



**TRANSFLO®**

# TRANSFLO

2023 TERMS & CONDITIONS





# TRANSFLO

## TERMS & CONDITIONS / *Effective January 1, 2023*

### TABLE OF CONTENTS

|  |          |
|--|----------|
| <b>I. INTRODUCTION.....</b>                      | <b>4</b> |
| GENERAL RULES (1.1) .....                        | 4        |
| <b>II. TERMINAL OVERVIEW.....</b>                | <b>5</b> |
| FACILITIES (2.1) .....                           | 5        |
| PIPELINE MANAGEMET (2.2).....                    | 5        |
| PRODUCT HANDLING CAPABILITIES (2.3).....         | 5        |
| TERMINAL HOURS OF OPERATION (2.4).....           | 5        |
| HOLIDAY SCHEDULE (2.5).....                      | 5        |
| REQUIRED METHOD OF COMMUNICATION (2.6).....      | 5        |
| CUSTOMER DELIVERY SPECIFICATION (CDS) (2.7)..... | 6        |
| CUSTOMER AGENTS (2.8) .....                      | 6        |
| MOTOR CARRIER ACCESS AGREEMENT (2.9) .....       | 6        |
| LOAD SCHEDULING AND TIMING (2.10) .....          | 6        |
| RAILCAR LOAD CAPACITY (2.11) .....               | 7        |
| TRUCK DETENTION CHARGES (2.12) .....             | 7        |
| RAILCAR INSPECTIONS (2.13) .....                 | 7        |
| TRAILER INSPECTIONS (2.14) .....                 | 7        |
| CUSTOMER REPORTS (2.15) .....                    | 8        |
| WEIGHING OF TRUCKS (2.16) .....                  | 8        |
| RAILCAR AND TRAILER SEALING (2.17) .....         | 8        |
| DISPOSITION OF EQUIPMENT (2.18) .....            | 8        |
| UNBALANCED CARS (2.19) .....                     | 8        |
| NON-ACCIDENT RELEASE TARIFF (2.20) .....         | 8        |
| <b>III. SERVICES.....</b>                        | <b>9</b> |
| PRICE LIST (3.1) .....                           | 9        |
| TRANSFER (3.2) .....                             | 9        |
| TRACK OCCUPANCY (3.3).....                       | 9        |
| OVERTIME (3.4) .....                             | 9        |
| HOLIDAY OVERTIME (3.5) .....                     | 10       |
| EXTRA LABOR (3.6) .....                          | 10       |
| PRODUCT SAMPLING (3.7) .....                     | 10       |
| RAILCAR HEATING (3.8) .....                      | 10       |
| ENERGY SURCHARGE (3.9).....                      | 10       |
| INERT GAS (3.10) .....                           | 10       |
| RECONSIGNMENT (3.11).....                        | 11       |
| TRANSFER OF RETURNED PRODUCT (3.12).....         | 11       |
| PRELOADING AND PARKING (3.13).....               | 11       |
| BLOWBACK (3.14) .....                            | 11       |
| WAREHOUSE SERVICES (3.15) .....                  | 11       |



**IV. SAFETY.....15**

GENERAL SAFETY (4.1) .....15

FIRE PROTECTION (4.2) .....15

SAFETY DATA SHEETS (4.3) .....15

SPEED LIMIT (4.4) .....15

WORKING TRACK PROTECTION (4.5) .....16

VEHICLE PROTECTION (4.6) .....16

PERSONAL ELECTRONIC AND ELECTRICAL DEVICES (4.7).....16

AFTER HOURS TERMINAL ACCESS (4.8) .....16

TERMINAL HOUSEKEEPING (4.9) .....17

SECURITY (4.10) .....17

PLACARDS (4.11).....17

HOT WORK (4.12) .....17

**V. GENERAL TERMS AND CONDITIONS .....18**

LOSS OF PRODUCT (5.1) .....18

LOSS OR DAMAGE LIABILITY CLAIMS (5.2) .....18

FORCE MAJEURE (5.3) .....19

INDEMNIFICATION AND DAMAGES (5.4) .....19

INSURANCE (5.5) .....20

PRODUCT INFORMATION (5.6) .....20

MODIFICATION OF TERMS AND SERVICES (5.7).....21

OTHER TRANSPORTATION DOCUMENTS (5.8) .....21

TERMINATION AND DEFAULT (5.9) .....21

COMPLIANCE WITH CURRENT LAWS AND RULES (5.10) .....21

INTERPRETATION AND VENUE (5.11).....22

ATTORNEY FEES AND COSTS (5.12) .....22

RELATIONSHIP OF PARTIES (5.13).....22

HEADINGS (5.14) .....23

THIRD PARTY BENEFICIARY (5.15) .....23

CREDIT TERMS/ PAYMENT/ BILLING DISPUTES/ FINANCE CHARGES (5.16) .....23

TAXES (5.17) .....24

NOTICES (5.18) .....24

# I. INTRODUCTION

TRANSFLO Terminal Services, Inc. (“TRANSFLO” or the “Company”) operates North America’s leading multi-modal transloading, materials management, and logistics services network. This network allows for the transfer of commodities between railcars, trucks, pipelines, and containers. These Service Terms and Conditions (the “Publication”) describe the terminals managed and services offered by TRANSFLO and set forth the terms and conditions under which it will arrange, provide, accommodate or make available its terminals and services. The terms and conditions in this Publication apply to all transfers and activities occurring in TRANSFLO terminals.

## GENERAL RULES (1.1)

The purpose of this Publication is to provide our Customers with a clear understanding of the rules and supplemental fees associated with our terminal operations. These Terms and Conditions published here apply to all transloading services provided by TRANSFLO and all railcars while in our terminals.

These Terms and Conditions supersede and replace prior versions of the Terms and Conditions effective January 1, 2022. Specific terms and conditions for transloading, including rates, are published in TRANSFLO’s Price List, and contracts. In the event of any conflict between the terms found here and any other TRANSFLO publication or contract, the terms of the other TRANSFLO publication or contract takes precedence.

By arranging for services with TRANSFLO or entering a TRANSFLO terminal, a Customer, or any third party acting under the direction or on behalf of a Customer, authorizes and accepts all the rules, requirements and applicable charges contained within this publication. In addition, any action taken by a Customer, or any other Carrier, that directs a railcar, motor vehicle, or individual to one of our terminals also constitutes acceptance by that Customer or third party of all the rules, requirements and applicable charges established here. This Publication does not constitute an offer of services, but supplements services contracted for by Customers. The terms and conditions in this Publication shall apply to all use of, presence on, access to, and services provided in, TRANSFLO terminals. By using TRANSFLO’s terminals, the Customer, shipper, motor carrier, or other third party using TRANSFLO’s facilities shall be conclusively presumed to have agreed to this Publication’s terms and conditions, even in the absence of an executed agreement between Customer, shipper, motor carrier or other third party

## II. TERMINAL OVERVIEW

### FACILITIES (2.1)

TRANSFLO operates a network of specialized terminals that allows Customers' transfer of product between railcars, trucks, pipelines, and containers. The terminals are generally equipped with on-site management, offices, truck scales, paving, lighting, fencing and multiple types of transfer equipment. TRANSFLO is prepared to tailor its services to meet your requirements. Locations and more detailed descriptions of service offerings can be found on TRANSFLO's website: <http://www.transflo.net>.

