

# **NORFOLK SOUTHERN RAILWAY COMPANY**

**NS CONDITIONS OF CARRIAGE # 2-I  
Replaces NS Conditions of Carriage #2-H**

**COAL, COKE and IRON ORE**

**Effective January 12, 2009**

**Issued On December 19, 2008**

Coal Business Group  
Norfolk Southern Corporation  
110 Franklin Road, S. E.  
Roanoke, Virginia 24042-0026

**NS CONDITIONS OF CARRIAGE FOR COAL, COKE AND IRON ORE**

Changes Are Noted as follows: (I) Increase; (D) Decrease; (W) Word change without rate change; (Z) Deletion; (N) New Provision

**CONDITION 1.1 -- SUBSIDIARIES AND AFFILIATED CARRIERS**

These conditions apply to Norfolk Southern and the subsidiaries and affiliated carriers listed here. References to "NS" include the listed carriers:

Norfolk Southern Railway Company  
 Atlantic and East Carolina Railway Company  
 Camp Lejeune Railroad Company  
 Chesapeake Western Railway  
 Central of Georgia Railroad Company, The  
 Georgia Southern and Florida Railway Company  
 State University Railroad Company  
 The Alabama Great Southern Railroad Company  
 The Cincinnati New Orleans and Texas Pacific Railway Company  
 Tennessee, Alabama & Georgia Railway Company  
 Tennessee Railway Company

**CONDITION 5.2 -- GENERAL APPLICATION**

The provisions of this Document apply to transportation of coal, coke from coal and iron ore, as identified below by STCC numbers, (a) when such transportation (i) originates on NS and (ii) moves under single line rates or single factor joint line through rates offered by NS itself or in conjunction with a connecting railroad as an exempt rate or as a regulated common carrier rate; and (b) to the NS portion of through movements under AAR Accounting Rule 11 or other combination or proportional exempt or common carrier rates. In the absence of a separate contract specifically covering the transportation, the terms and conditions of these Conditions of Carriage constitute a unilateral offering of such terms and conditions of a bilateral contract between NS and its connecting lines on the one hand, and the user of the transportation service on the other upon acceptance by such user. Tender of shipments to the originating carrier shall constitute acceptance of both the terms of service as set out in these Conditions of Carriage and the rate governing the shipment.

When NS is not the originating carrier, but does participate in a movement under single factor or joint through rates, the Conditions of Carriage or comparable offering of the originating carrier, along with the exempt or common carrier rates, shall apply to such transportation performed by NS, with the following exceptions: 1. where the terms of a valid rate quotation or separate contract specifically covering the transportation involved contradicts this provision, then the valid quote or contract shall govern and 2. where NS is the terminating carrier in such joint through or single factor rates, then the terms and conditions that would govern pursuant to this Conditions of Carriage at destination shall apply, including but not limited to, demurrage, unloading terms and charges, collect credit terms and switching carrier absorptions at the destination. When such originating carrier does not issue or have in effect such an offering, the terms of service contained herein shall apply.

Any tender of a shipment with different or additional terms and conditions submitted by Shipper shall be considered a counteroffer and such different or additional terms and conditions shall be deemed rejected by NS unless electronically confirmed or agreed in a writing executed on behalf of NS by a Marketing Vice-President of NS, regardless of whether the shipment is accepted or moved by NS.

However, if there are provisions in an applicable contract, tariff or quotation that are inconsistent with the terms of these Conditions, the terms of the applicable contract, tariff or quotation shall govern.

NS' Coal Transportation Management System ("CTMS") shall serve as the electronic business platform for the execution and management of transportation scheduling between Shipper and NS. CTMS does not alter the underlying obligations between Shipper and NS. Transportation management functions to be performed through CTMS shall include, but shall not be limited to, scheduling and permitting shipments for loading; release of empty equipment following unloading, submission of Bill of Ladings for shipments performance monitoring and measuring of equipment utilization.

