



PATHMARK TMS APPLICATION TERMS AND CONDITIONS

The Pathmark TMS is a rating tool that compares the rates of several regional and national market LTL carriers based on the information provided by the user. The actual charges will be provided on the freight bills tendered to the customer for payment. The rates charged will be based on the current rates of the underlying carrier in place at that time for the account of Pathmark Transportation on behalf of the customer at the time of the actual shipment with an additional markup. All terms, conditions, and rules of the underlying carriers will prevail in all rates. Specific rules, charges and conditions can be found in the rules tariff of each of the underlying carriers. The TMS system provides a cost estimate based on the information provided and any additional costs incurred for any reason will be passed on to the customer. Customer agrees to pay Pathmark's invoice within 30 days of invoice date without deduction or setoff. Any severely overdue invoices will be subject to an interest charge of 1.5% per month for each day over 30 days from invoice date. Customer will be responsible for any and all collection costs and reasonable attorney's fees of overdue accounts.

PATHMARK TRUCKLOAD TERMS & CONDITIONS ACCESSORIAL SERVICES AND CHARGES

1. Determination of Distances

Except as otherwise provided in this agreement, distances between origin and destination of shipment will be computed according to the current mileage guide ICC HBG 100 issued by the Household Goods Carriers Bureau, Inc., and any supplements there to or successive issues thereof (the "Mileage Guide") subject to the following.

For distances from or to points not covered by the Mileage Guide, actual mileage via the shortest practical route shall be used, except that the Mileage Guide will be used for such portion of the distance as may be provided there in or ascertainable therefore.

Where customer requests transportation of the shipment over a longer route than the shortest available "regularly traveled highway" route, the mileage via the route of movement shall be used.

Stop-off sequences shall be run in the following order:

- (a) First stop shall be closest to shipping location
- (b) Second stop shall be closest from first stop
- (c) Balance of stops shall continue as state in
- (d) Final stop shall be farthest from Origin.

Where customer customers alter a normal stop-off route because of delivery conflicts, documentation satisfactory to customer regarding such alteration must be supplied to customer with the freight bill, so that CARRIER may be paid for the excess mileage.



Any failure of CARRIER to furnish documentation supporting a longer route than the shortest available will be considered by customer as excess mileage for CARRIER'S convenience, and charges for the excess mileage may not be bill to or paid by customer.

2. Fuel Surcharge

Freight charges will be subject to a fuel surcharge from our fuel surcharge matrix located on the last page of this document which will be billed as a separate charge on freight bills. The charge will be adjusted up or down each Monday by the cost per mile adjustment listed on the matrix attached. Each Monday at 12:30 PM, the weekly diesel fuel price can be obtained by calling the Energy Information Administration Hotline at (202) 586-6966. This price will be used to determine the increase to be supplied to the line haul rate, the increase will become effective on Tuesday of that week and will be effective for the following seven (7) day period. The fuel surcharge will be added to the line haul freight charge in connection with shipments subject to rates and charges as established between the Carrier and Company for line-haul transportation.

3. Payments

All payments for transportation charges must be made within 15 days of invoice date. Interest will be charged at a rate of 1.5% per month on all accounts over 30 days from invoice date. Customer will be responsible for all collection costs and reasonable attorney's fees of overdue accounts. All payments, whether involving a domestic or international shipment, shall be made in U.S. currency and at U.S. rate of exchange.

4. Congestion

Recognizing that certain geographical areas of operations involve extreme congestion or delays for homeland security hindering efficient and economical operations, Shipper agrees to pay the following congestion charges, which will be listed as a separate line item on freight bills Carrier submits.

\$ 200 for each shipment originating from or destined to New York City, New York; Long Island, New York, and the commercial zone of each, including all areas within the zip codes ranging from 10001 through 11999.

5. Detention of Trailer with Tractor

Upon Carrier's offering of a trailer with tractor for loading or unloading, Shipper or Shipper's consignee, as the case may be, shall be allowed, without charge, 2 hours to complete such loading or unloading and release the equipment for dispatch. If Shipper or Shipper's consignee fails to complete the loading or unloading and release the equipment for dispatch within the 2 hour period, Shipper shall pay Carrier a detention charge of \$60 per hour for each hour or fraction thereof in excess of the 2 hour period, up to a maximum of \$350 per twenty-four hour period following the expiration of the 2hour period. Shipper shall



use the trailer with tractor for the sole purpose of loading and/or unloading the lading within the scope of this Agreement.

6. Detention of Trailer Without Tractor

Upon Carrier's offering of a trailer without a tractor for loading or unloading, Shipper or Shipper's consignee, as the case may be, shall be allowed 2 hours to complete such loading or unloading. If Shipper fails to tender the trailer to Carrier, either loaded and ready for dispatch on behalf of Shipper or unloaded and ready for dispatch by Carrier as it desire within the 2hour period, Shipper agrees to pay Carrier a detention charge of \$25 per hour for each hour or fraction thereof in excess of the 2 hour period, up to a maximum of \$150 per twenty-four hour period following the expiration of the 2 hour period. Shipper shall use the trailer without a tractor for the sole purpose of loading and/or unloading the lading within the scope of this Agreement.

