



**§525 TITLE PAGE**

**MTO Schedule for Federal Marine Terminals, Inc.**

**Issued by: Federal Marine Terminals, Inc.**

**FMC Organization # 001934**

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## §525.1 PURPOSE, SCOPE, APPLICABILITY, ABBREVIATIONS, AND DEFINITIONS

### ITEM 1: PURPOSE, SCOPE AND APPLICABILITY

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#### PURPOSE:

This Schedule adheres to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and Coast Guard Authorization Act of 1998.

#### SCOPE:

The rules, regulations, conditions, commodity rates and/or charges set forth in this schedule apply to or from the following Marine Terminal.

#### APPLICABILITY:

This MTO shall apply to the following terminal operated by Federal Marine Terminals, Inc.:

Federal Marine Terminals, Inc. (Eastport, Maine)

Port of Eastport Maine

38 Barren Rd.

Eastport, ME 04631

Phone: 207.853.6096

### ITEM 2: ABBREVIATIONS

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\$	Currency	%	Percent
Cont'd	Continued	CBM	Cubic Meter
CWT	Hundredweight or per one hundred pounds	MT	Metric ton (2204.6 lbs.)
FMC	Federal Maritime Commission	GRT	Gross Registered Ton
ISO	International Standards Organization	LBS	Pounds
NOS	Not otherwise specified	LOA	Length overall
<	Less than	>	More than
CFR	Code of Federal Regulations	O/T	Other Than
B/L	Bill of Lading	TTC	Terminal Transfer Charge

### **ITEM 3: DEFINITIONS**

The following words may be used in the ensuing Schedule.

#### **ACT:**

Means the shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and Coast Guard Authorization Act of 1998.

#### **ATTORNEYS' FEES AND COSTS:**

"Attorneys' fees and costs" shall include, but not be limited to, all legal costs and expenses, attorneys' fees, expert witness fees, paralegals' fees, court reporter fees, filing fees, copying charges, and charges relating to document production incurred by the MTO in relation to the investigation and/or defense of any loss, damage, expense, claim, liability, suit, fine, and/or penalty, including, but not limited to, attorneys' fees and costs incurred for appellate and/or bankruptcy proceedings.

#### **BULK CARGO:**

Means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the requirement of this part.

#### **CHECKING:**

Means the service of counting and checking cargo against appropriate documents for the account of the cargo, the vessel, or other person requesting same.

#### **COMMISSION:**

Means Federal Maritime Commission (FMC)

#### **DOCKAGE:**

Means the charge assessed against vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed.

**EFFECTIVE DATE:**

Means the date a schedule or an element of a schedule becomes effective. Where there are multiple publications on the same day, the last schedule or element of a schedule published with the same effective date is the one effective for that day.

**EXPIRATION DATE:**

Means the last day, after which the entire schedule or single element of the schedule, is no longer effective.

**FOREST PRODUCTS:**

Means forest products including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp on rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets, liquid or granular byproducts derived from pulping and papermaking, and engineered wood products.

**FREE TIME:**

Means the period specified in the terminal schedule during which cargo may occupy space assigned to it on terminal property, including off-dock facilities, free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel.

**HANDLING:**

Means the service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of vessel's tackle.

**HEAVY LIFT:**

Means the service of providing heavy lift cranes and equipment for lifting cargo.

**LOADING/UNLOADING:**

Means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters or vessels or any other means of conveyance to or from the terminal facility.

**MARINE TERMINAL OPERATOR (MTO):**

Means a person engaged in the United States or a commonwealth territory, or possession thereof, in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier and a water carrier subject to Subchapter II of Chapter 135 of Title 49, United States Code. A Marine Terminal Operator includes, but is not limited to, terminals owned or operated by states and their political subdivisions; railroads who perform port terminal services not covered by their liner haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities. For the purposes of this part, marine terminal operator includes conferences of marine terminal operators.

Where the term MTO appears throughout this Schedule, it shall refer to Federal Marine Terminals, Inc. ("FMT").

**ORGANIZATION NAME:**

Means an entity's name on file with the commission and for which the commission assigns an organization number.

**PARTY RECEIVING THE MTO SERVICES:**

Party receiving the services shall include the party ordering the MTO services from FMT; the owner of the cargo; the shipper; the consignor; the consignee; the ocean carrier, including owners and charterers of the vessel; any other party having any interest in the cargo and/or receiving, directly or indirectly, any benefit from the services rendered; and, any vessel, vehicle, conveyance of any kind, and the owners and operators thereof, and person and/or entity that requests, is provided with, and/or receives any terminal services of any kind or description.

**PERSON:**

Includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees, and personal representatives.

**RATE:**

Means a price quoted in a schedule for providing a specified level of marine terminal service or facility for a stated cargo quantity, on and after a stated effective date or within a defined time frame.

**SCHEDULE:**

Means a publication containing the actual rates, charges, classification, regulations, and practices of a MTO. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the rates, charges or services provided by a MTO.

**TERMINAL FACILITIES:**

Means one or more structures comprising a terminal unit, which include, but not limited to, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, grain elevators and/or bulk cargo loading and/or structures, landings, and receiving stations, used for the transmission, care, and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers.