Note: The STCC numbers for commodities covered under this Conditions of Carriage #2 Series are hereinafter referred to collectively as "Commodities":

STCC 11; **Coal** including Anthracite STCC 1111215, 1111220 and Synthetic Coal STCC 2991191;  
 STCC 2991410, 2991415, 2991425, 2991430, 2991440, 2991490; **Coke**  
 STCC 2991340, 2991341; **Petcoke**  
 STCC 1011190, 10111240, 10111290, 10111320; **Iron Ore**

### **CONDITION 10.3 -- APPLICATION OF REFERENCED TARIFFS, PUBLICATIONS AND CUSTOMER COMPUTER INTERFACES**

These Conditions incorporate and include the provisions of the following tariffs and publications (and their successor publications):

- Open and Prepay Station List OPSL 6000-Series
- Standard Transportation Commodity Code STCC 6001-Series
- Official Railway Equipment Register RER 6412-Series
- NS Mileage RPS 6301-Series
- Uniform Freight Committee UFC 6000-Series
- NS Switching NS 8001, 8211-Series
- Demurrage Rules and Charges—NS 6004-Series
- Weighing and Reweighing NS 8002-Series
- Diversion and Reconsignment - NS Tariff - 9037- Series
- Rules and Regulations - NS Tariff - 9219-Series
- Rules and Charges on Accessorial Services NS 8002 Series
- RRRRA 6000 Master (Rail re-organization, rerouting, etc.)
- NS Currency Exchange Regulations on International Traffic NS 6316

- Line Haul NS Tariffs including but not limited to NS 4007, NS 4203, NS 4008, including successor Tariffs
- Hazmat and Waste Tariff NS 6306 where applicable

The NS Coal Transportation Management System (“CTMS”) shall be used for all shipment monitoring, permitting and reporting. Register for CTMS access at [www.nscorp.com/accessNS](http://www.nscorp.com/accessNS).

References to specific publications herein include successor publications.

**CONDITION 12.0 -- COAL TRANSPORTATION MANAGEMENT SYSTEM (“CTMS”)**

The NS CTMS internet coal access and reporting system shall be used for all coal, coke and iron ore shipment monitoring, permitting, tracing, billing and reporting activities. Where customers are unable to obtain internet access then alternative arrangements can be made by contacting the NS System Manager Transportation, Roanoke, VA, E-mail: [dahrusov@nscorp.com](mailto:dahrusov@nscorp.com) or as subsequently designated by System Manager.

**CONDITION 15.0 -- ABSORPTION OF CONNECTING LINES SWITCHING CHARGES**

Rates making reference to this document will include full absorption of connecting line reciprocal switching unless otherwise agreed to in separate contracts or stated in a rate quotation.

**CONDITION 20.3 -- BILL OF LADING** Transportation by NS under these Conditions shall be subject to the terms of the Uniform Bill of Lading (BOL) as contained in the Uniform Freight Classification UFC 6000-Series, as modified from time to time. Any alteration, addition or erasure in the bill of lading made without special notation thereof of an NS agent shall be without effect and the rate agreed upon by contract or quotation as originally reflected in the bill of lading shall be the applicable rate.

The order of precedence for the application of terms and conditions for transportation services provided by NS shall be as follows:

- 1) Written Contract for the specific Movement
- 2) NS Customer Specific Rate Quotation
- 3) General Rate Tariffs
- 4) Conditions of Carriage
- 5) Other Applicable NS Publications, if any
- 6) Uniform Bill of Lading

Each shipper of Commodities on NS is required to supply an accurate BOL to NS no later than two (2) hours after the completion of loading via one the following electronic means:

I-BOL via accessNS at <https://www2.nscorp.com/accessNS>  
 CTMS via accessNS at <https://www2.nscorp.com/accessNS>  
 EDI

BOL's received by NS via the electronic means as noted are not subject to any manual handling or corrections fees.

Manual/non-electronic BOL customers must send BOL information to NS Central Yard Operations in Atlanta via fax or e-mail and phone. For each manual/non-electronic BOL, NS will charge the party submitting the BOL \$50 per BOL.

**CONDITION 25.2 – LOADING & MINIMUM LOADING WEIGHTS (I) (D)**

Minimum loading weights for coal loaded on NS shall be administered using the NS **CTMS** internet system pursuant to the conditions outlined below. The minimum carload weight for all coal loaded on NS shall be the **CTMS** calculated maximum load weight for that car at the time of loading. Cars not loaded to the maximum allowable load weight shall be subject to under-load charges, as follows:

**CTMS** uses actual car capacity, mine coal density, maximum per car weight restrictions for the proposed route to destination and load heap capacity above the car top rail to calculate the maximum load weight for each car and train loaded at each origin for each individual destination on NS.

