 5.4.

4.5 Carrier's Applicable Tariffs - Carrier's Tariffs as set forth in Part I, subsection 5.6 shall apply hereto and are incorporated herein by this reference.

4.6 Service Commitments - Carrier shall exercise due diligence to provide access to regularly scheduled sailings, space aboard such sailings and service adequate to accommodate Shipper's normal service requirements for the Minimum Volume Commitment reasonably spread over the Duration of this Contract.

5. Terms Covering Additional or Special Services

In addition to providing ocean transportation services in U.S.-foreign and/or non-contiguous domestic trades, Carrier may provide additional and/or other related logistics services as may be agreed in subsection 5.7 of Part I, the terms of which, when referred to in subsection 5.7, shall be incorporated herein by such reference to the extent not inconsistent with this Contract and, in the event of a conflict of conditions between this Contract and all documents incorporated by reference, the terms of this Contract and its Annex's shall control to the extent of such conflict but no further. Any terms covering additional or special services, if not expressly stated herein or attached hereto, may be published on-line and widely available to the shipping public at www.Crowley.com.

6. Rates, Charges and Accessorials (STB Required Waiver)/ Credit and Payment

6.1 Shipper shall pay Carrier for services rendered under this Contract fees as set forth in Part I, subsection 5.1 and/or 5.7, as applicable.

6.2 Unless otherwise expressly agreed in writing in Part I, subsection 5.6 of this Contract, all applicable Carrier tariff charges, surcharges, add-ons, rate increases, general rate increases, accessorial and any other additional surcharges shall be added to the base ocean freight rate as referred to in subclause 4.1 and apply in full at time of shipment at the then current amount, whether or not in effect at the Effective Date set forth in Part I, subsection 4.4, Item (i).

6.3 With respect to only noncontiguous domestic ocean transportation services provided by Carrier to Shipper under this Contract as regulated by the STB, Carrier and Shipper, pursuant to 49 U.S.C. §14101(b)(1), hereby expressly waive any rights and remedies specified in 49 U.S.C., Subtitle IV, Part B (concerning the parties' authority to enter into contract carriage and the presumed reasonableness of rates under such an agreement) to the extent such regulations are inconsistent with the provisions of this Contract. Carrier and Shipper further expressly and irrevocably waive their respective rights to challenge the foregoing waiver of rights and remedies.

6.4 All transportation charges; including but not limited to rates, surcharges, accessorial charges and related charges, for services provided hereunder shall be paid in accordance with Crowley's Credit Application and Agreement, the terms and conditions of which are incorporated herein by this reference. Unless prior credit or payment arrangements have been agreed to in writing by Carrier, all such charges hereunder shall be paid prior to Carrier delivering the Goods; provided, further, that Shipper agrees for its account to be responsible for all rates and charges for services rendered under this Contract, whether such services are rendered on a prepaid or collect basis. If Shipper has established credit prior to shipping, Shipper agrees to pay all transportation and related charges hereunder within thirty (30) calendar days from the date of Carrier's invoice. In case of conflict between the terms of Crowley's Credit Application and Agreement and this Service Contract, the Credit Application and Agreement shall prevail in connection with the credit and collection of freight.

6.5 Shipper shall remit all payments to Carrier via Automated Clearing House (ACH) or by wire transfer (in lieu of check) in accordance with prior credit or payment arrangements or, if Shipper has not established credit prior to shipping, at least one (1) day prior to the Vessel's arrival at the Port of Discharge named on the face of the Bill of Lading or Sea Waybill covering such shipment as follows:

Bank Name: Citibank N.A.

Bank Address: 111 Wall Street, 6th floor, New York, NY 10044

Account Name: Crowley Maritime Corporation

ABA Number: 021000089

Account Number: 30436569

Shipper shall provide Carrier remittance details to AR - Remittances via fax at 904.805.1646 or e-mailed to AR.Remit@crowley.com.

7. Amendment and Cancellation

7.1 This Contract may be amended at any time to the extent and in a manner consistent with FMC or STB regulations, as may apply, and by agreement between the parties. Unless otherwise specifically indicated in this Contract, Goods not shipped shall be subject to Liquidated Damages as provided for in Clause 4.2.

7.2 Carrier or Shipper may terminate this Contract upon written notice in accordance with Clause 14 as follows:

- (i) At any time after Shipper has met its Minimum Volume Commitment as set forth in Part I, subsection 4.3; or
- (ii) In the event Shipper fails to tender any Goods within thirty (30) calendar days of the Effective Date.