**TERMINAL SERVICES:**

Includes checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage, as defined in this section. The definitions of terminal services set forth in this section shall be set forth in terminal schedules, except that other definitions of terminal services may be used if they are correlated by footnote, or other appropriate method, to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefore shall be shown in the terminal schedule.

**TERMINAL STORAGE:**

Means the service of providing warehouse or other terminal facilities for the storage of inbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage.

**USAGE:**

Means the use of terminal facility by any rail carrier, lighter operator, trucker, party receiving the MTO services or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified.

**VESSEL(S):**

Means any ship, boat, barges or water craft of any kind or description.

**WHARF DEMURRAGE:**

Means a charge assessed against cargo remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage.

**WHARFAGE:**

Means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at a wharf or when moored in a slip adjacent to a wharf. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.



## §525.2 MTO SCHEDULE DETAILS

### ITEM 1: COLLECTION FOR SERVICES RENDERED

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- A. The party receiving the MTO services shall pay for all services based upon the rates and charges as specified in the MTO's Rate Quote. The Rate Quote shall be deemed accepted by the party receiving the MTO services upon commencement of any performance by either party, including without limitation any access to and/or use of the terminal facility and/or terminal services of the MTO whatsoever by or on behalf of the party receiving the MTO services. Upon any such acceptance, this MTO schedule shall be deemed fully incorporated into the Rate Quote and binding upon the parties. Except as otherwise stated herein, charges are for the account of the party receiving the MTO services. Payment must be assured prior to release of the goods through any one of the following methods deemed satisfactory to the MTO.
1. Charges to be paid at the time of delivery, in advance until proper credit has been established with the MTO.
  2. Charges advanced by the inland carrier picking up or delivering the cargo at the terminal.
  3. Charged to the account of the party receiving the MTO services when prior arrangements have been made with the terminal.
- B. All charges for any services, including stevedoring, rendered by the MTO for which credit is granted shall be due and payable upon receipt of invoice, without any setoff, compensation, or counterclaim. Interest at the rate of one and one-half percent per month (18% per annum) will accrue against any invoice which has not been paid in accordance with the terms previously set forth until such invoice is paid in full.
- C. The MTO reserves the right to withhold the delivery of goods until all accrued stevedoring charges, terminal charges, overtime charges, special services charges, or storage charges against said cargo have been paid in full, or acceptable guarantee of payment has been arranged.
- D. The vessel, its owners, charterers, and agents, Grantees of Berth Privilege, party receiving the MTO services, or in instances of outside operators functioning as set forth in this Schedule, shall permit the MTO access to all cargo documents, including, but not limited to, bills of lading, charter parties, contracts of carriage or affreightment, cargo manifests, delivery tickets, dray receipts, hatch lists, or invoices for services and furnish to the MTO such other documentation, reports or information as it may require, for purpose of audit so as to secure necessary data to permit correct billing for charges incurred under this Schedule. Failure to provide such information upon request will constitute cause for denial of use of MTO facilities.
- E. Advances made by, and/or liabilities incurred by, the MTO are permitted for storage, stevedoring, transportation, terminal charges, insurance, labor, charges present and future in relation to the cargo, as well as expenses necessary for preservation of the cargo, whether or not such advances are required or permitted by this schedule, and such expenses reasonably incurred in the judicial

sale of cargo pursuant to law. The MTO has a lien on all of the depositor's property (including the cargo) for such charges, including those reasonably incurred in enforcing such lien, including without limitation any attorneys' fees and costs incurred by the MTO in relation to such charges.

- F. Rates and charges that are based on inaccurate or incomplete information, descriptions, instructions, or particulars may be recalculated at any time and without notice to the party receiving the MTO services.
- G. Any dispute regarding any invoice or any charges contained within an invoice from MTO must be submitted to MTO in writing within ten (10) days of presentation of said invoice. Failure to give written notice within ten (10) days shall be deemed conclusive evidence that the invoice is accurate, valid, and accepted by the party receiving the MTO services.
- H. In the event the party receiving the MTO services fails to pay any invoice when due, the MTO may engage a collection agent and/or attorney, or file suit to collect the amounts due and the party receiving the MTO services shall be responsible for all fees and costs relating thereto, including attorneys' fees and costs.
- I. The party receiving the MTO services grants the MTO a general contractual lien on all cargo, goods, and/or property (collectively referred to as "cargo" in this section) in the possession of the MTO as security for the payment of amounts due MTO hereunder and for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, past, present or future, in relation to the cargo against which the lien is asserted and/or arising from the MTO's provision of any previous services to the party receiving the MTO services, and for expenses necessary for preservation of the cargo or reasonably incurred in their sale. If the MTO elects to hold the cargo of the party receiving the MTO services based on these lien rights it will provide written notice of that election to the party receiving the MTO services. If the party receiving the MTO services fails to make payment of all amounts due or fails to post security to the MTO's satisfaction within 30 days of the date of such notice, then the MTO shall have the right to sell such cargo at public or private sale or auction. The proceeds of any such sale or auction shall first be applied to the sale costs, including attorneys' fees and costs, then to amounts due MTO, with the remaining net balance, if any, to be remitted to the party receiving the MTO services. The party receiving the MTO services shall provide notice to any other parties having an interest in the cargo of the MTO's lien rights and if any exercise of those rights by the MTO.
- J. For the purposes of this MTO, payments shall only be considered received by the MTO once the funds have cleared the bank accounts of both the MTO and the party receiving the MTO services.