### PIPELINE MANAGEMENT (2.2)

Customers are responsible for managing the pipeline of shipments through each Terminal. In the event that a Customer has sent too many railcars to a Terminal and/or has fallen behind in transloading and emptying railcars at any particular Terminal, TRANSFLO may reject a railcar consigned to such Terminal. TRANSFLO will use commercially reasonable efforts to warn Customers of the excess railcar dwell before rejecting a railcar.

TRANSFLO shall have no liability for any costs or charges incurred by a Customer when a railcar is rejected due to excess railcar dwell at a Terminal, except to the extent caused by the gross negligence of TRANSFLO.

### PRODUCT HANDLING CAPABILITIES (2.3)

TRANSFLO can handle a variety of products. Please contact your TRANSFLO Sales Manager to determine whether a specific terminal can handle your product transloading needs. Prior to shipping to a TRANSFLO terminal, all products must be approved by TRANSFLO to ensure safe transloading and to meet your quality requirements. Each terminal is equipped to handle a specific set of commodities. TRANSFLO

reserves the right to refuse to handle any product at any or all locations at its sole discretion. For more information on obtaining product approval, please see the "Become a Customer" section at <http://www.transflo.net>.

### TERMINAL HOURS OF OPERATION (2.4)

Terminal hours are generally Monday through Friday, 6:00 a.m. to 6:00 p.m. local time zone. For the hours of operation of a specific terminal please contact your TRANSFLO Sales Manager.

### HOLIDAY SCHEDULE (2.5)

TRANSFLO terminals observe the following holiday schedule:

| HOLIDAY SCHEDULE       |                        |
|------------------------|------------------------|
| New Year's Day         | Thanksgiving           |
| Martin Luther King Day | Day after Thanksgiving |
| President's Day        | Christmas Eve          |
| Memorial Day           | Christmas Day          |
| Independence Day       | New Year's Eve         |
| Labor Day              |                        |

Terminals in Canada will observe the following holiday schedule:

- New Year's Day
- Queen Victoria's Birthday
- St Jean's Holiday
- Canada Day
- Labour Day
- Canadian Thanksgiving
- Christmas Day
- Boxing Day

### REQUIRED METHOD OF COMMUNICATION (2.6)

TRANSFLO requires all communications regarding matters such as railcar movements, order requests etc., be communicated via EDI,

TRANSFLO'S Customer E-Tool, or email.

If a Customer utilizes a different communications system, additional charges may apply for data entry services.

Customer software and hardware data and communication systems, including both third party and proprietary systems, are not supported at TRANSFLO terminals. Should a Customer desire support of such a system, TRANSFLO Logistics personnel will, at the Customer's request and expense, perform the necessary research to determine the requirements and feasibility of supporting such system(s). Only with the approval of TRANSFLO's Marketing and Logistics personnel and at Customer's expense, subject to mutual agreement regarding the associated terms and charges, will TRANSFLO authorize the installation of equipment and provide any needed additional personnel and systems support.

## CUSTOMER DELIVERY SPECIFICATION (CDS) (2.7)

A Customer Delivery Specification (CDS) is required to be completed setting forth customer product service and handling requirements. A CDS must be mutually agreed upon prior to commencement of any transloading activity. Customer is responsible for maintaining the accuracy of the CDS.

## CUSTOMER AGENTS (2.8)

Any third party performing any obligation of Customer under this Publication, including Motor Carriers, is considered to be Customer's agent. Customer acknowledges and agrees that it shall be responsible for any charges or damages incurred or caused by any of its agents.

## MOTOR CARRIER ACCESS AGREEMENT (2.9)

Each motor carrier, at the corporate level, must obtain an Access Agreement form from [www.transflo.net](http://www.transflo.net) > Resources > Motor Carriers and shall provide a signed copy thereof and proof of insurance to [transfloaccess@transflo.net](mailto:transfloaccess@transflo.net), prior to accessing a TRANSFLO terminal. Motor carriers using the terminals shall abide by the provisions of the Motor Carrier Operating Provisions, and any additional documents, local or otherwise, adopted by TRANSFLO.

All motor carriers entering TRANSFLO's terminals must be registered in the Intermodal Driver Database (IDD) and must maintain each individual driver in the IDD that is actively doing business in any TRANSFLO terminal.

## LOAD SCHEDULING AND TIMING (2.10)

Customers are required to request a scheduled time for their transloading at least 24 hours in advance. TRANSFLO will use commercially reasonable efforts to promptly respond, accepting the requested transload time or proposing an alternative time. Transload times requested less than 24 hours in advance will be accepted when practical, but may be subject to additional charges. Motor carrier delays or cancellations should be promptly communicated to TRANSFLO. If your motor carrier fails to arrive within fifteen (15) minutes of the scheduled transload time, additional charges may apply, in addition to overtime charges as provided by TRANSFLO's Price List.

If a scheduled load needs to be cancelled, the cancellation must be completed before 12p.m. local terminal time on the preceding business day. In the instance that a load is cancelled after 12p.m. local terminal time on the preceding business day before the scheduled load time, Customer may be billed

a load cancellation charge in addition to overtime charges as provided by TRANSFLO's Price List.

If the motor carrier is on time, TRANSFLO will attempt to complete transfers within two (2) hours from the scheduled transfer time; if the motor carrier is late, TRANSFLO will attempt to complete the transfers within two (2) hours from actual commencement of the transfer.

A transfer shall be measured from the time when a truck weighs in to a terminal to the time it weighs out of a terminal. If the motor carrier arrives late, overtime charges may apply.

TRANSFLO will attempt to accommodate early or late motor carrier arrivals if resources are available.

### RAILCAR LOAD CAPACITY (2.11)

TRANSFLO's standard allowance for the loading of railcars is no more than 95% of the listed volume of the railcar.

### TRUCK DETENTION CHARGES (2.12)

TRANSFLO is not responsible for truck detention charges on scheduled loads unless they are incurred as a result of TRANSFLO's gross negligence. An authorized TRANSFLO representative must provide acknowledgement in writing for TRANSFLO to acknowledge the claim. The Customer will be responsible for all other overtime and truck detention charges.

TRANSFLO is not responsible for any costs incurred by Customer due to equipment failures at the TRANSFLO terminals. TRANSFLO accepts no responsibility for truck detention charges on unscheduled loads regardless of cause. All truck detention claims must be submitted to TRANSFLO within 60 days of the scheduled load date to the TRANSFLO address listed in the Notice section of this Publication (5.18).

### RAILCAR INSPECTIONS (2.13)

TRANSFLO will use commercially reasonable efforts to visually inspect railcars within twenty-four (24) hours of Actual Placement for all transfers or on the first operating day following Actual Placement in the terminal (excluding weekends and holidays), whichever is later, and also before departure from the terminal.