Any such termination of this Contract shall be without prejudice to all rights accrued between the parties prior to the date of termination.

8. Confidentiality

Carrier and Shipper agree that the terms and provisions of this Contract are confidential and proprietary and that they will not reveal any of its contents or any information concerning the services performed hereunder without the prior written consent of the other party; except (i) as may be required by law or court order, or (ii) as is necessary for the proper performance and completion of the services to be provided hereunder.

9. Carrier's Right to Assignment or Sub-Contract

Carrier shall have the right to assign or sub-contract any of its obligations hereunder without the prior written consent of Shipper; provided, however, that in the event of such an assignment or a sub-contract, Carrier shall remain fully liable for the due performance of its obligations under this Contract.

10. Responsibilities

10.1 Force Majeure – Notwithstanding any other provision of this Contract, to the extent Carrier or Shipper fails to meet any obligation imposed by the terms of this Contract owing to Force Majeure, performance of this Contract shall, to that extent, be deemed to have been frustrated and no cause of action for breach or liability shall arise as a

consequence thereof. For the purpose of this Contract, "Force Majeure" means and includes, without reservation or restriction, strikes, lock outs, labor disputes or exceptional circumstances arising from the threat thereof; acts of God, State, or the public enemy, including but not limited to war, terrorism, restraint of princes, riots, civil disorder or insurrection, embargo or other disruption or interference with trade; natural disaster, marine disaster, perils of the sea, including but not limited to fire or other casualty which materially frustrates the ability of either party to perform under this Contract. The party declaring Force Majeure must give written notice in accordance with Clause 14 within seven days of the event giving rise to the Force Majeure and Shipper's Minimum Volume Commitment or requirements, as the case may be, shall be reduced by a percentage calculated by dividing the number of days that the Force Majeure circumstance existed by 365, rounded upward to the next volume unit designated in Part I, subsection 4.3 or if none is designated, a twenty foot equivalent shall be used. For example, if the Force Majeure circumstance existed for thirty-six (36) days, the Minimum Volume Commitment or requirement would be reduced by 10 percent.

10.2 Cargo Loss or Damage (Clause Paramount) - This Contract is subject to the provisions of the Carriage of Goods by Sea Act of the United States of America, 46 U.S.C. app. § 1301, et seq, as enacted 1936 ("U.S. COGSA"), which Act is incorporated herein by this reference and shall apply to the Goods evidenced by a Bill of Lading or Sea Waybill from origin to destination issued in accordance with this Contract and throughout the entire period such Goods are in the actual or constructive custody or are the responsibility of Carrier or any connecting, substitute or other performing carrier, regardless of mode, whether or not Carrier or its agent, assignee or subcontractor is acting as the contracting or a performing carrier, bailee, warehouseman, trucker, stevedore or marine terminal operator.

Unless the nature and value of the Goods have been declared by Shipper before the Goods have been handed over to Carrier and inserted on the face of Carrier's Bill of Lading or Sea Waybill, Carrier shall in no event be or become liable for any loss of or damage to the Goods in an amount exceeding U.S.\$500.00 per Package or customary freight unit.

Except as may be otherwise provided for herein, claims for loss, damage, delay or misdelivery of Goods transported hereunder shall be adjusted in accordance with, and Carrier's liability shall be governed by this Contract, applicable Carrier's tariff and Carrier's Bill of Lading or Sea Waybill as applicable.

10.3 Indemnity – Shipper shall indemnify, defend and hold Carrier harmless from and against any and all liabilities, including but not limited to suits, demands, causes of action, damages adjudged due or claims reasonably settled, penalties, costs and expenses (including reasonable attorneys' fees) arising from or in connection with the negligence, gross negligence or willful misconduct or breach of this Contract or violation of any applicable law or regulation by Shipper in connection with this Contract, including but not limited to laws and regulations governing the disclosure and tendering for transportation to Carrier Hazardous or Dangerous Goods. Except with respect to claims for loss of or damage to Goods which shall be handled in accordance with sub-clause 10.2 above, Carrier shall indemnify, defend and hold Shipper harmless from and against any and all liabilities, including but not limited to suits, demands, causes of action, damages adjudged due or claims reasonably settled, penalties, costs and expenses (including reasonable attorneys' fees) arising from or in connection with the negligence, gross negligence or willful misconduct or breach of this Contract or violation of any applicable law or regulation by Carrier in connection with this Contract.

10.4 Consequential Loss - In no event shall any claim for delay, loss of use or profits or incidental, special, consequential, or liquidated damages of any nature whatsoever be made by Shipper against Carrier in any way arising from or in connection with this Contract.