## **ITEM 2: DAMAGE TO TERMINAL EQUIPMENT OR FACILITIES**

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The party responsible for damage to sheds, warehouses, structures or other equipment is responsible for payment for such damage. The MTO must be reimbursed for the total cost of restoration, repair, or replacement in the event damage is beyond repair. In the event the party responsible fails or refuses to pay for such damage, and the MTO files suit to recover the damage, then the party responsible shall, in addition to its liability for the damage, be liable to the MTO for the MTO's attorneys' fees and costs incurred in recovering the damage and

prejudgment interest from the date of the damage at the rate of 18% per annum, compounded annually.

### **ITEM 3: TRUCK PICK-UP/DELIVERY**

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- A. Any motor carrier, including, but not limited to, owner, operator, and/or driver, shall be considered a party receiving the MTO services and shall be subject to the provisions of this Schedule.
- B. The MTO reserves the right to require the party designating a trucker to be responsible for insuring that every driver has available on each and every pick-up/delivery the following document(s):
  - 1. Truck pick-up order describing cargo, enumerating vessel, bill of lading, identifying marks and numbers, driver's name, and commercial driver's license number, legal load limit as well as tractor and trailer license numbers.
  - 2. For loads requiring a state permit(s), copies of such permits(s) (covering entire route) must be presented prior to being loaded.
- C. The loading or unloading of cargo shall be under the supervision and responsibility of the driver of the truck. The inspection of the load is the motor carrier's responsibility. The motor carrier assumes all liability for safety and securement of the load. The MTO assumes no responsibility for loading and securing of cargo on vehicles of any type. Motor carrier warrants that he has inspected the safety and securement of the loaded cargo and has ensured himself that the loaded cargo is properly and safely loaded and secured, and that it complies with all safety regulations and applicable laws, including, but not limited to, the rules and regulations relating to the transportation and securement of cargo contained within the Federal Code of Regulations, including, but not limited to, 49 CFR Parts 390 et seq., 391 et seq., 392 et seq., and 393 et seq. Motor carrier agrees to defend, indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees, from any and all claims arising from or relating to (a) any failure to comply with said regulations or applicable laws, (b) failure to properly secure the load, or (c) any claim of any kind or nature whatsoever made against the MTO, caused by, arising from or relating to a failure to properly secure the cargo loaded and/or any breach of these terms and conditions.
- D. Prior to entering the terminal facilities, each truck must be properly equipped to properly and safely load, secure, and transport the cargo it will receive.
- E. Failure to comply with the aforementioned requirements may result in loading/unloading delays for which the MTO shall not be responsible.
- F. The MTO will not assume any responsibility for dispatching of trucks.
- G. Policy of truck loading sequence:

1. Where practicable, all trucks are loaded on a "first come first serve basis." However, it must be understood that daily operations dictate a truck loading sequence to best service all customers in a productive manner. A diligent effort is always made by our supervisory personnel to avoid congestion, provide continuity, and best utilize manpower and equipment to maximize efficiency.
  2. The dispatcher must notify the terminal by 3:15 p.m., one day in advance, for truck loading. The amount of loads will be entered on a truck list, and any trucks not on the list will be turned away if we cannot accommodate extra trucks.
  3. The truck driver must pick-up a cargo pass from the traffic department and then will be instructed by the traffic department as to the location of their cargo.
  4. Proper information is a must. The driver should know the vessel's name, Bill of Lading marks, customer name, and release number if applicable.
  5. A commercial driver's license must be produced if requested by the MTO.
  6. Only one cargo pass will be given to a driver unless the loading of his truck requires otherwise.
  7. Once a cargo pass is completed by a checker, the driver responsible for the load must return to the traffic department with the pass and a valid driver's license in order to sign for a dock tally.
  8. Each driver must have wood for blocking. Drivers may not remove our wood from the MTO's facilities. The MTO does not supply dunnage, chains, coil racks, or binders.
  9. Drivers may not use the driveways beside the vessel when a vessel is in port. The roads are reserved for cranes and lift trucks used for the unloading of the vessel.
  10. Drivers may not congregate in warehouse doorways or block forklift access to storage areas.
  11. It is the responsibility of the motor carrier and truck driver to properly secure cargo before moving his/her truck.
- H. The party receiving the MTO services and any party that instructs a motor carrier to enter the terminal for the purpose of pick-up or delivery of cargo at the terminal shall ensure that the motor carrier has knowledge of and abides by all rules of the terminal as well as any applicable Federal Motor Carrier Safety Regulations, OSHA regulations and any local, state or federal rules, regulations or laws governing the operation of motor vehicles. Any party receiving the MTO services and any party that instructs a motor carrier to enter the terminal for the purpose of pick-up or delivery of cargo at the terminal shall defend, indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees, for any and all claims, including, but not limited to, claims for personal injury, including claims by the truck driver, claims for property damage, any breach of the motor carrier's responsibilities set forth herein, and all other liabilities, including attorneys' fees and costs, arising from or related to the failure of the truck driver to abide by said rules.