Minimum weights required for coal car loading shall be 95% of the **CTMS** maximum load weight per car from non-batch weigh loading facilities and 98% of the **CTMS** maximum load weight per car from batch weigh loading facilities. Determination of whether a specific shipper meets the minimum weights shall be based on an average for each calendar quarter, for each separate loading facility and shall be calculated by dividing the weight actually loaded in cars (the numerator) by the total **CTMS** maximum load weight of those same cars shipped (the denominator) and comparing the resultant percentage to the required minimum of either 95% or 98% as the case may be.

For all cars loaded with Commodities other than coal, the minimum carload weight shall be 95% of the UMLER car capacity.

Where actual loadings from an origin to a destination in a calendar quarter fail to meet the specified minimum weights, the shipper shall be billed for and agrees to pay an under-load charge on each ton short of the minimum. In the absence of specific contract language outlining the charges for under-loading, the under-load charge shall be \$5.00 per NT on each net ton short of the minimum loading weight. Within 45 days from the receipt of an underload bill from NS, shipper may petition NS to review whether such underload charges are correct. In reviewing such charges for shipper, NS will, at its sole discretion, promptly determine whether such underload charges are accurate and may cancel such charges if there are obvious,

extenuating circumstances which operated to prevent shipper from loading the minimum weights at the implicated shipper loadout. The normal business records of NS will control. NS will advise shipper of its decision by e-mail.

A first failure to meet minimum loading requirements in a quarter will trigger a warning letter to be sent by NS to the shipper advising shipper of the under-loading result by loadout name and number and will include the specific shipments involved and the actual delinquent minimum weight percentage achieved for that quarter. For all subsequent under-loading failures in a calendar quarter the under-load charge, will be applied and billed to shipper, by NS, as noted above. NS will continue to assess under-loading charges without sending a new warning letter until no under-loading charges have accrued at that loadout for six (6) consecutive calendar quarters. After no under-loading charges have accrued at that loadout for six (6) consecutive calendar quarters, NS will issue a new warning letter for the first subsequent quarterly loading failure prior to billing for under-loading charges pursuant to the terms above.

Consignor/shipper at origin agrees to be bound by origin detention rules and agrees to pay any resultant demurrage charges, upon acceptance of cars for loading pursuant to NS Tariff 9219 Series.

#### **CONDITION 30.2 – PERMITTING SHIPMENTS & TRANSPORTATION**

Unless NS agrees to a different permitting schedule, all trainload and unit train shipments shall be scheduled and permitted monthly with NS Coal Business Group's Transportation Section in advance of loading, by the 25th of each month for the subsequent month. All other shipments must be permitted and scheduled at least 7 days in advance of shipment.

Where applicable, permits must be obtained and shipments scheduled on the NS **CTMS** self permitting system. Where self-permitting is not applicable, shippers must submit requests for permits to schedule loadings in writing to NS by fax, first class mail, and e-mail to:

System Manager Coal Transportation  
 Norfolk Southern Railway Company  
 110 Franklin Rd  
 Roanoke, VA 24042-0026  
 Fax: (540) 985-6398  
 E-mail: [dahrusov@nscorp.com](mailto:dahrusov@nscorp.com)  
 Or as subsequently designated by System Manager.

NS does not guarantee observance of loading times and dates. A permit is not a guarantee of rail service. Permits may be cancelled or withheld or loading dates modified where congestion, scheduling conflict or other temporary condition exists.

After a shipment is permitted and loaded, NS will arrange for reasonable transportation and delivery in accordance with instructions shown on the Bill of Lading and other conditions mutually agreed upon by the parties. Separate services such as weighing, switching and dumping not covered by the Bill of Lading or applicable contract must be arranged for separately with NS by the consignor or consignee.

**CONDITION 33.2 -- RELEASE OF EMPTIES AT DESTINATION**

All cars with Commodities placed by NS at destination shall be released empty using the **CTMS** "Online Release of Empties" transaction. The date stamp contained in the **CTMS** Online Release transaction shall be considered the release date for purposes of demurrage calculation. Demurrage at destination shall be pursuant to Tariff NS – 6004 Series, except where modified by specific contract, quote or tariff provision.

Cars released empty by means other than CTMS such as by notifying NS Central Yard Operations, in Atlanta, must be in writing by fax or e-mail. The date that NS receives e-mailed empty car releases shall be the release date for those cars. If by Fax, the date of the fax shall be the release date.