Inspections will include or look for:

- Verification that Customer seals are intact, if applicable
- Visible leaks in railcars
- Visible damage to railcars
- Broken safety devices pertaining to the transfer process
- Appropriate placarding

Customer will be notified of any deficiencies and will be responsible for the cost of needed repairs and cleanup or remediation, if any.

### TRAILER INSPECTIONS (2.14)

Motor carriers are required to produce a washout slip before TRANSFLO commences the transfer of product to a trailer, if a washout slip is required by the Customer per the Customer Delivery Specification (CDS). TRANSFLO will make a reasonable effort to visually inspect a trailer before a transfer to determine if it appears to be clean, dry, odor free, and suitable for service. Unique Customer inspection requirements will be applied only after written agreement between TRANSFLO and Customer.

TRANSFLO is not responsible for ensuring that a trailer is free of materials that could contaminate products.

TRANSFLO will use commercially reasonable efforts to notify Customers of any observed material deficiencies, and Customer will be responsible for the repair or removal of equipment as applicable.

### CUSTOMER REPORTS (2.15)

TRANSFLO'S Customer E-Tool, a secure, internet-based tool, offers Customers the ability to manage their product activity at the TRANSFLO terminal level, thus providing the means to submit shipment notices, schedule product transfers, oversee product inventory, evaluate railcar aging, and access a host of additional relevant information.

Should specific information not be available through the TRANSFLO'S Customer E-Tool, TRANSFLO will, at the Customer's request, evaluate its ability to provide such information and the cost of doing so. If TRANSFLO agrees to provide the information, additional charges may apply.

To acquire a user ID and password allowing access to TRANSFLO'S Customer E-Tool, submit user information online at [www.transflo.net](http://www.transflo.net), or contact your TRANSFLO Sales Manager.

### WEIGHING OF TRUCKS (2.16)

Where truck scales are certified for legal trade and available, TRANSFLO will obtain one complete set of truck weights (inbound and outbound) for all truckloads in conjunction with a corresponding transfer.

### RAILCAR AND TRAILER SEALING (2.17)

TRANSFLO will provide and utilize 8.75" flat metal seals, 12" heavy duty pull tight (HTP) seals, or 16" cable seals depending on business needs. Customers must, at their cost, provide seals unique to their requirements.

TRANSFLO will follow sealing procedures for full and empty railcars, ocean containers, storage containers, and/or bulk trucks as mutually agreed to by Customer and TRANSFLO and documented in the CDS.

### DISPOSITION OF EQUIPMENT (2.18)

TRANSFLO reserves the right to reposition TRANSFLO-owned equipment at any time and at its discretion. All customer-owned equipment is covered by the equipment license agreement.

### UNBALANCED CARS (2.19)

When a railcar is loaded with less than 5,000 lbs., regardless of the pocket in which the material is held, there is no need for balancing the load. When a railcar is loaded with 5,000 lbs. or more, the load must be evenly distributed between the two (2) center or end compartments. Balancing of unbalanced loads will need to be facilitated by TRANSFLO personnel. The charge for this service is \$60/hour/person. TRANSFLO will perform all blowbacks and rebalancing on top of cars to avoid drivers working at height.

### NON-ACCIDENT RELEASE TARIFF (2.20)

When a non-accidental release of a non-hazardous product occurs through no fault of TRANSFLO, TRANSFLO acts promptly to address the situation and may incur environmental or other clean-up costs, including service disruptions and expenses from moving affected equipment to a secure location. TRANSFLO may charge a customer for any and all costs incurred during the response, clean-up, remediation, and repositioning of equipment resulting from a non-accidental release. The minimum charge for responding to a non-accidental release, is currently \$5,000.00 per event.



## III. SERVICES

### PRICE LIST (3.1)

Standard rates for TRANSFLO's transfer and other services can be found in the TRANSFLO Price List. Contact your TRANSFLO Sales Manager for a copy of the most up to date price list.

### TRANSFER (3.2)

The movement of one specific product between a railcar, a truck, a pipeline, or a container, whether from, to, or between any two thereof, shall be considered a "transfer" for the purposes of this Publication, irrespective of the amount on the transfer order submitted.

The charge for each transfer is based on a minimum weight of 40,000 pounds of product. Any transfer under the minimum weight will be billed as though the minimum weight were transferred at the relevant transfer rate.

### TRACK OCCUPANCY (3.3)

As each railcar is Constructively Placed (defined below) at a terminal, a prescribed number of "free days" is allowed with respect to that railcar before assessment by TRANSFLO of Track Occupancy charges commences. The Track Occupancy charges vary depending upon the car type: private and railroad-owned or leased. If a railcar is constructively placed on a Friday, Saturday or Sunday, the calculation of free days and Track Occupancy charges begins the first Monday following the date on which the railcar is Constructively Placed.

- Actual Placement is defined as "physically placing a railcar for loading or unloading at a place in the terminal designated by, or usually used for the shipper or consignee's product."
- Constructive Placement of a railcar at a TRANSFLO terminal occurs when a railcar has arrived at a railroad serving yard and is available to be switched into a TRANSFLO terminal.

Track Occupancy charges cease on the date of the final transfer. In the event no transfers occur, track occupancy charges cease on the day the railcar is released to CSXT or applicable railroad.

TRANSFLO bills Track Occupancy charges by individual railcar on a per day basis, including weekdays, weekends and holidays, except as stated above.

Some environmentally regulated products including, but not limited to, hazardous and non-hazardous waste are subject to a limited number of days that railcars may be placed at a TRANSFLO terminal.

TRANSFLO will assist in managing inventory levels at the terminal, but does not guarantee "first in, first out" railcar ordering or transferring of product(s).

### OVERTIME (3.4)

Transfers or any pickup after normal working hours, or on an exception basis, require prior approval of TRANSFLO and will be subject to overtime charges. Customers must authorize TRANSFLO's overtime charges in advance and in writing.

Overtime charges are calculated on a per minute basis and are determined as follows:

- An overtime charge per person will be assessed for work requested before or after regular working hours. This includes set-up and breakdown time before and after the actual transfer.
- Overtime required after normal working hours, as a continuation of a service commenced during normal working hours, will be based on actual time.
- Overtime required with respect to service commenced outside of normal working hours, including but not limited to weekends and holidays, will be billed based on a four-hour per person minimum and then on a per minute basis.

TRANSFLO procedures require at least two (2) TRANSFLO workers to be present during the transfer process.

### HOLIDAY OVERTIME (3.5)

Transfers or any pickup on a TRANSFLO designated holiday will require prior approval of TRANSFLO and will be subject to holiday overtime charges. Customers must authorize TRANSFLO's holiday overtime charges in advance and in writing.

### EXTRA LABOR (3.6)

TRANSFLO makes commercially reasonable efforts to empty each railcar using generally accepted unloading procedures. When a transfer cannot be completed or a railcar cannot be completely unloaded by generally accepted unloading methods due to the characteristics of the product or railcar, TRANSFLO will attempt to empty the railcar using its own labor force and TRANSFLO's standard extra labor charges will apply. If TRANSFLO cannot complete the unloading, Customer will be required to

arrange for an approved third party to empty the railcar.