- I. For their own safety and the safety of others, truck drivers must obey the following truck rules:
  1. All truck drivers must remain not less than twenty (20) feet away from any truck, trailer and/or chassis while the truck, trailer and/or chassis is being loaded or unloaded.
  2. All truck drivers must stay a safe distance (not less than twenty (20) feet) away from any area where loads are being suspended overhead.
  3. The posted speed limit within the terminal facility must be complied with;
  4. Come to a complete stop at all stop signs and yield at unmarked crossings and/or intersections;
  5. Terminal equipment has the right of way at all times;
  6. Do not try to pass, drive, walk, or stand behind terminal equipment that is backing up;
  7. No unauthorized pedestrian traffic is allowed on the terminal. Drivers must stay close to their vehicles while in terminal and should be out of their vehicle only for actual operating needs;
  8. The use of cell phones and other electronic devices while driving is strictly prohibited;
  9. All truck/motor vehicle operators, drivers, and/or occupants are required to wear the following personal protective equipment at any time they are out of the truck/motor vehicle:
    - A high visibility reflective safety vest;
    - Hard hat;
    - Safety glasses; and,
    - Steel-toed safety boots.
  10. It is the responsibility of the motor carrier and truck driver to properly secure cargo before moving his/her load.

#### **ITEM 4: LIMITATIONS OF LIABILITY STATEMENT APPLICABLE TO ALL PARTIES RECEIVING THE MTO SERVICES**

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- A. The MTO shall not be liable for any expenses, losses, or claims whatsoever caused by or resulting from: failure or delay in performance of services including stevedoring and/or terminal services; bursting of pipes; an act of God; fire; flood; storm; frost; heat; leakage; evaporation; sweat; moisture; loss of weight; breakage; insufficient cooperage, boxing, crating, car bracing, bagging, packing or wear and tear; inherent vice of the goods; insufficiency of packing; insufficiency of markings; failure of building; theft; rodents; insects; parasites, or other vermin; elements; strikes; walkouts; picketing; labor disputes; shortages of labor; acts of war; terrorism; riots; insurrections; the order of any governmental authority; necessities of war or disaster; unseaworthiness of any vessel; errors in the navigation or management of any vessel; or any cause beyond the MTO's control. The MTO is not responsible for any delay in delivery of cargo to or receipt of cargo from carriers. All storage and handling charges must be paid on goods lost or damaged. Nothing herein above shall relieve the MTO of liability resulting from its own negligence.

- B. Iron and steel rates are based on open-pier, uncovered handling and storage. The MTO will not be liable for any loss, expense, or damage, including rusting, pitting, etc., whatsoever, caused or contributed to by cargo being partially or wholly unprotected during handling or storage. Acceptance for use of an open-pier by a party receiving MTO services, or receiver of goods, is a recognition that cargo landed on such dock is at the risk and expense of the party receiving the MTO services.
- C. The MTO shall not, in any event, be or become liable for any loss or damage to goods in an amount exceeding the per package amount set forth in the Carriage of Goods at Sea Act, 46 U.S.C. Section 1304 (5), (\$500 (US) per package) or in case of goods not shipped in packages, the per customary freight unit amount set forth in the Carriage of Goods at Sea Act. 46 U.S.C. Section 1304 (5), unless the party receiving the MTO services, prior to the commencement of such services, declares a higher value to the MTO and pays to the MTO a premium computed at 1% of the declared value of each package in addition to the other charges for such services as herein set forth. The declaration of a higher value by the party receiving MTO services shall be only prima facie evidence of the true value of the cargo. In the event the actual value of the cargo is greater than the declared value, the liability of the MTO shall not exceed the declared value. In the event the actual value of the cargo is less than or equal to the declared value of the cargo, the liability of the MTO shall not exceed the actual value. In no event shall the MTO be liable for any damage unless said damage results solely from the failure of the MTO to exercise due and proper care in performing the services contracted. For the purpose of this limitation, an intermodal shipping container will be considered a package and the contents therein will not be considered separate packages. For the purpose of this limitation, if the cargo includes machine(s) or machinery(ies), the entire composite machine shall be deemed a single "package," regardless of how shipped or received.
- D. The MTO will not be liable for damage in the loading, off-loading or unloading of cargo not packed to meet import/export packing standards, nor for concealed damages and/or concealed shortage, and all receipts issued are subject to these provisions. Perishable merchandise or merchandise susceptible to damage through temperature changes or other causes incidental to either handling or general storage, will be accepted only at the risk of the party receiving the MTO services.
- E. In addition to any other defenses which the MTO may have, the MTO shall also be entitled to the benefit of all the rights, immunities and defenses available or stated to be available to the carrier under its bill of lading or contract of carriage without regard to whether the MTO is hired by the carrier or some other party. The party receiving the MTO services undertakes that any bill of lading or other contract of carriage for cargo to be handled by the MTO will contain an express provision stating that the MTO is to be deemed a servant of the carrier and as such to be entitled to rely on all of the rights, immunities and defenses available to the carrier under such bill of lading or other contract of carriage, and that this express provision and entitlement will extend to cover all services provided by the MTO, including any services provided after discharge of the cargo; and the party receiving the MTO services shall defend, indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees,

against any failure to comply with this undertaking. In the event that the additional defenses available to the carrier under its bill of lading or other contract of carriage conflict with any other defenses available to the MTO, the MTO shall have sole discretion to choose which defenses it will assert.