7. Tractor Ordered and Not used

If Shipper requests that a tractor with operator be made available and cancels its request, Shipper shall pay Carrier a charge of \$1.50per mile for each mile the tractor and driver traveled to be available for Shipper before Carrier was notified subject to a minimum charge of \$ 250.

8. Reconsignment

If Shipper reconsigns or otherwise changes the destination of a shipment prior to delivery, the applicable rate shall be the rate that would be applied had Carrier been originally directed to deliver the shipment to the new destination via the location where the shipment was located at the time it was reconsigned, plus a reconsignment charge of \$100. If a shipment is reconsigned or otherwise assigned a new destination at the time of delivery, the applicable rate shall be the rate that would apply to a new shipment from the point of delivery to the new destination, and Carrier shall bill for the reconsigned shipment as though it were two separate deliveries.

9. In-Transit Stop-Off/Drop Charges

A single shipment may be stopped at the direction of Shipper for partial loading or partial unloading; provided, however, that in the event of any intransit stop at the direction of Shipper or Shipper's consignee, Shipper shall pay Carrier, in addition to other freight charges due (a) first stop \$100 flat charge (b) second stop \$ 150 (c) all stops thereafter \$ 200.

10. C.O.D. Shipments

Carrier shall accept shipments with C.O.D. charges to collect if Shipper advises Carrier of the need for such service at time of offering a load and checks the applicable box on the freight document. Carrier shall only accept money orders or certified checks from consignees unless Shipper otherwise indicates



acceptance of an uncertified check. Carrier shall remit to Shipper the collection with fifteen (15) days of delivery. Shipper will pay Carrier a \$ 25 collection charge for each collection shipment.

11. Permits

Carrier shall secure any permits for any over-dimensional or overweight load and Shipper agrees that Carrier may bill Shipper the actual cost of any permits or those costs for use of any required escort vehicles. If the over-dimensional or overweight movement requires the payment of tolls over normal truckload tolls, Shipper shall absorb the difference in charges.

12. Redelivery Charges

If a delivery cannot be accomplished through no fault of Carrier, Carrier shall notify Shipper and request redelivery instruction from Shipper, and if redelivery is made, the following charges may be assessed to Shipper:

(a)	Same day redelivery	\$100
(b)	Overnight detention	\$350
(c)	Operator per diem charge	\$50
(d)	Redelivery charge	\$100

13. Movements Under Certain or Special Bonds or Special Permits

If Shipper tenders a shipment moving under a Custom Bond, Carrier shall charge Shipper \$150.

14. Tarping

If Shipper requests or requires tarping of a load, Carrier will charge Shipper \$75.

15. Team Drivers/Expedited Services

When Shipper requests expedited services that requires the use of team drivers (two drivers and one tractor) Carrier will charge Shipper
\$ Market Surcharge

The bill of lading will be marked for team drivers at the origin location.

16. Hazardous Materials

Carrier may be requested to transport products identified as "hazardous materials." Such materials are defined in and will be transported in accordance with Title 49 of the Code of Federal Regulations, Parts



171 to 177. For such shipments, and when special equipment is required, the below additional charge may be assessed.

\$200 flat charge per load or \$0.50 cost per mile, whichever is greater.

17. Application of Rate/Hierarchy for Pricing

1. Point to Point
2. State to Point
3. State to State

18. Minimum Charges

When rates are published on per mile basis and no minimum charge is specified, a \$500 minimum charge will be applicable.

19. Loading and Unloading labor requirements

All rates submitted are based on shipper load and consignee unload. If special handling is required at origin or destination, additional charges will be assessed based on labor involved.

20. Declared Value and Limits of Liability

In the event customer determines it has a claim for freight loss, damage or delay against any carrier which transported customer's traffic when arranged for transportation by Pathmark Transportation, customer may either (i) file its claim directly with the carrier, or (ii) submit the claim together with all required documentation to Pathmark Transportation for Pathmark Transportation's filing with carrier. If the claim is submitted to Pathmark Transportation for its filing with carrier, Pathmark Transportation agrees merely to act as an administrator for the processing of the claim with carrier. Pathmark Transportation shall not be responsible to customer for any freight loss, damage or delay involving shipments for which it has arranged for transportation. The maximum liability coverage is not to exceed \$25.00 per pound per package or \$100,000 per incident, whichever is lower. Applicable liability limits of the actual carrier used will apply, including liability limits due to FAK pricing included in the carrier's contract with Pathmark Transportation. Customer shall not withhold or offset from monies due to Pathmark Transportation pursuant to this Agreement for any freight loss, damage or delay to shipments which Pathmark Transportation arranged for transportation. All matters involving rates and charges on shipments arranged for transportation by Pathmark Transportation shall be resolved solely between customer and Pathmark Transportation.



21. Minimum Charge - Cubic Capacity and Density - Eligible Shipments

Any shipment which is 750 cubic feet or greater and has a density of less than six pounds per cubic foot.

