

# TGS CEDAR PORT RAILROAD SWITCHING, ACCESSORIAL & DEMURRAGE TARIFF AND TERMS



Effective Date: August 1, 2023

Switching Charges	Item	Description	Rate
Reciprocal Switch	100	Railcars received at interchange from any Class 1 carrier (Except Hi/Wi and TIH )	\$205.00 per railcar
Reciprocal Switch (Hi/Wi or TIH)	110	Railcars received at interchange from any Class 1 carrier that are Hi/Wi or TIH	\$405.00 per railcar
Accessorial Charges	Item	Description	Rate
Holding Railcars Offered at Interchange	200	Railcars offered and holding at interchange 12 hours after expiration of interchange window. The charge will be assessed every 12 hours thereafter. Unit trains will be charged 14 hours after release.	\$175.00 per railcar
Railcars Received in Error	210	Railcars received in error are defined as but not limited to the following: <ul style="list-style-type: none"> <li>- Incomplete or missing billing instructions</li> <li>- Interchange not specified</li> <li>- TGS not included in the route</li> </ul>	\$450.00 per railcar
Release of Railcars without Forwarding Instructions	220	Railcars released and held awaiting forwarding instructions. This includes equipment holding due to carrier embargo.	\$125.00 per railcar
Closing or Securing of Railcars	230	Railcars received at interchange with open doors, hatches, gates, caps or appliances that require securement.	\$50.00 per occurrence
Incorrect Billing Instructions	240	Billing instructions received other than EDI messaging (phone, fax, email, etc).	\$75.00 per railcar
Late Advance Inbound Train Consist (EDI 418)	250	Train consists (EDI 418) received less than 2 hours from arrival to interchange tracks.	\$225.00 per consist
Embargo Railcars Received at Interchange	260	Railcars received at interchange under embargo or OPSL (EDI 824).	\$750.00 per railcar
Railcars Received for Dismantling	270	Railcars received with forwarding instructions to dismantle for Class 1 carrier	\$125.00 per railcar
Air Test	280	Air test services can be performed on request.	\$350.00 per occurrence
Blocking Railcars	290	Blocking or grouping of outbound railcars can be performed on request.	\$6.50 per railcar
Locomotive Turning & Positioning	300	Locomotive power that requires turning or positioning so that it may be interchanged or moved through yard limits.	\$3,500.00 per occurrence
Demurrage Charges	Item	Description	Rate
Demurrage (Non-Private)	400	48 hours of Free Time will be given from the time of actual or constructive placement. After the expiration of Free Time, charges will accrue until equipment is released and made available to TGS.	\$75.00 per day

\*Tariff charges are applicable to all parties unless covered by a separate agreement

\*\*Terms and Conditions follow



### **CUSTOMER**

Customer is defined as the Class I railroads for the Switching Charges and Accessorial Charges. Customer is defined as the responsible party for the Demurrage Charges.

### **TARIFF**

Tariff is defined as the TGS Cedar Port Railroad Switching, Accessorial & Demurrage Tariff and Terms.

### **PAYMENTS**

#### **Charges.**

Customer agrees to pay CPRR all fees, expenses, and charges specified in this Tariff upon receipt of invoice from CPRR detailing such charges. CPRR may send invoices for handling charges and other fees as soon as the work is performed.

#### **General.**

If any payment required under this Tariff is not paid within 30 days of the date when due, it shall bear interest at the rate of 1.5% per month for each month or portion of a month thereafter during which such overdue amount remains unpaid. **All payments shall be made to CPRR via wire transfer to CPRR designated account or mailed to the designated address on the invoice. Customer shall identify by number the CPRR invoices being paid in the wire transfer comments or on the check stub.** Customer shall be responsible to pay any bank charges incurred by Customer when remitting funds via wire transfer. Acceptance by CPRR of any payment from Customer for any charge or service at any time shall not be deemed a renewal of this Tariff or waiver by CPRR of any default by Customer hereunder. Customer agrees that CPRR will not be obligated to provide any services as provided for in this Tariff when Customer fails to pay invoices when due. In the event Customer disputes any portion of an invoice, Customer shall promptly notify CPRR in writing of the disputed portion and pay the undisputed portion according to the terms of this paragraph. Any disputes not reported within 90 days will be deemed to have been waived.