- F. With respect to cargo carried by truck, the loading or unloading of cargo shall be under the supervision of the truck driver of the truck. It shall be a primary duty of the trucking company and/or its drivers to take delivery of the cargo for which the trucking company entered the operator's premises. The MTO shall not be responsible for any trucking costs resulting from the trucker taking other than their intended cargo from the MTO's premises.
- G. The MTO shall not in any event be responsible for special or consequential damages, including without limitation, damages for or arising from delay, extra expense, loss of sale(s), loss of contract(s), loss of charter, loss of hire, loss of profits, loss of market value, loss of business, interruption of business, dead freight, and loss of use whether resulting from negligence, breach of this Contract by the MTO, failure to discharge cargo, delay in discharge of cargo, damage to vessels, and any other cause, and even if the possibility of such special or consequential damages or damages from delay were foreseeable to the MTO or were made known to the MTO.
- H. Under no circumstance shall the MTO be liable for vessel, railroad car, or truck demurrage or for delays resulting from any cause beyond its control, including, but not limited to, strikes, weather conditions, Act of God, failure of the railroad to spot or remove equipment in a timely manner, or when cargo does not lend itself to being unloaded from railroad equipment or trucks to dock or shed awaiting arrival of a vessel. The MTO's liability for demurrage and/or delay shall be limited to the sum of \$50 per hour for a maximum period of 24 hours.
- I. Under no circumstance shall the MTO be liable for any infestation of cargo. Any costs incurred in eliminating the infestation, including but not limited to, stand by, extra labor costs, extermination costs, governmental penalties, fines or corrective actions, will be for the account of either the cargo owner, consignee of the cargo or party receiving the MTO services.
- J. Under no circumstance shall the MTO be liable for spoilage of cargo within a reefer container which is in the care, custody or control of the MTO, caused by an electrical shortage/outage or failure or malfunctioning or defect of the reefer container itself or its refrigeration systems as well as any failure of the electrical plug located at the MTO's facility. The MTO shall not be liable, under any circumstances whatsoever, for any loss, damage, expense, claim, liability or suit relating to such goods when incorrect or inadequate information was provided to it, and/or when such goods were tendered with improper or inadequate temperature protection, or with improper or inadequate wrapping, packing, packaging, and/or with improper or inadequate stowage within the container.
- K. In any event, the MTO shall be discharged from all liability in respect of loss or damage unless suit is brought within eight (8) months after delivery of the cargo to MTO or six (6) months from the date of delivery of the cargo to the consignee or its agent or the date on which the cargo should have been delivered, whichever period is lesser, and only if written notice describing the general nature of the loss or damage has been given to the MTO within five (5) days of the date of delivery of said cargo from the MTO. Any motor carrier that receives the cargo for

transport from the MTO's facility shall be deemed to be the agent of the Consignee. The only exception shall be if arrangements for storage are made in writing and agreed upon by all parties. In the event such arrangements are made, suit must be brought within six (6) months of the date set forth in the written agreement for delivery of the cargo from the MTO. Failure to take delivery on the date set forth in the written agreement shall not excuse the failure to bring suit within six (6) months of that date. Failure to give written notice within five (5) days after delivery of said cargo from the MTO describing the general nature of the loss or damage of said cargo shall be prima facie evidence of good delivery of the cargo by the MTO in good condition. Written notice as provided for herein shall be a condition precedent to the institution of any lawsuit against the MTO.

- L. The written notice of loss or damage referenced above must include and attach copies of the following, as applicable: all bill(s) of lading, transportation agreement(s), receipt(s) and other document(s) identifying the goods, consignor, consignee, vessel, voyage, shipping date, etc.; all manifests, packing lists, stow plans, loading/discharge reports, tally/count sheets, cargo receipts, etc.; all agreements, invoices and receipts respecting any sale of the goods; all correspondence respecting the goods and/or their transportation; all inspections, surveys, photographs, claim bills, invoices and statement of losses respecting the goods and/or the loss/damage being claimed, including documents supportive of any mitigation, salvage, market analysis and disposition efforts; and all other documents, instruments, records, data, drawings, photographs and information of any kind or nature whatsoever which may be pertinent or helpful to an understanding of the nature of the goods, the particulars of their transportation and/or the loss/damage being claimed. Failure to include any of the foregoing items with the written notice of claim shall render the notice of claim invalid and unenforceable.