RATES AND CHARGES

Eligible shipments will be subject to a minimum charge to be determined as follows:

1. Multiply the total cubic feet by 6 pounds to get the calculated weight of the shipment.
2. Multiply the calculated weight by the class 100 class rate as published in the current carrier's applicable tariff in effect at time of shipment.
3. Apply the customers published discount percentage.

CONDITIONS

Density is based on the total cubic feet of all articles or pieces in the shipment. Density is determined as follows:

- A. The cube of loose articles, pieces or packaged articles of a rectangular, elliptical, or square shape on one plane shall be determined by depth in inches, including all projections, and dividing the total by 1,728 cubic inches (one cubic foot), the density shall be the result of the weight of the article, piece or package by the ascertained cubic feet.
- B. To determine the density of a cylindrical shaped article or any article other than a square, elliptical or rectangular shaped article in a single plane, square the greatest dimension on the cylindrical or other than square, elliptical or rectangular plane (multiply the dimension by itself) and multiply that result by height or length. If result is in cubic inches, divide by 1,728 cubic inches (one cubic foot). The density shall be the result of the division of the weight of the article by the ascertained cubic feet.
- C. Freight bill information: When this item has application, the carrier's freight bill will indicate both the actual weight and the calculated weight upon which the charges are assessed.
- D. The provisions of this item are not applicable in connection with shipments subject to:
 - a. Truckload rates or charges
 - b. Rates which apply per vehicle used.
 - c. Capacity load provisions
 - d. Exclusive use of vehicle provisions
- E. If carrier is unable to load freight on top of the packaged articles/handling units due to the nature of the packaged articles/handling units or per instructions from the shipper/consignee, a minimum height measurement of 84 inches will be used when determining the cubic footage of the packaged articles/handling units.



F. FUEL SURCHARGE MATRICIES

TRUCKLOAD FUEL SURCHARGE MATRIX

The fuel surcharge will be applied on loaded miles only. The Energy Information Administration's EIA Retail On-Highway Diesel Fuel Price, national U.S. Average, will be used as the basis for determining the applicable fuel surcharge. This number is available by calling 202-586-6966 Option 1. Adjustments will be made each Monday based upon the EIA Index posted that day, and will be applied on all shipments loaded on or after that date until the next adjustment. In the event of a holiday on Monday, the EIA Index for Tuesday will be used and will apply on all shipments loaded on or after that Tuesday.

EIA DIESEL FUEL PRICE INDEX		RATE PER MILE
\$2.211	2.237	\$0.215
\$2.238	2.264	\$0.220
\$2.265	2.291	\$0.225
\$2.292	2.318	\$0.230
\$2.319	2.345	\$0.235
\$2.346	2.372	\$0.240
\$2.373	2.399	\$0.245
\$2.400	2.426	\$0.250
\$2.427	2.453	\$0.255
\$2.454	2.480	\$0.260
\$2.481	2.507	\$0.265
\$2.508	2.534	\$0.270
\$2.535	2.561	\$0.275
\$2.562	2.588	\$0.280
\$2.589	2.615	\$0.285
\$2.616	2.642	\$0.290
\$2.643	2.669	\$0.295
\$2.670	2.696	\$0.300
\$2.697	2.723	\$0.305
\$2.724	2.750	\$0.315
\$2.751	2.777	\$0.320
\$2.778	2.804	\$0.325
\$2.805	2.831	\$0.330
\$2.832	2.858	\$0.335
\$2.859	2.885	\$0.340
\$2.886	2.912	\$0.345
\$2.913	2.939	\$0.350
\$2.940	2.966	\$0.355
\$2.967	2.993	\$0.360
\$2.994	3.020	\$0.365

Same formula will apply if fuel levels exceed listed price

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LTL FUEL SURCHARGE MATRIX

Average U.S. Retail Motor Diesel Fuel Prices (\$ per Gallon)		Fuel Surcharge
At Least	But Less Than	
\$1.500	\$1.580	7.00%
\$1.580	\$1.660	7.75%
\$1.660	\$1.740	8.50%
\$1.740	\$1.820	9.25%
\$1.820	\$1.900	10.00%
\$1.900	\$1.980	10.75%
\$1.980	\$2.060	11.50%
\$2.060	\$2.140	12.25%
\$2.140	\$2.220	13.00%
\$2.220	\$2.300	13.75%
\$2.300	\$2.380	14.50%
\$2.380	\$2.460	15.25%
\$2.460	\$2.540	16.00%
\$2.540	\$2.620	16.75%
\$2.620	\$2.700	17.50%
\$2.700	\$2.780	18.25%
\$2.780	\$2.860	19.00%
\$2.860	\$2.940	19.75%
\$2.940	\$3.020	20.50%
\$3.020	\$3.100	21.25%
\$3.100	\$3.180	22.00%
\$3.180	\$3.260	22.75%
\$3.260	\$3.340	23.50%
\$3.340	\$3.420	24.25%
\$3.420	\$3.500	25.00%

Over \$3.50/gallon, .75% increase for every \$.08/gallon

Index: DOE National Average on Diesel Fuel

<http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>