

**EVANSVILLE WESTERN RAILWAY
CONTRACT GENERAL TERMS AND CONDITIONS**



EVANSVILLE WESTERN RAILWAY, INC.

FREIGHT TARIFF 1-A

**CONTRACT GENERAL TERMS AND
CONDITIONS**

ISSUED: March 1, 2017

EFFECTIVE: April 1, 2017

ISSUED BY

**Kevin McEwan
Vice President Sales & Marketing
200 Clark Street
Paducah, KY 42003**

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1. Application

The Terms and Conditions in this Tariff are applicable to and made a part of any Contract making reference to this Tariff, unless otherwise provided in the Contract.

2. Cancellation of This Tariff

This publication may not be cancelled by EVWR unless any and all contracts subject to the rules and conditions herein have either expired or have been cancelled.

3. Amendment of This Tariff

This Tariff, once issued and effective, shall not be amended by EVWR. In the event EVWR desires to change provisions which govern its future contracts, it shall issue a new publication which shall pertain only to those contracts making specific reference thereto.

4. Term of Contract

The Contract shall become effective on the date specified in the Contract and shall expire on the date specified in the Contract. A Contract's term may be extended only by mutual written consent of all parties to the Contract. Termination of the Contract will not release any party from its obligations that accrued prior to the termination.

5. Signatures

Contract may be executed in one of two forms:

- A. As a signed contract, onto which all parties will affix a signature confirming their consent, or
- B. As a "signature less" Contract, the consent of which is confirmed via electronic means, such as e-mail or facsimile, and shall remain on file and substitute for written signatures.

6. Transportation Particulars

Railroads agree to provide rail contract carriage transportation service with reasonable dispatch over their lines for Industry at the rates, terms and conditions set forth in the Contract.

7. Shipment Description and Instructions

Shipments will be accompanied by a bill of lading and/or billing instructions referencing the Contract's identification number, and containing the appropriate Standard Transportation Commodity Code (STCC) and routing instructions. Any notation made on the shipping order which is in any way inconsistent with the terms of the Contract, or which purports to enlarge, modify or change the Contract is void and of no effect. For purposes of determining the date on which a shipment was made, the waybill date will govern.

8. Shipping Limitations

The name of only one consignor, one origin, one consignee and one destination shall appear on a Shipment Instruction. No shipments shall be made as "Order Notify" shipments.

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9. Loading and Unloading

Customer shall have the sole responsibility, at its sole expense, for properly packaging, labeling, marking, blocking, bracing, placarding, loading and unloading the commodity into or out of equipment to be transported. Customer shall comply with the loading rules of the Association of American Railroads and applicable federal, state and local loading rules as well as applicable federal, state and local requirements regarding the handling of the commodity. Customer shall further be responsible for insuring that the load limits of any equipment used for transporting the commodity are not exceeded. In the event it is discovered that equipment has been overloaded, Railroad may set out such equipment at a location convenient to Railroad and shall notify Customer by telephone, confirmed in writing, of the location of the overloaded equipment. Railroad may then either (1) contact customer in which event Customer shall have twenty-four (24) hours to remove excess weight; or (2) move the overloaded equipment to a location suitable for removal of the excess weight that meets with all federal, state and local requirements. In any event, Customer shall be responsible for performing and bearing all costs for movement of the overloaded railcar and removal of excess weight. Railroad will move the affected equipment to destination in such manner and time as is practicable after Railroad receives notice from customer that excess weight has been removed.

10. Car Supply

If a Railroad is to furnish cars, such Railroad will do so on a non-guaranteed basis subject to availability and distribution considerations. If Customer is to furnish cars, Customer will obtain any necessary OT5 authority. If a particular contract provides for No Mileage Rates applicable in privately-owned or leased equipment, then Railroad(s) will not be liable for, and Customer shall hold Railroad(s) harmless against, mileage, per diem or other charges in connection with the use of Customer furnished cars.