## **ITEM 5: ADDITIONAL LIMITATION OF LIABILITY STATEMENTS APPLICABLE TO VESSELS AND INDEMNITY FROM VESSELS AND CARGO INTERESTS**

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All vessels delivered for loading and/or unloading by the MTO are subject to the following terms and conditions. Delivery of a vessel for loading and/or unloading by the MTO constitutes acceptance of these terms and conditions by the owner, charterer and/or operator of the vessel, vessel agent, the party delivering the vessel, the party ordering its delivery and/or the party ordering its loading/unloading by the MTO (collectively referred to as the "vessel owner").

- A. Limitation of Liability as to all Vessels and Indemnity from Cargo Interests for Damages Caused by Insufficiency of Packing
  - 1. In no event shall the MTO be liable for any damage to vessels in the loading, off-loading and/or unloading of cargo and all handling incident thereto that is caused directly, or indirectly, in whole or in part, by insufficiency in packing of the cargo and/or failure to supply proper handling instructions for the cargo. The shipper, consignor, consignee, and cargo owner shall defend, indemnify, and hold harmless the MTO, its officers, agents, and employees and all related entities and their officers, agents, and employees from and



against any and all claims, demands, actions, losses, and damages, including, but not limited to, claims for personal injury or death, claims for loss of or damage to vessels, and claims for property loss or damage of any kind or description, including, but not limited to, pollution or environmental damage, and all expenses, including attorneys' fees and costs incurred by the MTO, arising from or in any matter related to any such claims, demands, actions, losses, and damages caused by or related to insufficiency of packing of the goods for loading, off-loading and/or unloading and all handling incident thereto and failure to supply proper handling instructions for the cargo.

2. The MTO shall not, in any event, be or become liable for any loss or damage to vessels in an amount exceeding the lesser of the amount charged by the MTO for the stevedoring services or the actual costs of repairs to the vessel. In no event shall the MTO be liable for any damage to vessels unless said damage results solely from the failure of the MTO to exercise due care in performing the services contracted for.

3. In any event, the MTO shall be discharged from all liability in respect of loss or damage to vessels unless suit is brought within six (6) months of the date of loading or discharge of the vessel, and only if written notice describing the general nature of the loss or damage has been given to the MTO within five (5) days of the date of loading or discharge of the vessel. Written notice as provided for herein shall be a condition precedent to the institution of any lawsuit against the MTO.

#### B. Indemnity from Vessels for Damages Caused by the Negligence of the Vessel

1. The vessel and its owner(s), charterer(s) and/or operator(s) shall defend, indemnify and hold harmless the MTO, its officers, agents, and employees and all related entities and their officers, agents, and employees from and against any and all claims, demands, actions, losses, and damages, including, but not limited to, claims for personal injury or death, claims for loss of or damage to cargo, and claims for property loss or damage of any kind or description, including, but not limited to, pollution and/or environmental damage and damage to property of the MTO, and all expenses, including attorneys' fees and costs incurred by the MTO, arising from or in any manner related to the negligence of the vessel and/or its crew and/or the failure of the equipment, machinery, and appurtenances of the vessel, and in defending against any such claim, demand, or suit.
2. Nothing herein shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for its own negligence.

### C. Additional Limitations of Liability Applicable to Vessels

1. It is the responsibility of the vessel owner to monitor the prevailing and expected weather conditions in and around the MTO facility at all times when its vessel is present at the MTO facility, and to take all action necessary to safeguard, reposition or otherwise protect the vessel at any time when weather conditions may pose a danger to vessels. The MTO will not be responsible for any damages of whatsoever nature arising due to weather conditions and/or the vessel owner failing to take such preventive action.
2. All vessels delivered to the MTO shall be berthed at a location designated by the Port Authority. The vessel owner is responsible for ensuring that the vessel is properly moored at the designated location. Proper mooring includes, but is not limited to, ensuring that the vessel is moored with sufficient lines in number and strength to withstand any weather conditions that might arise at any time the vessel is berthed at the MTO facility. Vessel owner shall inspect the fendering system in the area where the vessel is to be moored to determine that the fendering is sufficient to protect the vessel and shall supplement the fendering system with additional protective devices, if necessary. The MTO is not responsible for inspecting or caring for any vessel at the terminal facility, nor for securing or watching any such vessel. The MTO is not responsible for providing any mooring lines, bumpers, fenders, or other gear used for berthing, does not accept the vessel for storage and shall not otherwise be held responsible for the vessel under bailment or any other legal theory. All responsibility for watching, securing, and protecting the vessel, and all liability for any loss or damage to the vessel, shall rest solely with the vessel and its owners, charterers and/or operators, and the party receiving the MTO services.
3. An officer of the vessel shall be in attendance at all times during operations to monitor vessel trim and stability and to observe and/or be notified of any accident or damage. The party receiving the MTO services shall be responsible for reporting any claim for MTO damage to the MTO's attending supervisor immediately and for acknowledging receipt of reports. If MTO has additional requirements for the vessel to improve working conditions, the party receiving the MTO services and the vessel shall fully cooperate.
4. In the event a condition develops that has the potential to jeopardize the safety of loaded vessels or their cargo at the terminal, the MTO may in its sole discretion, and without prior consultation with the party receiving the MTO services, exercise any means necessary to unload any such vessel and, in the event the MTO incurs additional expenses, including overtime, in unloading any such vessel, the party receiving the MTO services shall be liable for all such additional expenses. Any party that delivers a loaded vessel to the MTO for unloading does thereby consent to this provision and to the imposition of any such additional expenses. Nothing herein shall be construed as imposing upon the MTO any duty to take any additional measures to unload vessels.