**CONDITION 34.1 – DEMURRAGE AT NS TRANSLOAD FACILITIES(I)**

**A. APPLICATION**

The demurrage rules and charges published herein apply to all railroad-owned cars shipped to Designated NS Coal Transload Facilities, as listed in Section **B**, pursuant to either tariff or contract rates.

Demurrage charges will accrue on a straight time basis for each calendar month, and will increase for longer periods of detention. No averaging of debits and credits is applied. Demurrage charges shall be based upon the total Days on Hand for each car or each such month less Free Days as noted herein.

No demurrage will be charged for coal assigned to Ground Storage at facilities where ground storage is available and that is actually and finally dumped to Ground Storage accounts at the involved facility. For purposes of this tariff, demurrage time is the total time a car is in a consignee's demurrage account at Designated NS Transload Facilities.

When cars billed for delivery at the coal dumping facilities at Designated NS Transload Facilities, as listed in Section **B**, cannot reasonably be accommodated at that point, such cars will be held by the carrier on tracks short of the facility and will be considered constructively placed at that point.

**B. DEFINITION OF TRANSLOAD FACILITIES(I)**

Designated NS Coal Transload Facilities include: Lamberts Point Dock, VA, Sandusky Dock, OH, Ashtabula Dock, OH and Wheelersburg Dock, OH.

**C. RECORDS & USING DUMPING ASSIGNMENTS**

No notice of car arrivals will be sent to consignees when cars arrive at a NS Designated Coal Transload Facilities. Arrival information can be obtained through NS' Coal Transportation Management System ("CTMS"), which shall be the official record for all car arrivals and departures.

A Dumping Assignment will be applied to a car at the time a car physically arrives at a Designated Coal Transload Facility. NS will designate a car as being either for

GROUND STORAGE, DIRECT VESSEL or BARGE based upon the designation that appears on the NS permit in CTMS for that shipment. All permits for any dock that does not have GROUND STORAGE available will be considered DIRECT VESSEL or BARGE even if the permit does not explicitly designate the cars as DIRECT VESSEL or BARGE (example: Lamberts Point).

A consignee may, upon written request, re-assign cars between DIRECT and GROUND STORAGE. When cars are reassigned from Ground Storage to Direct Vessel or barge, demurrage START DATE will be the earlier of either the actual car arrival date or the constructive placement date at the NS Designated Facility prior to the reassignment.

When cars are reassigned from Direct To Ground Storage then the STOP DATE for the cars will be the date that NS received the written request to effect the reassignment.

In order to utilize any GROUND STORAGE designation a consignee must have actual GROUND STORAGE capacity assigned to and available for the consignee at the involved NS Designated Coal Transload Facility, sufficient to handle any and all reassigned tonnage.

**D. ADDED FREE DAYS**

If in Norfolk Southern's sole judgment a service disruption occurs, then NS Coal Business Group personnel may grant ADDITIONAL FREE DAYS upon request.

Additional free days will be granted if NS suspends unloading operations at Designated NS Transload Facilities for a period exceeding 24 hours for any reason. This free time extension will be made only for cars on hand or arriving between 7 a.m. of the day operations are suspended and 7 a.m. of the day operations are resumed, and which would have been dumped into vessel or barges nominated to load during the suspension period, and will cover only the period from the date the vessel or barge reported, or would have reported at Designated NS Transload Facilities, to the date the vessel or barge actually took the cargo or the cars were reconsigned.

At the discretion of Norfolk Southern and with written concurrence from the consignee, SUBSTITUTE SERVICE may be performed in which one car's START DATE and STOP DATE may be substituted (or switched) with another car in the same consignee's account. This may be done to prevent any loading delays to vessel or barges.

**E. DEMURRAGE DEFINITIONS(I)**

The START DATE to calculate DAYS ON HAND will be the earlier of either the actual car arrival date or the constructive placement date at the dock.

The STOP DATE to calculate DAYS ON HAND will be the date that coal commences loading into a vessel or barge (i.e. when we start loading the first ounce of coal into the vessel or barge). The STOP DATE will be applied to each car physically dumped for that vessel or barge.

The DAYS ON HAND will be calculated as the number of days from the START DATE to the STOP DATE with any partial day counting as one whole day.

The amount of FREE DAYS to apply will vary by transload facility, as follows:

	# FREE DAYS
Lamberts Point Dock	10
Sandusky Dock & Ashtabula Dock, OH	6
Wheelersburg Dock, OH	2

Additional Free Days may apply pursuant to Section **D**. herein.