11. Incorporation of Documents; Conflict in Terms and Conditions

The Contract incorporates the provisions of the Uniform Straight Bill of Lading, as well as AAR and other industry standards, requirements and procedures, including, but not limited to the Bureau of Explosives BOE 6000-series, Directory of Hazardous Materials Shipping Description (Issued by RAILINC), Official Railroad Station List OPSL 6000-series, Official Railway Equipment Register RER-series, Standard Transportation Commodity Code STCC 6001-series, Uniform Freight Classification UFC 6000-series, EVWR Circular 5-series (Credit and Payment Terms) and EVWR Tariffs 4000-series (Coal & Petroleum Coke), 5000-series (Unit Trains other than Coal/Coke), 7500-series (Percent of Revenue Fuel Surcharge), 8001-series (General Rules and Accessorial Services), 8500-series (Mileage Based Fuel Surcharge), and 9000-series (Demurrage and Storage). In the event of conflict of terms, the other provisions of the Contract and then this Tariff shall govern.

12. Participating Railroads

Customer acknowledges that it may not be party to, and may not have access to, any agreements for the divisions of rates or revenues associated with these Terms.

13. Volume Guarantees

Customer shall satisfy any Volume Guarantee provided in the Contract for each contract term. Failure to satisfy the Contract Volume Guarantee shall result in

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Customer being assessed a penalty in the form of liquidated damages as described in the Contract. Customer shall be required to provide written certification of the degree of compliance or non-compliance to the Volume Guarantee no later than sixty (60) days after the end of the volume period, with payment of any penalties due. In the event Customer does not provide timely certification EVWR shall have the right, upon seven (7) days written notice, to inspect the books and records of Customer to ascertain if Customer has met the Volume Guarantee.

14. Payment of Charges - Extension of Credit

Payment of all rates and charges that may accrue and become due from Customer to EVWR in connection with a Contract shall be made within the time frames set forth in, and subject to the finance charges, late charges, and other provisions of EVWR Circular 5-series (Credit and Collection Terms). If Customer fails to pay all rates and charges as required by this paragraph, EVWR may, without limitation, cancel or suspend its credit privileges or terminate the Contract. Customer may not set off or withhold any payment due to any Railroad.

15. Claims for Overpayment of Charges

Claims for overpayment of charges must be in writing and received by EVWR no later than one year after delivery of shipment or tender of delivery of shipment. Any lawsuit for overpayment of charges must be filed within two years after delivery or tender of delivery of shipment. Any claim or lawsuit not filed within the periods set forth in the preceding sentences or under eight-five dollars (\$85) per Shipment Instruction is waived by Industry

16. Switching Absorption

Except as may be otherwise provided in the Contract, EVWR will not absorb the switch charge, or a portion thereof, of the railroad serving the actual loading point at Origin and/or the actual unloading point at Destination. Movements to or from such points will be automatically deleted from any rate authority if the associated switch service is terminated.

17. Fuel Rate Adjustment

EVWR will apply a fuel adjustment to the line haul rates and charges as provided for in the Contract, and according to the terms of the applicable fuel surcharge publication.

18. Return Shipments

Should a shipment arrive at a destination and be rejected and not unloaded or partially unloaded, Customer may return the shipment to Origin, via the reverse of the inbound route, and Railroads shall assess the Contract Rate applicable to the inbound shipment at the level in effect on the date shipment is tendered for return movement.

19. Changes in Railroad Operations

Railroads are not obligated to continue ownership, maintenance (including weight standards), or operation of any rail lines. Railroads will not be liable for any consequential damages or increased transportation costs incurred by Customer as a result of Railroad's discontinuation of ownership, maintenance (including weight standards), or operation of any rail lines. Any Volume Guarantee made by Customer which cannot be met due to the lawful cessation of service or abandonment of any rail

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lines during any period of the Contract will be waived to the extent caused by such changes.