5. The MTO will provide notice to the vessel owner of the time when loading or unloading of the vessel has been completed. Notice by fax or email will be deemed proper notice and the fax or email transmittal form or confirmation shall be conclusive evidence of the receipt of the notice by the party(ies) to whom it is addressed. The vessel owner shall pick up the vessel and remove it from the terminal within two (2) business days from receipt of such notice.
6. At the conclusion of the two-day notice period stipulated in paragraph 7 above:
  - A. All duties or responsibilities of the MTO with respect to the vessel or its cargo whether as wharfinger or bailee or otherwise shall terminate, and bailment shall be deemed to have ceased. The MTO will have no duty or responsibility to monitor the condition of the vessel or its mooring lines, to ensure that the vessel is adequately moored, or to take any action whatsoever to prevent the vessel from breaking away from its moorings.
  - B. The vessel owner shall have sole and exclusive responsibility for the vessel, including, but not limited to, the duty to monitor the condition of the vessel and its mooring lines, to ensure that the vessel is adequately moored, and to take all action necessary to prevent the vessel from breaking away from its moorings.
  - C. The MTO shall have no liability for any losses, expenses, damages or claims whatsoever related to the vessel or its cargo or caused thereby, including but not limited to damage to vessels or cargo or to any other property of any kind or description, pollution or environmental damage, personal injury or death. The vessel owner shall defend, indemnify and hold harmless the MTO, its officers and employees and all related entities and their officers, agents and employees from and against any and all claims, demands, actions, losses, damages, including, but not limited to, claims for personal injury or death and claims for property loss or damage of any kind or description including pollution or environmental damage and all expenses, including attorney's fees and costs, arising from or in any matter related to the presence of the vessel at the terminal or its breaking away from its moorings after the conclusion of the two-day notice period.
7. Nothing herein shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for its own negligence.

## ITEM 6: EXTRA SERVICES

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A. Late Documents/Wrong Format:

The MTO strives to provide the highest level of service to our customers and to achieve our goal of providing accurate and proper handling of your cargo, it is important that all documentation be received in correct format and in a timely fashion prior to vessel arrival. Late documents create difficulties to the service you receive and can jeopardize commencement of discharge.

The MTO will now require documents to be received 48 business hours prior to vessel arrival in correct excel or delineated format. If documentation is received between 24 - 48 hours there will be a \$500 per B/L late documents charge, if documents are received less than 24 hours the late documents charge will be \$750 per B/L.

If documents are received in any format other than EDI and/or Excel, there will be a fee of \$250 per B/L. Late or incorrect documentation or EDI files that must be entered manually, can also lead to sorting and/or charges of \$250 per B/L if applicable.

B. Storage:

Inside Storage \$2.85/Outside Storage \$2.05

C. Re-banding:

Re-banding services to be billed at \$75 per unit of cargo.

D. Rain Cancellation Fee:

A rain cancellation fee will be assessed of \$300 per gang per hour for gang supervisors (supervisors for stevedoring and/or warehouse labor) during their guarantee time. This charge will only apply for the time gang supervisors are hired and the gang has not been ordered or if the gang was knocked off prior to supervisors filling their minimum hourly guarantees.

E. Sorting:

\$95 per man per hour for sorting cargo

F. Photos/Additional Reporting:

If additional reporting or paperwork is required beyond the issued dock tally a fee of \$25 will be applied for the additional paperwork.

If photos of cargo are required there will be a charge of \$2/photo with a minimum amount of \$10 to apply.

## ITEM 7: ENFORCEMENT OF MTO SCHEDULE

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- A. This schedule is published in accordance with the Ocean Shipping Reform Act of 1998, 46 USC § 40501(f), and as required by law as set forth in the Code of Federal Regulations, Title 46, Chapter IV, Part 525.2. It therefore creates a contract between the MTO and the party receiving the MTO services and is enforceable in an appropriate court without proof that such party has actual knowledge of the provisions herein. Use of the terminal facilities shall constitute a consent to the terms and conditions of this MTO Schedule and evidences an agreement on the part of the party receiving the MTO services to pay all applicable charges, be governed by all rules and

regulations contained herein, and the acceptance of all limitations contained herein. A prevailing contract with the MTO will supersede this Schedule except that any item not covered in the prevailing contract is by default covered by this Schedule.

- B. The MTO shall be the sole judge as to the interpretation of this Schedule.