### PRODUCT SAMPLING (3.7)

TRANSFLO will follow sampling procedures as mutually agreed to by Customer and TRANSFLO and documented in the Customer Delivery Specification (CDS) and customers will be charged applicable charges.

### RAILCAR HEATING (3.8)

At certain terminals TRANSFLO has the ability to heat product, using hot water or steam heating on a per hour, per car charge basis.

### ENERGY SURCHARGE (3.9)

An "Energy Surcharge" shall be applied on all shipments moving through any terminal that require heat application services. The Energy Surcharge is based on the "U.S. No. 2 Diesel Retail Sales by All Sellers."

(Source: <https://www.eia.gov/petroleum/gasdiesel/>)

The energy surcharge rate will change the first day of each month and will be based upon the prior Monday's posting of the weekly "U.S. No. 2 Diesel Retail Sales by All Sellers." Updates regarding the application of or changes to this surcharge will be posted on the TRANSFLO website.

To access further information and updates regarding TRANSFLO's Energy Surcharge, data will be available via [www.transflo.net](http://www.transflo.net). If you have any questions, please contact your TRANSFLO Sales Manager.

### INERT GAS (3.10)

Inert gas will be applied as requested by TRANSFLO's Customers and subject to applicable charges. Customers are required to supply the inert gas for the procedure and associated equipment.

### RECONSIGNMENT (3.11)

TRANSFLO may reassign a railcar if a Customer instructs TRANSFLO to reship the railcar without a transfer of product occurring. Customer will be charged the Price List rate for reassignment.

### TRANSFER OF RETURNED PRODUCT (3.12)

TRANSFLO will transfer returned product back into the original type of vehicle for a charge equal to the original transfer charge. Customer is responsible for all costs of returning and transferring the returned product.

### PRELOADING AND PARKING (3.13)

The parking of vehicles/trailers within a TRANSFLO terminal and/or in preparation for the act of preloading a trailer within a TRANSFLO terminal may be permitted occasionally at the request of Customer and the discretion of TRANSFLO. Such preloading and parking will be at rates and within areas established by TRANSFLO for each terminal, and subject to the Terms and Conditions in this Publication and such others as TRANSFLO may establish regarding preloading and parking at TRANSFLO terminals.

Notwithstanding any language to the contrary in this Publication, TRANSFLO, its affiliates and contractors, and their respective directors, officers, employees and agents (the "Relieved Parties") shall not have, and are hereby relieved, released and indemnified by the Customer, motor carrier and customer agents, of and from, any Damages, liability or responsibility whatsoever for loss or damage to, or theft of, vehicles or their contents while preloaded or parked at a terminal, except to the extent caused by the intentional misconduct of a Relieved Party and

any and all such claims are hereby completely and forever time-barred and waived.

It is prohibited for motor carriers to have their personal vehicles on TRANSFLO property for any period of time. The only exception is for motor carrier provided shuttle drivers that work at a TRANSFLO terminal on a full-time basis. Motor carriers are not allowed to park trailers on TRANSFLO's property for business not related to TRANSFLO. This applies to any motor carrier that parks a trailer at the terminal for any time period that was not loaded at a TRANSFLO terminal or is not going to be loaded at a TRANSFLO terminal.

### BLOWBACK (3.14)

A blow-back happens when a motor carrier driver returns a product to a railcar – the product is blown back into the railcar. Before returning product to a railcar on TRANSFLO property, a driver must request and complete a Product Blow-Back Approval Form and receive express permission from TRANSFLO terminal personnel. Prior to connecting to the railcar or starting the process, the Motor Carriers' driver must be re-verified by TRANSFLO at the railcar, and confirm that the blow-back is being performed into the correct car.

### WAREHOUSE SERVICES (3.15)

The terms and conditions in this section shall apply to all use of, presence on, access to, and services provided in, TRANSFLO warehouses.

- a. Any goods accepted by TRANSFLO at the Warehouse shall constitute "Goods" under this Publication.
- b. Industry agrees that all Goods shipped to the Warehouse shall identify TRANSFLO on the bill of lading or other contract of carriage as in care of

TRANSFLO, and shall not identify TRANSFLO as the consignee. Furthermore, TRANSFLO shall have the right to refuse such Goods and shall not be liable for any loss, misconsignment, or damage of any nature to, or related to, such Goods. Whether TRANSFLO accepts or refuses Goods shipped in violation of this paragraph, Industry agrees to indemnify and hold TRANSFLO harmless from all claims for transportation, storage, handling and other charges relating to such Goods, including undercharges, rail demurrage, truck/intermodal detention and other charges of any nature whatsoever.

c. All Goods shall be delivered at the Warehouse properly marked and packaged for storage and handling. The Industry shall furnish at or prior to such delivery, a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other services desired.

d. Instructions to transfer Goods on the books of TRANSFLO are not effective until delivered to and accepted by TRANSFLO, and all charges up to the time transfer is made are chargeable to the Industry. If a transfer involves rehandling the Goods, such will be subject to a charge. When Goods in storage are transferred from one party to another through issuance of a new warehouse receipt, a new storage date is established on the date of transfer.

e. TRANSFLO may, upon written notice of not less than 30 days to the Industry and any other person known by TRANSFLO to claim an interest in the Goods, require the removal of any Goods. Such notice shall be given to the last known place of business of the person to be notified. If Goods are not removed before the end of the notice period, TRANSFLO may sell them in accordance with applicable law.

i. If TRANSFLO in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of TRANSFLO's lien

before the end of the 30-day notice period referred to above, TRANSFLO may specify in the notification any reasonable shorter time for removal of the Goods and if the Goods are not removed, may sell them at public sale held one week after a single advertisement or posting as provided by law.

ii. If as a result of a quality or condition of the Goods of which TRANSFLO had no notice at the time of deposit the Goods are a hazard to other property or to the Warehouse or to persons, TRANSFLO may sell the Goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the Goods. If TRANSFLO after a reasonable effort is unable to sell the Goods it may dispose of them in any lawful manner and shall incur no liability by reason of such disposition. Pending such disposition, sale or return of the Goods, TRANSFLO may remove the Goods from the Warehouse and shall incur no liability by reason of such removal.

f. The handling charge covers the ordinary labor involved in receiving Goods at warehouse door, placing Goods in storage, and returning Goods to warehouse door. Handling charges are due and payable on receipt of Goods. Unless otherwise agreed in writing, labor for unloading and loading Goods will be subject to a charge. Additional expenses incurred by TRANSFLO in receiving and handling damaged Goods, and additional expense in unloading from or loading into cars or other vehicles not at warehouse door will be charged to the Industry. When Goods are ordered out in quantities less than in which received, TRANSFLO may make an additional charge for each order or each item of an order. TRANSFLO shall not be liable for any demurrage or detention, any delays in unloading inbound cars, trailers or other containers, or any delays in obtaining and loading cars, trailers or other containers for outbound shipment.