20. Damage Claims

Claims for loss, damage or delay to any commodity shipped pursuant to the Contract shall be governed by the provisions of 49 USC §11706, 49 CFR §1005, and related decisions. EVWR liability for loss or damage is contingent upon EVWR or its agent receiving immediate notification of all noted visible losses or damages discovered during the unloading of a rail car. Loss or damage discovered other than between 8:00 A.M. and 5:00 P.M., Monday through Friday, shall be reported no later than 24 hours following unloading from rail car, Saturdays, Sundays, and Holidays excluded. Concealed damage must be reported immediately upon discovery and made available for inspection at point of delivery. All loss or damage may be reported at the following telephone number: 270-444-4424.

Any claim for loss or damage must be filed within nine (9) months of the date the shipment was delivered, or in the case of failure to make delivery, then within nine (9) months after a reasonable time for delivery. Any lawsuit or other action for the enforcement or liability for loss of damage must be instituted within two years after EVWR first declines the claim. Any claim or lawsuit not filed within the periods set forth in the preceding sentences is waived by Customer. Loss and damage claims submitted to EVWR should be sent or delivered to:

Manager Customer Accounting
Evansville Western Railway
200 Clark Street
Paducah, KY 42003
Phone (270)444-4424

21. Agent

Any third party performing any obligation of Customer or EVWR is considered to be such party's agent. Customer acknowledges and agrees that it shall be responsible for any charges or damages incurred or caused by its agents in connection with the Contract. For the avoidance of doubt, no other rail carrier shall be deemed EVWR's agent in connection with any rail transportation provided in connection with the Contract.

22. Indemnification

Upon delivery to and acceptance by Customer of the commodity transported, Railroad and Railroad's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents (collectively 'Indemnitees') shall be relieved from any further obligation with regard to the disposition of the Commodity. Customer hereby agrees to release, defend, indemnify, and hold Railroad harmless for, from and against any and all losses, damages (including special, incidental, and consequential damages), suits, liabilities, fines, penalties, costs, causes of action, demands, judgments and expenses (including without limitation, court costs, attorneys' fees, and costs of investigation, removal and remediation and government oversight costs) environmental or otherwise (collectively 'Liabilities') of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) the disposition of the Commodity, or the work

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performed by Customer or a licensed EPA cleanup-disposal operator designated by Customer including but not limited to, damages caused by sudden pollution. Customer shall, at the sole option of Railroad, defend the Indemnitees at Customer's sole expense in any claim involving the same. The foregoing indemnification and hold harmless provision shall not apply to any Liabilities wholly caused by the sole negligence of any Indemnitee.

Any Railroad that is a party to a Contract warrants that it is and will maintain the ability to be financially responsible for general liability (including contractual liability) insurance of not less than ten million dollars combined single incident limit for bodily injury and property damage. Customer agrees to keep in force general liability (including contractual liability) insurance of not less than ten million dollars combined single incident limit for bodily injury and property damage. Certification of insurance will be furnished by Customer to Railroad(s) party to Contracts referencing this Tariff.

23. Joint Liability

Each party shall indemnify ('Indemnifying Party') and hold harmless the other party for all judgments, awards, claims, demands, and expenses, including without limitation, attorneys' fees, environmental damage, hazardous materials damage, fines or penalties, for injury or death to all persons, including Railroad's and Customer's officers and employees, and for loss and damage to property belonging to any person whomsoever ('Loss or Damage'), arising during the transportation of the commodity, but only to the extent the Indemnifying Party's negligence causes or contributes to any such Loss or Damage. In the event the proximate cause of such Loss or Damage cannot be determined, any liability for such Loss or Damage shall be shared equally between Railroad and Customer.

24. Railcars Transporting Hazardous Chemicals

Equipment used shall be privately owned or leased cars as described in the Contract and the Official Railway Equipment Register and tendered to Railroad in accordance with all applicable hazardous material regulations of the United States Department of Transportation (DOT), as published in 49 CFR. Railroad is not obligated to accept privately owned or leased equipment that does not have OT-5 approval from Railroad. Customer shall indemnify and hold harmless Railroad for loss, damage or injury due to any defects in privately owned or leased equipment, improper loading practices, or failure to properly close, secure and tender loaded or empty equipment, as prescribed by DOT regulations. Customer shall indemnify and hold harmless Railroad for loss, damage or injury due to presence of any trace chemicals or contaminants in the commodity which are not described in the commodity's proper shipping name, as provided in CFR Section 172.01.