## **ITEM 8: WAIVER OF WARRANTIES**

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- A. The MTO makes no warranties of any kind, express or implied, including, but not limited to, the implied warranty of workmanlike service, and specifically disclaims the application to it, its employees or agents of any duty or theory of breach of warranty, strict liability or absolute liability for loss or damage to vessels, trucks, vehicles, cargo, goods, for services performed, or claims for personal injury.
- B. The MTO makes no warranties whatsoever with respect to the terminal facility or the party receiving the MTO services' access or use thereof. Prior to access, the party receiving the MTO services shall conduct a thorough inspection of the terminal facility and the areas which it intends to access or use, including areas adjacent thereto, for the purpose of determining their safety and suitability for the party receiving the MTO services' intended access and use. If the party receiving the MTO services believes there is any problem as to safety or suitability, the party receiving the MTO services shall immediately notify the MTO. If the condition cannot be changed by mutual agreement so as to assure safety and suitability to the party receiving the MTO services' satisfaction, the party receiving the MTO services shall cease all of its operations. Once the party receiving the MTO services begins any access or use of the terminal facility whatsoever, or continues to conduct operations at the terminal facility, it shall be irrevocably presumed that the terminal facility was inspected and accepted by the party receiving the MTO services as both safe and suitable for its operations.
- C. **THE PARTY RECEIVING THE MTO SERVICES SPECIFICALLY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF WORKMANLIKE SERVICE, THE IMPLIED WARRANTY OF MERCHANTABILITY, AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE.**

## **ITEM 9: DEFAULT**

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- A. **Liability for Expenses.** Upon any default by the party receiving the services, in addition to any other remedies available to the MTO under law or in equity, the party receiving the services shall be liable to the MTO for: (a) all expenses, including, but not limited to, attorneys' fees and costs (i) incurred by MTO in curing or seeking to cure such default or in exercising or seeking to exercise any of MTO's rights and remedies with respect to such default, or (ii) otherwise arising out of such default, plus (b) interest on all such expenses, at the rate of eighteen percent (18%) per annum, all of which expenses and interest will be due and payable by the party receiving the services to the MTO upon written demand.

**B. Jurisdiction and Venue.** Each party hereto agrees that any suit, action or other legal proceeding arising out of or relating to this Schedule, or the Terminal Services provided by the MTO, may be brought in any court of competent jurisdiction in the Circuit Court of Cook County, Illinois, or in the United States District Court for the Northern District of Illinois, Eastern Division, or in any state or federal court in the county or district where the Terminal is located, at the sole discretion of the MTO. Each party hereto consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of venue of any such suit or proceeding in any of such courts.

## **ITEM 10: GENERAL PROVISIONS**

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- A. This Schedule may be changed by MTO from time to time without notice. The current version of this Schedule is available at the terminal facility main office and on the internet at [fmtcargo.com](http://fmtcargo.com).
- B. If any provision of this Schedule is found to be unenforceable or void, it is agreed that such provision shall be deemed deleted from this Schedule and shall not affect the remaining provisions of this Schedule, which remaining provisions shall remain in full force and effect.
- C. This Schedule, together with MTO's Rate Quote, and any separate written agreements between the MTO and the party receiving the MTO services represents the entire agreement between the MTO and the party receiving the MTO services and supersedes all prior and contemporaneous agreements, written or oral. No waiver, modification, or amendment of the terms of this MTO or any Rate Quote shall be of any force or effect unless made in writing, signed by the MTO and the party receiving the MTO services and/or the party claiming a waiver, modification, or amendment of the terms, and specifying with particularity the nature and extent of such waiver, modification or amendment.
- D. Any waiver by the MTO of any default by the party receiving the MTO service or any other party shall not affect or impair any right arising from any subsequent default.
- E. For any notice required by any provision(s) herein, notice by fax or email will be deemed proper notice and the fax or email transmittal form or confirmation shall be conclusive evidence of the receipt of the notice by the party(ies) to whom it is addressed.
- F. Nothing herein shall relieve the MTO from liability for its own negligence or impose upon any other party the obligation to indemnify or hold harmless the MTO from liability for its own negligence.

## **§525.3 AVAILABILITY**

### **ITEM 1: AVAILABILITY TO THE PUBLIC**

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Publication of this MTO Schedule on this web site complies with FMC requirements for electronic access.

### **ITEM 2: NOTIFICATION**

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The Commission's Bureau of Tariffs has been notified, via completion of electronic Form FMC-1, of the publication of this MTO Schedule.

### **ITEM 3: FORM AND MANNER**

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This MTO Schedule complies with Form and Manner as set forth by the commission in §525.3 subchapter B, chapter IV of 46 CFR.

## **§525.4 FMT QUALITY POLICY**

### **ITEM 1: FMT QUALITY POLICY**

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It is the goal and objective of FMT to meet or exceed the needs and expectations of our Customers in a safe and timely manner through consistent provision of quality, personalized service and continual improvement of our internal operations, procedures, and processes.

To achieve our goal and objective, FMT has established an effective Quality Management System based upon specific requirements. These requirements are communicated to all Managers and Employees. Management is committed to ensuring that its Quality Policy is understood, implemented, reviewed for continued effectiveness and maintained throughout the Company by requiring the direct involvement and total participation of each employee.

FMT is dedicated to:

- ✓ Promoting Safety
- ✓ Providing Quality Service
- ✓ Achieving Customer Satisfaction
- ✓ Monitoring All Procedures for Effectiveness
- ✓ Improvement Opportunities

All Managers and Employees adhere to the Quality Management System by performing to their highest possible standards, always bearing in mind that our ultimate objectives are to get it right the first time and continually strive for improvement.

Tom Critchley  
General Manager