### **OWNERSHIP OF COMMODITY AND INSURANCE**

#### **Ownership**

The commodities ("Commodity") contained in Customer's railcars shall be and remain at all times the property of Customer or its assignee or consignee and Customer or such assignee or consignee shall bear and pay, in addition to all fees and charges provided for herein, all ad valorem or other taxes related to the commodity. CPRR does not and shall not insure Customer's Commodity or Property, nor property of others. Insurance, if desired by Customer or Customer's contractors, shall be carried by Customer or its contractors at their own expense. If Customer carries any insurance on the Commodities or Customer's property, Customer's insurance carrier shall endorse the policies to waive subrogation against CPRR. Copies of such endorsements shall be furnished to CPRR upon request.



## Insurance

Prior to Customer's personnel entering into the CPRR, Customer shall procure and maintain the following minimum insurance coverage and provide certificates to CPRR demonstrating the required coverage:

- (1) Commercial General Liability with combined single limits of \$1,000,000 each occurrence:
  - (a) endorsed to show CPRR (and any underlying property owner), as requested by CPRR as an Additional insured;
  - (b) provide that Customer's insurers waive all rights of subrogation against CPRR; and
  - (c) include a statement that the insurance coverage shall not be materially changed or cancelled without at least thirty (30) days prior written notice to CPRR.
- (2) Workers' Compensation in compliance with all applicable statutes of appropriate jurisdiction (including Employer's Liability with limits of \$500,000 each accident)
- (3) "All Risk" Property insurance covering all of Customer's personal property located in the Colocation Space:
  - (a) provide that Customer's insurers waive all rights of subrogation against CPRR; and
  - (b) include a statement that the insurance coverage shall not be materially changed or cancelled without at least thirty (30) days prior written notice to CPRR.

To the extent that Customer is self-insured, Customer shall provide evidence of such to CPRR in reasonably satisfactory form. Customer shall require any contractor entering the CPRR on its behalf to procure and maintain the same types, amounts and coverage extensions as required for Customer above.

The amount of any insurance will not operate as a limit to any liability of Customer hereunder.

## **FORCE MAJEURE**

Neither Party shall be liable for contamination, loss of, damage to or destruction of any Commodities or property, or for any delay or nonperformance, when any of the foregoing is caused in whole or in part by any cause not within the reasonable control of said Party, whether now or hereafter existing (a "Force Majeure Event"), including without limitation, any act of God or of a public enemy or terrorist act, or by labor troubles, strikes, lockouts, riots. If either Party's ability to perform its obligations under this Tariff is affected by a Force Majeure Event, such Party claiming such inability shall (i) promptly notify the other Party in writing of such Force Majeure Event and its cause and (ii) promptly supply such available information about the Force Majeure Event and its cause as may be reasonably requested by the other Party. The Party affected by a Force Majeure Event shall exercise its reasonable efforts to eliminate the disabling effects of such Force Majeure Event as soon as and to the extent reasonably practicable (except that such Party shall have the sole discretion to settle any of its own labor disputes, strikes, or to terminate any of its



own lockouts). A Party invoking this provision cannot be responsible for the creation of the Force Majeure Event.

### **INDEMNITY**

- (1) Except as provided in the paragraph entitled "Limitation of Liability" hereof, CPRR shall indemnify and hold Customer harmless from and against all claims, demands, losses, fines, penalties, expenses (including reasonable attorney's fees) costs, suits, and liabilities (collectively "Claims") caused by or resulting from negligent or intentional wrongful acts or omissions on the part of CPRR, its employees, agents, or its contractors in the performance of this Tariff. Customer shall indemnify and hold CPRR harmless from and against all Claims, caused by or resulting from (i) negligent or intentional wrongful acts or omissions on the part of Customer, its employees, agents or contractors (including, but not limited to, any contractors transporting Commodities to or from the CPRR) in the performance of this Tariff, (ii) any breach of this Tariff by Customer; and (iii) to the extent not caused by the negligent or wrongful acts or omissions of CPRR, its employees, agents or contractors, any exposure to the Commodity. In the event that any Claim is caused in whole or in part by the negligent or intentional wrongful acts or omissions of CPRR, its employees, agents or contractors on the one hand, and Customer, its employees, agents or contractors on the other hand, then this obligation to indemnify shall be comparative and each Party shall indemnify the other to the extent that such Party's negligent or intentional wrongful acts or omissions were the cause of such Claim. CPRR shall in no event be liable for Claims arising from loss of or damage to any Commodity or Property or property of Customer except when and to the extent caused by the negligent or intentional wrongful acts or omissions of CPRR or its employees, agents, or contractors (and subject to any other limitations contained herein); provided, however, that CPRR shall not be liable for any such loss or damage to the extent that such Claim is covered by Customer's insurance.
- (2) Notwithstanding anything contained herein to the contrary, to the extent that Customer's Commodities include Commodities owned by Customer's affiliates or customers of Customer or its affiliates, Customer shall indemnify and hold CPRR and its officers, directors, employees and agents harmless from and against all Claims by Customer's affiliates or customers of Customer or its affiliates to the extent that such Claims or any recovery in connection with such Claims would not have been available to Customer hereunder had Customer owned the relevant Commodities.