i. TRANSFLO labor required for services other than ordinary handling and storage will be charged to Industry. Special services requested by Industry including but not limited to compiling of special stock statements; reporting marked weights, serial numbers or other data from packages; physical check of Goods; and handling transit billing will be subject to a charge. Dunnage, bracing, packing materials or other special supplies, may be provided for Industry at a charge in addition to TRANSFLO's cost. By prior arrangement, Goods may be received or delivered during other than usual business hours, subject to a charge.

g. TRANSFLO shall not be liable for any loss or damage to Goods tendered, stored or handled however caused unless such loss or damage resulted from the failure by TRANSFLO to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances and TRANSFLO is not liable for damages which could not have been avoided by the exercise of such care. Goods are not insured by TRANSFLO against loss or damage however caused. Industry declares that damages are limited to \$40 per hundred pounds. Where loss or damage occurs to tendered, stored or handled Goods, for which TRANSFLO is not liable, Industry shall be responsible for the cost of removing and disposing of such Goods and the cost of any environmental cleanup and site remediation resulting from the loss or damage to the Goods.

h. Claims by Industry and all other persons must be presented in writing to TRANSFLO within a reasonable time, and in no event any later than the earlier of: (i) 60 days after delivery of the Goods by TRANSFLO or (ii) 60 days after Industry is notified by TRANSFLO that loss or damage to part or all of the Goods has occurred. No lawsuit or other action may be maintained by Industry or others against TRANSFLO for loss or damage to the Goods unless timely written claim has been given as provided in paragraph (a) of this section and unless such lawsuit

or other action is commenced by no later than the earlier of: (i) nine months after date of delivery by TRANSFLO or (ii) nine months after Industry is notified that loss or damage to part or all of the Goods has occurred. When Goods have not been delivered, notice may be given of known loss or damage to the Goods by mailing of a letter via certified mail or overnight delivery to Industry. Time limitations for presentation of claim in writing and maintaining of action after notice begin on the date of mailing of such notice by TRANSFLO.

i. TRANSFLO shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind.

j. Industry represents and warrants that Industry is lawfully possessed of the Goods and has the right and authority to store them with TRANSFLO. Industry agrees to indemnify and hold harmless TRANSFLO from all loss, cost and expense (including reasonable attorneys' fees) which TRANSFLO pays or incurs as a result of any dispute or litigation, whether instituted by TRANSFLO or others, respecting Industry's right, title or interest in the Goods. Such amounts shall be charges in relation to the Goods and subject to TRANSFLO's lien.

k. TRANSFLO shall have a general warehouse lien for all lawful charges for storage and preservation of the Goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing cooperating, and other charges and expenses in relation to such Goods, and for the balance on any other accounts that may be due. TRANSFLO further claims a general warehouse lien for all such charges, advances and expenses with respect to any other Goods stored by Industry in any other facility owned or operated by TRANSFLO. In order to protect its lien, TRANSFLO reserves the right to require advance payment of all charges prior to shipment of Goods.

I. Industry will provide TRANSFLO with information concerning the Goods which is accurate, complete and sufficient to allow TRANSFLO to comply with all laws and regulations concerning the storage, handling and transporting of the Goods. Industry will indemnify and hold WAREHOUSE harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which TRANSFLO pays or incurs as a result of Industry failing to fully discharge this obligation.



## IV. SAFETY

### GENERAL SAFETY (4.1)

Every person shall exercise a high level of caution at all times while within a terminal. Every person shall take all steps necessary to remain informed of conditions and activities at terminals when on the terminal property. Every person shall attend safety training programs to promote the recognition of and appropriate response to terminal risks upon the reasonable request of TRANSFLO.

Before commencing activities at a terminal, unless already provided in advance by TRANSFLO, all non-terminal personnel shall request that TRANSFLO provide a safety briefing summarizing the safety and emergency requirements in effect at the terminal. Terminal personnel will place a TRANSFLO-provided safety sign on the truck's windshield during each active transfer. Safety sign may only be removed by terminal personnel.

Unless in a designated "safe area," such as the terminal office or break room, all personnel are required to wear hard hats, closed toe shoes with hard soles, safety glasses with side shields, and full length pants at all times. Safety shoes are required for any active participant in the transfer process or within 25 feet of an active transfer. Any person within 25 feet of an active transfer must wear the Personal Protective Equipment ("PPE") required for that transfer. If not, that person must remain at a distance greater than 25 feet from the active transfer. Each person is personally responsible for supplying their own PPE.

### FIRE PROTECTION (4.2)

Portable fire extinguishers are maintained throughout TRANSFLO terminals in accordance with OSHA regulations. The fire extinguishers are identified throughout TRANSFLO terminals in accordance with OSHA regulations. The fire exits are identified with signs and/or red stripes above extinguishers. Each person on the premises shall familiarize themselves with the extinguisher locations closest to their work area before commencing their activities.

Certain activities are restricted on TRANSFLO property, including but not limited to smoking and/or cell phone usage, except in designated areas.

### SAFETY DATA SHEETS (4.3)

As required by OSHA, TRANSFLO maintains a book of Safety Data Sheets (SDSs) for all hazardous chemicals present in the terminal. This book is available in the terminal office for review by any individual rightfully entering the Terminal. TRANSFLO must be notified of any product formulation changes and supplied the most current SDS.

### SPEED LIMIT (4.4)

All vehicles shall observe a speed limit of 10 miles per hour while in a terminal unless otherwise posted.

### WORKING TRACK PROTECTION (4.5)

Any individual conducting self-loading transfers in TRANSFLO terminals, shall ensure that the track on which they will be working has been protected by one

of the following means in accordance with 49 CFR 174.67 (a):

- Switch Lockout and Blue Flag: Switch(es) providing access to the working track shall be lined against movement to that track and locked with an effective locking device (i.e., vandal-resistant, tamper-resistant, and capable of being locked and unlocked by workers within the TRANSFLO terminal). In addition, a DOT-approved blue flag shall be installed at or near the switch or switches providing access to the track.

OR

- Derail Protection and Blue Flag: Derail device restricting access to the track, positioned no less than 50 feet from the end of the last railcar. The derail device must be locked in a derailing position with an effective locking device. In addition, a DOT-approved blue flag shall be installed at or near the switch or switches providing access to the track.

When a blue flag is placed during hours of darkness, a flashing blue light must be positioned on the flag device.

#### VEHICLE PROTECTION (4.6)

Each driver is responsible for ensuring the safety of any vehicle brought onto TRANSFLO's property. TRANSFLO has the right to reject access to the terminal if a vehicle is leaking or require the motor carrier to fix the leaks before coming on property.

#### PERSONAL ELECTRONIC AND ELECTRICAL DEVICES (4.7)

The usage of personal electronic or electrical devices that are not essential for the health or safety of the user or persons in the immediate vicinity of the user is prohibited at all TRANSFLO terminals, with the following exceptions:

- While inside the terminal office, break room, other terminal building, or
- Within a designated safe zone not within 25 feet of nearest rail.

Motor carriers are prohibited from using personal electronic and electrical devices, including headsets while in the terminal and during transfer process.