The DEMURRAGE DAYS will be calculated by taking DAYS ON HAND minus the FREE DAYS. If the resulting value is zero or negative, then DEMURRAGE DAYS will equal zero for the period.

The DEMURRAGE CHARGE is the applicable daily Demurrage Rate times the applicable Demurrage Days.

TOTAL DEMURRAGE will be calculated by adding the applicable Demurrage Charge for the 1<sup>st</sup> 10 days with the Demurrage Charge applicable on the remaining Demurrage Days, over 10 days.

NS' Bulk Rail Inventory Management ("BRIM") system shall be the official record for all car demurrage information at Designated NS Transload Facilities.

**F. DEMURRAGE RATES**

The per car Demurrage Rates at Designated NS Transload Facilities shall be **\$60.00** for each day up to 10 days and **\$120.00** for day 11 and each day thereafter.

**G. DEMURRAGE CALCULATION**

Each calendar month NS will calculate the Total Demurrage Charges due, if any, for all cars, for each consignee at each Designated NS Transload Facility. Charges for each car shall be determined by multiplying the applicable Demurrage Rate times the applicable Demurrage Days for each car and adding the sum of those charges together to equal the Total Demurrage Charges. An example demurrage calculation for one car at Lamberts Point, VA follows:

- Car arrives (either actual or constructive placement) on 02/08/06
  - Vessel or barge Loading Commences on 03/23/06
  - Car physically dumps on 03/24/06
- FREE = 10 days +
  - ADDITIONAL FREE DAYS = 0 days (Section **D**)
  - Total Free Days-Lamberts Point = 10 Days

- 1<sup>st</sup> 10 Demurrage Days = \$60 per day
- After 10 Days = \$120 per day
  
- START DATE = 02/08/06
- STOP DATE = 03/23/06
- DAYS ON HAND = 43
- Less FREE DAYS = 10
- Equals DEMURRAGE DAYS = 33
  
- **DEMURRAGE CALCULATIONS:**
  - 1<sup>st</sup> 10 Demurrage Days @ \$60 = \$ 600 +
  - Next 23 Demurrage Days @ \$120 = \$ 2,760
  
- 33 Total Demurrage Days
- **Total Demurrage Charges = \$ 3,360**

All such, demurrage charges calculated for each car in a consignee's account at that Designated NS Transload Facility will be added together to produce the total demurrage charges due NS for that month, at that facility, for those cars. The bill and supporting detail will be mailed to Consignee and consignee agrees to pay such Total Demurrage Charges.

**H. RECONSIGNMENT**

If a consignee Reconsigns a car to another consignee (i.e. sells the coal in a car to another consignee) before that car is physically dumped, then the original consignee is responsible for all calculated TOTAL DEMURRAGE CHARGES up to and including the day of the RECONSIGNMENT. The new consignee, to whom the car has been reconsigned, agrees to assume responsibility for and pay all TOTAL DEMURRAGE CHARGES for such car beginning from the day after the car is reconsigned. The car that have been reconsigned to the new consignee will not qualify for an additional 10 Free Days, per Section E, and the Demurrage Rate to apply, from Section F, will be based upon the original arrival date of the car, less 10 Free Days.

As an example, the new consignee would pay \$120 per demurrage day if he received a reconsigned car that arrived at the facility 21 days prior to the reconsignment. If that car was not dumped for 10 days after it was reconsigned, then the Total demurrage Charges would be \$1,200 for that car which is 10 Demurrage Days times \$120/Day. The reconsigned car would have accumulated a total of 31 total days from the original arrival date and the original consignee would be billed for 11 Demurrage Days: 10 @ \$60/ day + 1 @ \$120/Day for a Total Demurrage Charge of \$720.

**I. DEMURRAGE BILLING**

Billing will be performed each month for each consignee by aggregating the TOTAL DEMURRAGE CHARGES calculated for each car physically dumped during the previous month for that consignee. NS will send the demurrage bills to the consignee and the consignee agrees to pay such demurrage charges as may accrue under consignee's

account. A summary report will be included with each such demurrage bill outlining per car DEMURRAGE CHARGES.

**J. REFUSED COAL**

A car will be considered as refused when the consignee provides a verifiable refusal notice to the railroad. The refusal notice must be delivered via email or letter to personnel at the applicable NS Coal Transload Facility. Subsequent Total Demurrage Charges shall be paid by and are the responsibility of the consignor and shall be calculated under the terms & conditions provided for in this Tariff. NS Coal Transportation shall notify the consignor about refused coal within 24 hours, excluding Sundays and legal holidays, after receiving the refusal notice from the consignee.

