

# Tariff

Effective September 1, 2022

## Schedule of Charges

(all charges levied on per bale basis unless otherwise indicated)

	<u>Per Bale</u>
1. <b>RECEIVING COTTON:</b> (includes weighing, locating, and issuing electronic warehouse receipts).....	\$3.65
2. <b>PLAINS COTTON IMPROVEMENT PROGRAM:</b> Please note that these charges are producer contributions and collected by the warehouse for the benefit of Plains Cotton Growers, Inc.....	\$0.10
3. <b>STORAGE:</b> per diem (30 days minimum).....	\$0.08
4. <b>WEST TEXAS BOLL WEEVIL MAINTENANCE:</b> Please note that these charges are producer contributions and collected by the warehouse for the benefit of Texas Boll Weevil Eradication Foundation.....	\$1.00
5. <b>SHIPPING:</b> (includes picking and loading) .....	\$5.45
6. <b>MARKING:</b> (up to a total of five letters, numbers, or characters) .....	\$1.00
7. <b>COMPRESSION:</b> An additional handling charge of \$2.50 per bale will be assessed for bales weighing 550 pounds or more.....	\$9.50

### MISCELLANEOUS SERVICES

8. <b>REWEIGHING:</b> (includes 3 copies of weight sheet) .....	\$5.00
9. <b>RESAMPLING:</b> .....	\$5.00
10. <b>RESTOCKING:</b> (See Rule 7).....	\$3.00
11. <b>CANCELLATION OF SHIPPING ORDER:</b> (See Rule 7).....	\$3.00
12. <b>CHANGE OF SHIPPING ORDER:</b> (See Rule 7).....	\$2.00
13. <b>EARLY/LATE PICK-UP:</b> (See Rule 7).....	\$1.00
14. <b>FLATBED LOADING:</b> .....	\$1.50
15. <b>PHYTOS:</b> \$5.10 flat fee per order for inspection and certification of cotton for export (See Rule 11)	
16. <b>SMALL SHIPMENT SURCHARGE:</b> \$10 flat fee per order for each tag list covering 20 bales or less	

- ◆ Services not listed such as expedited services will be charged at rates agreed upon when service is requested.

## Rules

### Definitions

As used herein, the following definitions apply:

- a. **Owner:** the term owner as used herein shall mean the grower, shipper or other person and/or entity storing cotton in the warehouse and each of their respective heirs, executors, successors and assigns.
- b. **Company:** shall mean the entity listed above which operates the warehouse and its successors and assigns.
- c. **Business Days:** shall mean Monday through Friday each week, except for any of such days which are Holidays.
- d. **Holidays:** shall mean Labor Day, Veterans Day, Thanksgiving Day, Christmas Eve, Christmas Day, New Year's Day, MLK Day, Washington's Birthday, Memorial Day, Juneteenth, Independence Day; except that if any of such holidays are celebrated on an alternative date because such Holiday falls on Saturday or Sunday, such alternative date shall be deemed a Holiday.
- e. The **Normal Work Week** of the company shall be the period from 8:00 o'clock a.m. until 5:00 o'clock p.m., Central Standard Time, on Business Days each week. Services at other times may be provided by special arrangements and at the discretion of the Company provided, however, that for all cotton loaded outside the normal working hours of a Business Day, and in addition to all other applicable charges, Owner shall be charged with a reasonable rate established by the Company in the exercise of its discretion.
- f. **Complete Shipping Order** shall mean delivery to Company of warehouse receipts (in numerical order) and a complete set of shipping instructions, which shall include a standard electronic shipping order, means of conveyance, desired load date, and any other desired special instructions such as special markings, resampling, reweighing, etc. The order must be accompanied by an original compress receipt or recognized electronic receipt. Company only recognizes compress tag numbers. Upon receipt of these documents the Company and the Owner shall agree on a Scheduled Date. The "Scheduled Date" as used herein means the date on which the warehouse agrees to have the cotton covered by a Complete Shipping Order ready for loading. An order does not become a Complete Shipping Order until a Scheduled Date is assigned and the above referenced documents are received by the Company.
- g. **Tariff** shall mean this schedule of Charges, Miscellaneous Services and Rules which, coupled with the applicable Warehouse Receipt, constitute the entire agreement between Owner and the Company.

### Billing

1. All charges are due and payable upon receipt of invoice from the Company's warehouse and will be collected from the party who surrenders the warehouse receipt.
2. All charges are due and payable upon receipt of invoice of the Company at its general office in Lubbock, Lubbock County, Texas. Company shall be entitled to collect reasonable attorney's fees incurred to foreclose upon collateral and to collect past due amounts owing under this Tariff. For cash customers: if payment is not received two (2) business days prior to the Schedule Date then a \$100.00 late payment fee will be assessed. Invoices not paid within thirty (30) days of the date upon which they are due will become delinquent and Company may add a finance charge in an amount equal to an annual percentage rate of eighteen (18%)

percent, or the maximum amount allowed by law, whichever is less, on all delinquent accounts from the date past due until paid.