#### AFTER-HOURS TERMINAL ACCESS (4.8)

During normal terminal business hours, security gates will typically be left in an open position providing easy access to TRANSFLO terminals. After-hours access to TRANSFLO terminals is not permitted except in limited circumstances with TRANSFLO's prior approval. Written permission for after-hours loading must be obtained from TRANSFLO Operations Management in advance of the initial transfer taking place outside of standard hours.

Prior arrangements must be made with the terminal manager for the following:

- Use of truck scales by motor carriers accessing a TRANSFLO terminal after hours.
- After-hours terminal lighting.
- Terminal personnel must be present for all after-hours pickups or loading of hazardous products and other sensitive commodities as designated by TRANSFLO HS&E personnel.

The terminal manager and Customer representatives shall determine appropriate emergency notification procedures prior to the start of any after-hours business.



## TERMINAL HOUSEKEEPING (4.9)

Housekeeping is an important part of maintaining a safe work environment. Customers, motor carriers and customer agents are required to assist in maintaining a clean, debris-free terminal by:

- Keeping loading areas free of debris and trash by using designated trash receptacles at the terminal;
- Disposing of all trailer and railcar seals in trash receptacles;
- Parking equipment only where designated by the terminal manager;
- Placing all equipment at an appropriate distance from the centerline of each track, in no event less than 9 feet from the centerline when not in use, to provide necessary clearance for rail operations. This is of particular importance as switching can occur at any time;
- For all value transfers, motor carriers and customer agents are responsible for immediately notifying TRANSFLO of any spill and for sweeping, vacuuming and properly disposing of any spilled product immediately following a transfer.

## SECURITY (4.10)

Customer will allow, and will cause its employees and agents to allow, a search of personal or other vehicles prior to exiting terminals. No photography is allowed within a terminal without the prior approval of TRANSFLO. TRANSFLO shall have no responsibility to Customer, its employees or agents for articles lost or stolen while in a terminal.

## PLACARDS (4.11)

Customer is required to provide all railcar or truck trailer placards for shipments involving hazardous products in accordance with 49 CFR 172 Subpart E.

## HOT WORK (4.12)

No one on the terminal may conduct cutting/ welding operations without receiving a written work permit from the terminal manager prior to commencing work.

## V. GENERAL TERMS AND CONDITIONS

### LOSS OF PRODUCT (5.1)

If more than three (3) railcars of the same product are received at a single terminal in any given calendar year and Customer determines there is a product loss from the railcars at a terminal in excess of the applicable shortage allowance for which TRANSFLO may be liable during such calendar year (excluding returned material), Customer shall notify TRANSFLO in writing of the alleged loss within sixty (60) days following the end of such calendar year (“Annual Loss of Product Claim”). A one-percent (1%) apparent loss of product, or two-percent (2%) with respect to compressed gases (calculated on an annual calendar year cumulative per shipper per TRANSFLO terminal basis) (the “shortage allowance”), shall be allowed and considered a standard operating loss not recoverable from TRANSFLO. Loss of product claims shall be further subject to the limitations set forth in the “Loss or Damage Liability Claims” section of this Publication (5.2).

TRANSFLO utilizes a calibrated truck scale and/ or meter to measure the contents of each truck containing the shipper’s product. If, in the course of transferring product, there appears to be a material loss of product, TRANSFLO will review the following with the Customer:

- Railcar loading process at origin, to include method used to calculate the amount of product transferred into the railcar;
- Process to calibrate measuring equipment (e.g., a belt scale or railcar scale) at origin;
- Securing of outlets (e.g., gravity gates) on the railcars after transfer is complete;
- Evidence of leaking railcars;

- The transfer process and inventory management process at the TRANSFLO terminal; and
- Data source(s), information and calculation accuracy for railcars and measurements in question.

These areas and any additional factors will be considered in investigating the cause of the apparent loss of product. Customer shall immediately notify TRANSFLO upon discovery of any material loss of product. The objective is to understand and address the apparent product loss as quickly as possible when a negative trend is indicated. TRANSFLO reserves the right to discontinue transfer activity if the root cause is not identified and/or corrective action proves ineffective. Failure to inform TRANSFLO of product loss within five (5) business days of discovery constitutes a waiver of claims for subsequent product loss.

### LOSS OR DAMAGE LIABILITY CLAIMS (5.2)

TRANSFLO’s liability for loss or damage to property or delay in transfer or shipment shall be that of a warehouseman only, as it may be further limited by the terms of this Publication. TRANSFLO shall have no responsibility or liability for

- i. loss or damage to product in, or transferred to or from, a railcar made the subject of, in whole or in part, self-loading operations
- ii. loss of product if less than three (3) railcars from a Customer are received at the same TRANSFLO terminal during any calendar year;

- iii. loss of product to the extent such loss or inability to fully unload is due to the inherent nature or condition of the product; and
- iv. losses of product equal to or less than the applicable shortage allowance, as described in the "Loss of Product" section of this Publication.

Further, TRANSFLO shall not be liable for any losses or damages caused to the property or product of Customer caused by Customer, its motor carriers, contractors or agents, or any third party outside of TRANSFLO's control, and TRANSFLO shall in no event be liable for any more than its proportional share, on a comparative basis, of any loss, damage or delay, and its liability shall, in any event, be limited to the manufacturing cost of the product, plus freight costs, less salvage value. With the exception of loss of product claims under the "Loss of Product" (5.1) section of this Publication, which must be reported in writing to TRANSFLO upon discovery and with respect to Annual Loss of Product Claims, within sixty (60) days of calendar year- end, as described in the "Loss of Product" section of this document, all claims for loss or damage, including, without limitation, to products and equipment, must be in writing and received by TRANSFLO within sixty (60) days after loss or damage is identified. Any claims not made within the applicable claims notification period identified above are hereby completely and forever time-barred and waived. Only one claim for loss, damage and/or injury may be filed for each railcar handled hereunder.

### FORCE MAJEURE (5.3)

TRANSFLO shall be excused from fulfilling its obligations under this Publication and any contract related thereto, and shall not be liable for any loss, damage or delay occurring due to conditions beyond its reasonable control, including, but not limited to,

fires or explosions; acts of God, including, but not limited to, floods, hurricanes, tornadoes, earthquakes, unusually severe weather, and natural disasters; wars; insurrections; derailments; actual or threatened acts of terrorists or the public enemy; acts of governmental authority; actual or threatened labor action, lockouts or strikes; embargoes; quarantines; acts or defaults of the shipper, Customer, owner, transporter or any other party; or inherent defect, or perishable nature of the product.

### INDEMNIFICATION AND DAMAGES (5.4)

Customer shall release, indemnify and hold harmless TRANSFLO, its subsidiaries and affiliates; and CSX Corporation, and its subsidiaries and affiliates (the "TRANSFLO Parties") from and against any and all Damages arising out of or relating to Customer's, its motor carriers', its motor carriers' equipment, its contractors', its agents' or their respective employees', contractors', or agents' (i) negligence, intentional misconduct, or failure to comply with one or more terms or conditions of this Publication or any associated agreements; or (ii) presence at or use of TRANSFLO's terminals, except to the extent caused on a comparative fault basis by the negligence or intentional misconduct of the TRANSFLO Parties. This indemnification obligation shall survive the completion of the last transfer and release of the associated railcar and the termination, expiration, or non-renewal of any agreement related thereto.