### **LIMITATION OF LIABILITY**

- (1) Unless specifically set forth elsewhere in this Tariff, CPRR shall in no event be liable for the loss, deterioration, damage from or shrinkage of any commodity in any railcar unless caused by the negligence or willful misconduct of CPRR
- (2) NEITHER PARTY HERETO SHALL IN ANY EVENT BE LIABLE FOR LOST PROFITS OR INDIRECT, SPECIAL INCIDENTAL OR CONSEQUENTIAL OR PUNITIVE DAMAGES NO MATTER HOW SUCH LOSS OR DAMAGE SHALL HAVE OCCURRED INCLUDING, BUT NOT



LIMITED TO, LOSS OR DAMAGE CAUSED BY THE OTHER PARTY HERETO'S NEGLIGENCE, EVEN IF THE OTHER PARTY HERETO HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THERE ARE NO GUARANTEES OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE. THE FEES AND/OR CHARGES SET FORTH HEREIN FOR NONCOMPLIANCE ARE NOT CONSIDERED PENALTIES BUT RATHER REASONABLE CHARGES FOR THE SERVICES THAT CPRR WILL BE REQUIRED TO PERFORM UNDER SUCH CIRCUMSTANCES.

- (3) CPRR shall be responsible for loss or damage to a railcar, or truck, or their respective equipment or cargo only to the extent such loss or damage results from the negligence or willful misconduct of CPRR or its employees or agents (subject to any other limitations contained herein), occurs during the progress of the work and CPRR is notified in writing of the occurrence of such loss or damage prior to such vehicle's departure from the CPRR. To the extent that CPRR can cure such loss or damage without cost to Customer and in a reasonable time period, it shall have the right to do so without additional liability to Customer.

#### **DEFAULT**

The following shall be considered "Events of Default" under this Tariff:

- (a) A Party fails to pay any monies due hereunder on the date when due;
- (b) A Party fails to comply in any material respect with any terms or conditions of this Tariff and such Party has failed to cure such noncompliance within 15 days after receiving notice thereof from the other Party, or where cure of such failure is not possible within such 15 day period, the Party fails to commence cure of such failure within such 15 day period and to diligently and in good faith pursue such cure;
- (c) A Party or any person owning fifty percent or more of the voting securities or interests entitled to vote of either Party (a "Controlling Person") commences a voluntary case as a debtor concerning such Party or such Controlling Person under the United States Code entitled "Bankruptcy" as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code");
- (d) An involuntary case against a Party or Controlling Person is commenced under the Bankruptcy Code and relief is ordered against such Party or Controlling Person or the petition is controverted but is not dismissed within 30 days after the commencement of the case



### **DISPUTE RESOLUTION**

Each Party hereby irrevocably submits to the exclusive jurisdiction of any federal court of competent jurisdiction situated in the United States District Court for the Southern District of Texas, Houston Division, or if such federal court declines to exercise or does not have jurisdiction, in the district court of Harris County, Texas. The Parties expressly and irrevocably submit to the jurisdiction of said courts and irrevocably waive any objection which they may now or hereafter have to the laying of venue of any action, suit or proceeding arising out of or relating to this Agreement brought in such courts, irrevocably waive any claim that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum and further irrevocably waive the right to object, with respect to such claim, action, suit or proceeding brought in any such court, that such court does not have jurisdiction over such Party.