**-END CONDITION 34.1-**

**CONDITION 35.3 – COMPLETE UNLOADING AND CLOSING CAR DOORS**

Upon arrival and placement of rail cars for unloading at destination, the consignee accepts and agrees (a) to unload cars in a manner that does not damage equipment (b) release cars in a condition suitable for reloading by another shipper and (c) accepts liability for any demurrage and detention charges accruing for all cars placed at consignee's destination pursuant to applicable demurrage and detention provisions applying thereto.

Consignee shall be responsible for the proper and complete unloading of commodity out of each railcar. It shall be the sole responsibility of the consignee to remove all contents from the car and close, latch and lock all doors on each hopper railcar before releasing railcars to NS. In the event consignee is unable to close, latch, and lock all doors due to wear or damage to the doors consignee shall, prior to release of the empty railcars, notify NS of the involved railcar (s) by initial and number and shall provide a description of the problem with the doors. If railcars are released empty to the NS and the doors are not closed, latched and locked, or if consignee has not provided timely notice of its inability to close, latch or lock the door and a description of the problem, or the car has not been completely unloaded, consignee shall pay NS \$150.00 for each such railcar.

In addition to the \$150 handling fee noted above, if a car is not properly cleaned or car doors are left open, and is subsequently released and removed, then the railroad discovering such failure may undertake to remedy such failure and the consignee will be responsible for reimbursement to the railroad for the cost, including associated switching, to make such car suitable for loading but not less than \$350 per car.

**CONDITION 38.0 - REJECTED COAL, COKE, AND IRON ORE (N)**

These rules shall apply to all coal, coke, and iron ore shipped in railroad-owned or supplied railcars shipped to any destination pursuant to either tariff or contract rates.

Coal, coke, or iron ore will be considered as rejected when the consignee, consignor, or transhipper provides a verifiable refusal notice to the railroad. The rejection notice must be delivered to NS Coal Transportation in writing or by email.

Subsequent demurrage charges shall be paid by and are the responsibility of the consignee that

rejects the shipment; provided, however, that if a shipment of coal has been refused because of the presence of rock or other debris, subsequent demurrage charges shall be paid by and are the responsibility of the consignor. Subsequent demurrage charges shall be \$60 per car per day for the five days and shall increase to \$120 per car per day after five (5) days and shall increase again to \$180 per car per day after ten (10) days. Demurrage charges incurred prior to the rejection shall be paid by consignee.

Consignor must file a request in writing or by email for approval by NS of the reconsignment, re-routing, diversion, or otherwise redirection of such rejected coal within fourteen (14) days after rejection by the original consignee of the shipment. The consignee for such a redirection rejected shipment must consent to accepting the coal "as is" in writing or by email to NS within the same fourteen (14) days after rejection by the original consignee. All charges relating to diversion or reconsignment, including those provided in Tariff NS 9037-I, or its successor, and all stop charges, including those provided in Tariff NS 9219-B, or its successor, shall also apply.

Coal, coke, or iron ore that has been rejected by a consignee at a Designated NS Transload Facility or at any destination or location other than a Designated NS Transload Facility, as listed in Conditions of Carriage #2-H, or its successor, may not be reconsigned, re-routed, diverted, or otherwise re-directed to a Designated NS Transload Facility without NS's advance consent, which shall be given either in writing or by email and which is in NS's sole discretion.

Notwithstanding Tariff NS 9037-I, Item 245, or its successor, it is prohibited for a consignor to redirect rejected coal to a Designated NS Transload Facility if that coal that has been refused because of the presence of rock or other debris that could harm equipment at a Designated NS Transload Facility.

In the event that consignor fails to comply with the fourteen (14) day time period set out above, the coal shall be considered abandoned and NS shall have the right to dispose of the rejected coal, coke, or iron ore by such commercially reasonable methods as NS shall deem appropriate in its sole discretion. Any proceeds arising from such disposition will be first applied to any outstanding freight and demurrage charges due to NS as well as against any disposition of costs and charges. The balance, if any, will be paid to consignor. In the event that NS disposes of rejected coal, coke, or iron ore, all charges that have accrued, including demurrage charges, stop charges, and diversion or reconsignment charges, that have accrued remain due and payable."