TRANSFLO shall, except to the extent otherwise provided or limited in this Publication, release, indemnify and hold harmless Customer and its directors, officers and employees from and against any and all Damages to the extent caused on a comparative fault basis by the negligence or intentional misconduct of TRANSFLO or its contractors or their respective employees or agents. This indemnification obligation shall survive the completion of the last transfer and release of the

associated railcar and the termination, expiration, or non-renewal of any agreement related thereto.

To the extent a spill or discharge is caused by the negligence, intentional misconduct or failure to comply with the terms or conditions of this Publication or any other agreements with Customer on the part of TRANSFLO, its contractors, or their respective employees, contractors or agents, the clean-up and remediation of the spill or discharge shall, as between TRANSFLO and Customer, and except to the extent otherwise provided or limited in this Publication, be the responsibility of, and the costs thereof shall be borne by, TRANSFLO.

To the extent a spill or discharge is caused by the negligence, intentional misconduct or failure to comply with the terms or conditions of this Publication or any other agreements with TRANSFLO on the part of Customer, its motor carriers, its other contractors or their respective employees, contractors or agents, the clean-up and remediation of the release shall, as between TRANSFLO and Customer, be the responsibility of, and the costs thereof shall be borne by, Customer. In that event, however, TRANSFLO is authorized by Customer, at Customer's expense, to commence and carry out any and all containment or cleanup operations deemed reasonable and appropriate by TRANSFLO or required by governmental agency, law or regulation. Customer shall immediately notify TRANSFLO of any spill, discharge or other release, including, without limitation, any related injuries or property damage.

With the exception of indemnification obligations in this Publication with respect to third party Damages, neither TRANSFLO nor Customer nor their respective affiliates, contractors, agents, directors, officers, employees, successors and assigns shall have any liability to any other party under this Publication or any related agreements they may have with one another, regardless of the circumstances, whether related to loss or damage to product,

personal injury to or death of any persons, property damage or otherwise, for indirect, special, consequential, or punitive damages, whether known, contemplated, foreseeable or unforeseeable.

## INSURANCE (5.5)

TRANSFLO or its contractors have procured and will maintain: (a) Employer's Liability Insurance in the amount of at least \$1,000,000; (b) Worker's Compensation Insurance in statutory amounts; (c) Commercial General Liability Insurance for bodily injury and tangible property damage with a minimum limit of at least \$5,000,000 for each occurrence and \$5,000,000 in the aggregate; and (d) Automobile Liability Insurance with a minimum limit of \$5,000,000 per occurrence. It is not TRANSFLO's policy to designate Customers as additional insureds on such policies.

## PRODUCT INFORMATION (5.6)

Customer represents and warrants that any and all information supplied by Customer concerning the content of a railcar or truck/trailer, and the identity, nature, and handling of a product, shall be the latest information known to Customer, accurate, and complete to the extent relevant to the associated Services. Customer is responsible for providing an accurate STCC (Standard Transportation Commodity Code) and Safety Data Sheet (SDS).

In the event any railcar and/or truck/trailer arrives at a terminal without a full written shipping description of its contents, TRANSFLO may withhold service and hold the railcar and/ or truck/trailer at the terminal at Customer's expense awaiting a proper description or further instructions on disposition of the contents. If the written shipping description shows that the product is not one approved for transfer, the railcar, trailer or container will be released to Customer subject to all applicable terminal charges.



If product requires fumigation or de-fumigation, TRANSFLO's policy must be adhered to. Please contact your TRANSFLO Sales Manager for the latest policy.

#### MODIFICATION OF TERMS AND SERVICES (5.7)

The terms of this Publication may be changed by TRANSFLO at any time without notice. The latest version is available on TRANSFLO's website at [www.transflo.net](http://www.transflo.net).

TRANSFLO may, at its discretion and without liability to Customers, eliminate, modify or add services at any terminal, or terminate services and close a terminal, at any time.

#### OTHER TRANSPORTATION DOCUMENTS (5.8)

Should any shipment be tendered with other documents, such as the Uniform Bill of Lading, a motor carrier bill of lading, a shipper bill of lading, or other shipping document, regardless of whether they have been signed by TRANSFLO or its agent, each such document will serve solely, if they have any purpose, as a receipt indicating the transfer of the shipment, and their terms will not govern the services arranged or provided by TRANSFLO. In no event will such documents serve as verification by TRANSFLO of the nature, number, or volume of the content of a shipment.

#### TERMINATION AND DEFAULT (5.9)

Absent a contractual provision to the contrary, TRANSFLO may terminate provision of services to a Customer upon thirty (30) days' notice if without cause, and immediately if due to default, regulatory changes or requirements, governmental action or

imposition, or any other cause beyond the reasonable control of TRANSFLO.

In the event of termination of the relationship(s) between TRANSFLO and Customer, Customer must provide TRANSFLO, not later than ten (10) days following termination of the relationship, with shipping instructions regarding the return of any railcars, product or other property of Customer then on or in transit to TRANSFLO premises. Should Customer fail to provide shipping instructions in the aforementioned time frame, TRANSFLO may, at its sole discretion and at Customer's expense, return such product and/or other property to origin or provide for disposal of the same. All costs of arranging for and completing the foregoing transportation and/or disposal shall be on Customer's account and expense and, if paid by TRANSFLO, shall be promptly reimbursed by Customer to TRANSFLO upon demand. Such expense will include, but may not be limited to, TRANSFLO's reconsignment fee per TRANSFLO's Standard Price List.

#### COMPLIANCE WITH CURRENT LAWS AND RULES (5.10)

TRANSFLO, Customers and motor carriers shall comply, and shall cause their respective contractors to comply, with all laws, rules, regulations, ordinances, and TRANSFLO published or otherwise provided policies and procedures applicable to the terminals, the Services and activities related thereto.

Handling Railcars Loaded with Hazardous Materials:

TRANSFLO does not hold itself out to provide storage of railcars containing hazardous materials ("hazmat railcars"). A Customer must arrange to forward each shipment of hazardous materials in a prompt and timely manner after acceptance at the TRANSFLO facility.

If the Customer cannot arrange to forward the hazardous materials in a prompt and timely manner, the customer will need to make arrangements for storage of the hazardous materials at an alternative location.

Track Occupancy charges are assessed by TRANSFLO for a commercially reasonable time to permit Customers the opportunity to arrange for transfer of product. For hazmat railcars held beyond a commercially reasonable time, TRANSFLO reserves the right, upon prior written notice to Customer and subsequent failure to remove the hazmat railcar(s), to assess a penalty. In extreme cases, upon additional written notice, TRANSFLO reserves the right to remove railcars containing hazardous materials and/or make disposition of the hazardous materials contained therein.