25. Rail Security Sensitive Shipments

Rail Security Sensitive Shipments (RSSM) are defined by the Transportation Security Administration (TSA) in the Code of Federal Regulations at 49 C.F.R. 1580. RSSM include TIH/PIH commodities and more than 5,000 lbs. of either division 1.1, 1.2, or 1.3 Explosive materials or Class 7 radioactive materials. To comply with TSA requirements for attended interchanges of RSSM shipments, EVWR has established the following approved interchange:

- Evansville, IN with CSXT

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EVWR will not accept any RSSM car at or for transportation to an unapproved interchange.

26. Confidentiality

The Contract is considered confidential and may not be disclosed to a third party without the consent of EVWR except: (a) as required by statute, regulation or valid court order, (b) to a parent, affiliate or subsidiary company or (c) to an auditing firm or legal counsel that are bound by confidentiality provisions. If this paragraph is breached, then the Contract may be terminated by EVWR upon notice to Industry.

27. Force Majeure

A party shall be excused from its performance under the contract if and to the extent prevented or delayed by the following natural or deemed force majeure conditions: Act of God; authority of law; major weather impediments; fire; explosion; labor disputes; embargo; war; insurrection; threatened or actual act of terrorism; derailment; or other like causes beyond its control. A downturn in the economy is not a force majeure condition. The term for which any rates are offered shall not be extended due to the force majeure condition. The party claiming force majeure' shall notify all other parties as soon as practical upon the beginning and ending of the force majeure condition. The suspension of any obligations under this item shall cause the level of Volume Guarantee in the Contract to be reduced by 1/300 for each day of force majeure.

28. Assignment

No party to the Contract may assign, in whole or in part, any interest arising under the Contract without the prior written consent of the other parties such consent will not be unreasonably withheld. No such consent will be required where the assignment is to a successor in interest of all of the assets of a party. Any assignment without consent will provide the party whose written consent should have been obtained the option to terminate the Contract.

29. Miscellaneous

- Railroads may, subject to any required regulatory approval, discontinue service on, or abandon the rail line that services any Origin or Destination. Such discontinuance or abandonment shall result in the automatic deletion of the applicable Origin or Destination from any Contract at no liability to Railroads as of the date of such discontinuance or abandonment.
- Rates and prices in any other rate authority may not be used to make a combination of rates or prices that lower the prices offered in the Contract.
- Unless specifically provided for in the Contract, diversion, re-consignment, and transit privileges are not allowed.
- The waiver of any provision in these Terms must be in writing. Failure to enforce any provision is not a waiver.
- All notices between the parties must be in writing and sent to the parties by First Class U.S. Mail, express carrier or electronic mail. Notices should be sent to:

Kevin McEwan, VP Marketing
200 Clark Street, Paducah, KY 42003
or kmcewan@palrr.com.

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30. Applicable Law

The Contract and these Terms shall be construed (except for matters referring to or traditionally governed by or construed under federal laws, regulations, or case law) according to the laws of the State of Indiana without regard to its conflict of laws rules. The forum for any litigation arising out of the Contract shall be the federal or state courts of the State of Indiana, as appropriate.

31. Severability

If any provision of the Contract is held invalid by any court or governmental entity of competent jurisdiction, to the extent possible, it shall not invalidate the remaining provisions of the Contract.

EXPLANATION OF ABBREVIATIONS

CFR	Code of Federal Regulations
CSXT	CSX Transportation
RSSM	Railroad Security Sensitive Shipments
STB	The Surface Transportation Board of the U.S. Department of Transportation
TSA	The Transportation Security Administration

EXPLANATION OF TERMS

Railroad(s)	EVWR or any other railroad who, by becoming a party to an EVWR Contract referencing this Tariff, becomes a party to the provisions contained herein.
Customer	Any shipper, receiver, consignor or consignee who becomes a party to a Contract and receives the benefit of the terms contained therein.