#### **CONDITION 40.2 – APPLICABLE TRANSPORTATION CHARGES**

The charges applicable to the transportation from origin to destination will be those contained in the applicable contract, tariff or quotation in effect on the shipping date, as reflected on the Bill of Lading.

Customer-specific rates (contracts or specific quotes) will take precedence over open or non-customer-specific rates (general quotes). Within each of those two categories, point-to-point rates will apply regardless of any group or scale rates available, and group rates will be applied to the exclusion of any scale rates.

Unless otherwise agreed upon by NS and the purchaser of transportation subject to this publication, where NS can serve both the shipper and the receiver (either directly or through reciprocal switching by another carrier), NS single-line rates will apply to the exclusion of any joint-line rates.

Rates applicable via NS apply only over the most direct lines of NS, forming the shortest possible NS mileage, from the first point at which NS receives the shipment (from consignor or other railroad) to the last point at which NS delivers the shipment (to consignee or other railroad). NS reserves the right to actually handle shipments via any route over NS lines.

**CONDITION 45.3 – PAYMENT AND CREDIT**

Acceptance by NS of a tender of a shipment by Shipper does not constitute the extension of credit by NS to Shipper or to party responsible for payment of NS freight charges ("Payor"). Credit shall only be extended through the Credit Department of NS. If NS extends credit, it is granted only as a convenience to the Shipper or Payor and may be revoked by NS at any time, as to any shipment (including those in transit), and without notice to Shipper or Payor. Any changes in Shipper's or Payor's ownership or financial condition which materially affects Shipper's financial standing must be reported to NS' Credit Department.

Where credit has been extended to Shipper or Payor, Shipper or Payor agrees to pay all charges in fifteen (15) days from the date of the freight bill or invoice. Where credit has not been extended to Shipper or Payor, payment of transportation charges must be made to NS in advance of the shipment in cash. Where credit has been extended but is revoked while shipment is in transit, payment must be made to NS, in cash, before NS will release the car(s) to receiver at destination.

In the event that Shipper or Payor shall dispute the amount of a bill, Shipper or Payor shall pay to NS within the credit period the undisputed amount of the bill. Shipper or Payor shall also notify NS within the credit period of the disputed amount and the basis for the dispute. Payment of bills, or any portion thereof, by Shipper or Payor which later are determined to be incorrect will not prejudice Shipper's right to seek a refund within the statutory period.

NS shall have the right to recover from Shipper or Payor all reasonable costs of collection, including but not limited to reasonable attorneys' fees, in the event of any violation of the credit terms of NS by Shipper or Payor.

Effective October 1, 2003, NS will assess a finance charge of one percent (1%) per month (twelve percent (12%) per annum) against unpaid linehaul freight bills beyond credit terms. Finance charges will be calculated using a daily rate of .0329% (12%/365 days) which will be applied to unpaid linehaul freight bills that are not paid within the governing credit period. The finance charge will accrue daily until payment is received by NS.

Placement of cars by NS under a credit agreement shall be deemed acceptance of the shipment. Acceptance of the shipment shall be deemed acceptance of responsibility for payment of all charges occurring on the shipment, including detention and switching services performed at destination. All payments shall be in U.S. money and will not be reduced to offset claims, damages to property, or for other reasons.

**CONDITION 50.0 – CARRIER LIABILITY FOR LOSS OR DAMAGE TO LADING**

NS will assume liability for loss and damage under the terms of 49 USC 11706 and the terms of the Uniform Bill of Lading, provided that where provisions maintained by other railroads in the through route differ, then the rules of the origin carrier will apply.

**CONDITION 52.1 – AGGREGATE RULE**

Unless specifically authorized in writing by NS, point-to-point rates may not be combined to provide a through rate.

**CONDITION 53.0 – INTERMEDIATE RATES**

Except as otherwise specifically provided in individual contracts or rate quotations, rates will not apply from or to points intermediate to the origins or destinations specified in such individual contracts or rate quotations.

**CONDITION 55.5 – FUEL SURCHARGE**

(Does not apply to Public Prices)

In the event the average monthly price of West Texas Intermediate Crude Oil exceeds \$23.00 per barrel calculated using the daily prices published in the Wall Street Journal. Norfolk Southern will assess a fuel surcharge on all linehaul freight charges (as set forth below, the “WTI Average Price”).