TRANSFLO has the right to refuse to accept carrier-tendered railcars that contain hazardous materials if the hazardous materials cannot be forwarded by the Customer in a prompt and timely manner.

#### INTERPRETATION AND VENUE (5.11)

This Publication and the contractual terms and conditions it establishes will be interpreted according to the laws of the State of Florida excluding the principles thereof regarding conflicts or choice of law.

Any action or suit in connection with this Publication shall only be brought in a court of competent jurisdiction in Duval County, Florida or the United States District Court for the Middle District of Florida. The parties hereto consent to the jurisdiction of said courts and waive any rights to move said courts to transfer venue of such action or suit, or to dismiss such action or suit for lack of personal jurisdiction, improper venue or forum non conveniens. In addition, the parties hereto consent to a non-jury trial for any such action or suit brought before the court. Although the Publication is printed in a format prepared by

TRANSFLO, it is the intention of the parties that the provisions of this Publication be fairly interpreted, and not construed against TRANSFLO. If any portion or all of a provision of this Publication is determined by a court of law to be illegal or unenforceable, the remaining portion of the provision, if any, and the other provisions shall remain in full force and effect, and binding upon the Customer and TRANSFLO. Time is of the essence with respect to the filing of claims or legal proceedings as provided for in this Publication. A failure by TRANSFLO or Customer to enforce a provision of this Publication shall not constitute a waiver of that provision in the future. Except as otherwise expressly stated herein or in a related written agreement between the parties, all rights and remedies, whether provided by this Publication, any other agreement between the parties or by law, shall be cumulative, not exclusive and may be exercised singly or concurrently.

#### ATTORNEY FEES AND COSTS (5.12)

In any legal action or other proceeding arising out of or relating to or for the enforcement of this Publication or any related agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled from the non-prevailing party.

#### RELATIONSHIP OF PARTIES (5.13)

Nothing contained in this Publication shall be deemed to give any party the power or right to direct or control the day-to-day activities of the other. Neither this Publication nor anything contained herein shall be deemed or construed to constitute TRANSFLO and Customer (or its motor carrier) as principal and agent, partners, joint ventures, co-owners or otherwise participants in a joint or common undertaking, it being

understood that the relationship between TRANSFLO and Customer (or its motor carrier) is solely that of independent contractors. Neither TRANSFLO nor Customer (or its motor carrier) shall be or become liable or bound by any agreement, representation, act, or omission whatsoever of the other party unless specifically provided for in this Publication or an addendum hereto. Customer's (or its motor carrier's) employees and contractors shall not be deemed to be TRANSFLO's employees.

Customer agrees that any terms and conditions related to click-through agreements required for access to electronic business systems are subordinate to the terms of this Publication. Conflicting provisions of such agreements shall not apply to any service provided pursuant to this Publication.

Occasionally TRANSFLO is billed for charges due to the actions of Customers or their agents, including pursuant to click-through agreements. TRANSFLO may rebill (pass through) such charges to the Customer or party responsible for TRANSFLO being billed, and the Customer or such party is responsible for the payment of those charges.

## HEADINGS (5.14)

The headings of the provisions of this Publication are inserted solely for convenience of reference and are not a part of this Publication and shall not in any way affect, govern, limit, or aid in the construction of any of the terms or provisions of this Publication.

## THIRD PARTY BENEFICIARY (5.15)

Nothing contained in this Publication creates any third party beneficiary rights except to the extent an intent to do so is clear with respect to the language of the indemnity provisions.

## CREDIT TERMS / PAYMENT / BILLING DISPUTES / FINANCE CHARGES (5.16)

TRANSFLO Customers must establish credit with TRANSFLO before the delivery of services by TRANSFLO can be arranged and provided. Contact the TRANSFLO Sales manager for your area to obtain an Application and Credit Agreement. This Agreement can also be found on TRANSFLO's website: [www.transflo.net](http://www.transflo.net).

The Credit Application contains instructions on the completion and submittal process. Complete the Application and Credit Agreement to establish credit prior to arranging to move product to a terminal.

Payment in full of undisputed TRANSFLO charges must be received within fifteen (15) days of the date of the invoice. Payment obligations are absolute and not subject to excuse or waiver in any circumstance. TRANSFLO may at any time terminate credit provisions and require payments in advance for services. Failure to pay all rates and charges may result in cancellation or suspension of service agreements. Payments due under service agreements may not be set off or withheld in any dispute with TRANSFLO.

TRANSFLO prefers payments be made electronically via its Electronic Funds Transfer (EFT) program. EFT helps Customers manage cash more effectively with the rapid, accurate, and uniform transfer of financial information. These funds transfers are initiated through the Automated Clearing House (ACH) operation of the Federal Reserve Bank.

Three options are available:

- ACH Debits. TRANSFLO charges your company's bank account.
- ACH Credits. Your company sends payment to TRANSFLO's bank account.

- o Fed - Wire Transfers. Your company sends payment and remittance detail to TRANSFLO's bank account.

To initiate an EFT agreement, please contact your TRANSFLO Sales manager.

All billing disputes must be submitted via ShipCSX with reasonable supporting documentation within 15 days of the date of the invoice. Failure to submit a dispute and supporting documentation within 15 days of the invoice date constitutes a waiver by the Customer of any right to dispute the invoice and acceptance of the invoice as presented.

A finance charge of 12% per annum (0.00329% per day) will be assessed against charges not paid when due. The finance charge will be assessed on the unpaid balance of any charge from the first day following the end of the applicable credit term through the date of receipt of payment in full. Finance charges will be billed monthly for all charges that were paid late in the prior calendar month.

A finance charge will be assessed on all disputed amounts determined to be valid and due to TRANSFLO. The corresponding finance charge will be calculated from 15 days past the date of invoice to the date the disputed amounts are received.

Customers may not set off or otherwise withhold payment of any TRANSFLO charge due to any alleged overcharge, freight damage or other dispute with TRANSFLO or any TRANSFLO affiliate. TRANSFLO's policies on finance charges and late payment fees are designed to comply with usury laws. If either charge, or the combination of finance charge and late fees, exceeds allowable limits, then the applicable rate(s) will be automatically reduced to the maximum allowed.

## TAXES (5.17)

Customer shall be responsible for all sales and use taxes, value added taxes, excise taxes, withholding taxes, and other transactional taxes imposed by any federal, state, local, or international taxing jurisdiction on this Publication or the goods and services provided hereunder. Customer shall be responsible for property or ad valorem taxes imposed on product or property handled by TRANSFLO at Customer's request.

## NOTICES (5.18)

All notices to TRANSFLO must be in writing and sent by :

- a) U.S. certified mail, postage prepaid,
- b) Nationally recognized overnight courier service, or
- c) Successful facsimile or electronic transmission confirmed by copy sent by first class mail, postage prepaid, to the following address:

TRANSFLO Terminal Services, Inc.  
500 Water Street, J975  
Jacksonville, FL 32202-4423  
Attention: Director of Marketing

Notices sent in the foregoing manner will be effective upon receipt by TRANSFLO.