11. Insurance

The freight for transportation of certain types of cargo may include marine cargo insurance purchased by Carrier for the benefit of Shipper. If applicable, such insurance includes limitations, terms and conditions that may limit or preclude recovery in various cases. **SHIPPER SHOULD CONSULT ANNEX C TO DETERMINE IF MARINE CARGO INSURANCE IS PROVIDED FOR THE TRADE AND GOODS SHIPPED PURSUANT TO THIS CONTRACT AND, IF PROVIDED, TO DETERMINE THE TERMS OF THE MARINE CARGO INSURANCE. MARINE CARGO INSURANCE IS PROVIDED ONLY IF SHIPPER ELECTS THE INSURANCE ON ANNEX C TO BE PURCHASED BY CARRIER FOR THE BENEFIT OF SHIPPER AND HAS PAID, OR AGREED TO PAY, THE APPLICABLE CHARGE.**

12. General Provisions

12.1 Headings - Captions used in this Contract are for convenience of reference only and shall have no legal effect or meaning in the construction or enforcement of this Contract.

12.2 Drafting - Whenever used in this Contract, the singular shall include the plural and the plural shall include the singular, and the neutral gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning may require.

12.3 Severability - If, in any legal proceeding, it is determined that any provision of this Contract is unenforceable under applicable law, then the unenforceable provision shall automatically be amended to conform to that which is enforceable under the law. In any event, the validity or enforceability of any provision shall not affect any other provision of this Contract, and the Contract shall be construed and enforced as if such provision had not been included.

12.4 Third Party Beneficiaries - Except as specifically provided for elsewhere in this Contract, this Contract shall not be construed to confer any benefit on any third party not a party to it nor shall the Contract provide any rights to such third party to enforce its provisions. Shipper shall keep Carrier informed regarding any incident of which Shipper becomes aware, which gives or may give rise to claims or disputes involving third parties.

12.5 Waiver - No benefit or right accruing to either party under this Contract shall be waived unless the waiver is reduced to writing and signed by both Carrier and Shipper. The failure of either party to exercise any of its rights under this Contract, including but not limited to either party's failure to comply with any time limit set out in this Contract, shall in no way constitute a waiver of those rights, nor shall such failure excuse the other party from any of its obligations under this Contract.

12.6 Warranty of Authority/Certification - Carrier and Shipper each warrant and represent that the person whose signature appears in Part I of this Contract is its representative and is duly authorized to execute this Contract as a binding commitment of such party.

12.7 Integration - This Contract and all documents attached hereto or available on-line and incorporated by reference herein represent the final and complete agreement of the parties for this Service Contract. Upon the Effective Date set forth in subsection 4.4(i) of Part I, or, if applicable, on the date filed with the FMC in accordance with 46 C.F.R. part 531, whichever last occurs, this Contract replaces or supersedes all prior written or oral agreements between the parties with respect to any of the services arranged for herein.

13. Dispute Resolution

This Contract, as it is maritime in nature, shall be governed and construed in accordance with the general maritime law of the United States of America, the U.S. Federal Arbitration Act (Title 9 of the U.S. Code), the Shipping Act of 1984, (46 U.S.C. app. 1701 *et seq.*), as amended by the Ocean Shipping Reform Act of 1998, the regulations of the FMC and/or the regulations of the STB with respect to non-contiguous ocean shipping rate matters as may be applicable and, to the extent such laws are inapplicable, the laws of the State of New York, excluding its conflict and choice of law rules.

Any dispute arising out of or in connection with this Contract or in any way connected with the shipment of Goods hereunder (save for a dispute arising from or in connection with general average) shall be referred to three persons at New York City, one to be appointed by Carrier and the other by Shipper or its Affiliate as applicable, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, the parties consent and agree that the United States District Court for the Southern District of New York has personal jurisdiction over each of them in any action to enforce an arbitration award entered hereunder, concurrently with any other court of competent having jurisdiction. The parties further agree that venue is proper in the aforementioned court. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. Awards made pursuant hereto shall include costs, attorneys' fees, interest and expenses but shall exclude punitive damages. Any arbitral award issued pursuant hereto may be enforced pursuant to either the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 or the Inter-American Convention on International Commercial Arbitration.

14. Notices

14.1 Any notice to be given by either party to the other party shall be in writing and may be sent by facsimile, e-mail (providing for electronic confirmation), registered or recorded mail or by personal service.

14.2 The Address of the parties for service of such communication shall be as stated in Sections 2 and 3 respectively.