The applicable fuel surcharge percentage shall be applied to each shipment having a bill of lading dated on or after the 1<sup>st</sup> day of the second calendar month following the calendar month of a given WTI Average Price Calculation. The fuel surcharge will change monthly per the table below:

<b>Calendar Month of WTI Average Price</b>	<b>Fuel Surcharge Applied</b>	<b>Calendar Month of WTI Average Price</b>	<b>Fuel Surcharge Applied</b>
January	March 1	July	September 1
February	April 1	August	October 1
March	May 1	September	November 1
April	June 1	October	December 1
May	July 1	November	January 1
June	August 1	December	February 1

The fuel surcharge will be 0.4% of the linehaul freight charge for every \$1.00 per barrel, or portion thereof, by which the WTI Average Price exceeds \$23.00. The WTI Average Price for a given calendar month will be determined by adding the daily West Texas Intermediate Crude Oil prices published in the Wall Street Journal during a calendar month, and dividing the result by the number of days so published in that given month. The result will be rounded to the nearest cent. If the Wall Street Journal ceases publication of the price of West Texas Intermediate Crude Oil, NS will employ a suitable substitute source of price or measure. The following schedule reflects the applicable fuel surcharge within the WTI Average Price ranges noted below.

WTI Average Price Per Barrel	Fuel Surcharge Percentage	WTI Average Price Per Barrel	Fuel Surcharge Percentage
\$23.00 and below	No Surcharge	\$36.01 - \$37.00	5.6%
\$23.01 - \$24.00	0.4%	\$37.01 - \$38.00	6.0%
\$24.01 - \$25.00	0.8%	\$38.01 - \$39.00	6.4%
\$25.01 - \$26.00	1.2%	\$39.01 - \$40.00	6.8%
\$26.01 - \$27.00	1.6%	\$40.01 - \$41.00	7.2%
\$27.01 - \$28.00	2.0%	\$41.00 - \$42.00	7.6%
\$28.01 - \$29.00	2.4%	\$42.01 - \$43.00	8.0%
\$29.01 - \$30.00	2.8%	\$43.01 - \$44.00	8.4%
\$30.01 - \$31.00	3.2%	\$44.01 - \$45.00	8.8%
\$31.01 - \$32.00	3.6%	\$45.01 - \$46.00	9.2%
\$32.01 - \$33.00	4.0%	\$46.01 - \$47.00	9.6%
\$33.01 - \$34.00	4.4%	\$47.01 - \$48.00	10.0%
\$34.01 - \$35.00	4.8%	\$48.01 - \$49.00	10.4%
\$35.01 - \$36.00	5.2%	\$49.01 - \$50.00	10.8%
		<b>For each dollar or portion thereof above \$50:</b>	<b>the FSC increases by 0.4%</b>

Notice of changes in the percentage amount of the fuel surcharge will be published on NS's web page at [www.nscorp.com](http://www.nscorp.com).

**CONDITION 60.0 – NON-WAIVER**

Any waiver on the part of NS of any term or condition of these Conditions of Carriage shall not constitute a precedent, nor require NS to continue waiving such term or condition or to waive any succeeding breach of the same or any other of the terms and conditions of these Conditions of Carriage. No waiver or purported waiver on the part of NS shall be deemed to bind NS unless made in writing and signed by an authorized NS Marketing Officer.

**CONDITION 65.0 - BANKRUPTCY OR INSOLVENCY (N)**

In the event the Shipper files or is the subject of a filed petition in bankruptcy and the shipper has a transportation contract or other agreement with NS (collectively "Agreement") that incorporates these Conditions of Carriage, the shipper will, as soon as practicable:

1. Identify the NS as a "Critical Vendor" of essential services as that term is interpreted and understood within the context of a bankruptcy proceeding;
2. Identify any Agreement with NS under which there remains continuing unperformed obligations; and,
3. Chose to elect to either assume or reject such Agreements identified pursuant to paragraph (2) above within sixty (60) days of the date of the filing of the shipper's petition in bankruptcy.

In the context of a bankruptcy proceeding, no Agreement identified under paragraph (2) may be assigned without NS' consent, unless NS is given adequate assurance of future performance by the assignee. Such adequate assurance will include, but not necessarily be limited to, a deposit with NS as security for the timely payment of switching and linehaul charges an amount equal to

the average thirty (30) day accrual for such charges as or security guarantees in form and substance satisfactory to NS from one or more persons who satisfy NS' standard of creditworthiness.

<END>