3. Pursuant to the provisions of Section 7-209 of the Texas Business & Commerce Code and other applicable statutes, the Company is hereby granted a continuing security interest and lien on each bale of cotton (and the proceeds thereof) which is stored to secure all charges, advances, liabilities and other amounts owing to the Company under this Tariff with respect to the bale of cotton.
4. Consistent with the limitations on the liability of Company as set forth herein, in case of damage or casualty to bale, the Owner will be billed for all accrued charges, and such charges may be offset against any monies found to be due and owing to Owner on account of said damage or casualty.
5. In addition to the accrual of finance charges on delinquent accounts as stated above, the Company reserves the right to accelerate and demand payment of all accrued charges due and owing on all cotton as of July 31 of each year.
6. Notwithstanding Rule 2, the Company may, in the exercise of its sole discretion, permit certain Owners to make payment-in-full for accrued charges after cotton has shipped. However, if Owner fails to tender payment-in-full for all charges within fourteen (14) days from the date of any shipment, the Company reserves the right to put the Owner on a **cash before delivery status**. In such cases the Company will not release cotton for shipment until payment-in-full for all outstanding accrued fees has been made. Company is not obligated to provide the Owner with advance notice of this change in status.
7. Storage will stop on the agreed upon Scheduled Date. If the cotton is not picked up on the Scheduled Date contained in the Complete Shipping Order then an additional late pick-up fee will be assessed in the amount of \$1.00 per bale/per day, starting on the first day after the Scheduled Date and continuing through date loaded or through date change/cancellation of order is received by Company, as the case may be. In the event a late load is cancelled or rescheduled, all late charges will be assessed in addition to any change/cancellation charges. Cotton not picked up within 30 days after the Scheduled Date will be returned to stock, receipts returned and subject to a cancellation and restocking fee. Company may, in its sole discretion, waive the early pick-up fee where Owner makes reasonable advance efforts to schedule an early pick-up time with Company. A change fee is assessed when any change is made to the original shipping instructions.
8. The shipment of CCC-interest cotton without surrender of the original warehouse receipt prior to shipment as allowed by the Secretary of Agriculture may be subject to special service charges. Cotton stored under special contract with the CCC shall be released from the special contract upon a sale or transfer of the cotton to another person and/or entity. Upon the sale or transfer the cotton shall be deemed to be stored subject to the Tariff that is in effect on the date of the sale or transfer.
9. Charges for services performed, actual labor costs and other expenses incurred, not specifically mentioned herein, when in direct interest of the Owners, shall be charged to the party benefitted by the same, such services to be described on any invoice rendered.

### **Scheduling and Shipping**

10. **Scheduled Date:** Owner is responsible for obtaining a Scheduled Date- i.e. scheduling shipments through the Company. If the initial shipping date requested by Owner is not available, the Company will assign the next available shipping date for such cotton or a mutually agreed alternate date. No Scheduled Dates will be given on Holidays and/or outside the Normal Work Week, unless by special arrangement. The Owner is responsible for confirmation with Company of the Scheduled Date. Shipping instructions do not constitute a Complete Shipping Order until a Scheduled Date is assigned. This Company accepts Staging Shipping Orders (“SSOs”), however, a \$100.00 surcharge will be assessed if Owner fails to release warehouse receipts within two (2) business days of the Scheduled Date. Owners may verify and confirm electronically the availability of schedule dates and shipping status via the following website: [www.ismyloadready.com](http://www.ismyloadready.com).

11. Owner has the duty to inspect the cotton before it leaves the warehouse. Truckers will be afforded the opportunity to inspect each bale loaded for surface contamination or other defects. The Company is not responsible for contamination due to trucks being in an unsuitable condition to carry cotton. All phytosanitary certificate requests must be included on the shipping order. If Owner omits the phyto request under the shipping order instructions, then a change fee will be assessed if a request is made later.
12. **The company shall not be liable for any delays in shipment and/or any failure to have cotton available for shipment where such delay is caused by act of God, pandemics, acts of civil or military authority, acts of terrorism, weather, fire, flood, insurrection, riot, strike, labor dispute, non-availability and/or timely arrival of transportation, or any other causes beyond the control of the Company. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL THE COMPANY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR MULTIPLE DAMAGES OF ANY KIND RELATING TO OR ARISING OUT OF ANY DELAYS IN SHIPMENT OR AVAILABILITY FOR SHIPMENT.**

**During and following the peak of the harvest season, shipping delays may be experienced by some plants, particularly in high production years. Owners' shipping plans must take into account the possibility of such delays. Owners are encouraged to contact the plant office of the Company to determine the status of outgoing shipments. It is further expressly agreed and understood that delays in shipment such as detention caused under these circumstances are events constituting the "non-availability and/or timely arrival of transportation" within the meaning of the immediately preceding paragraph.**

#### **Insurance, Liability and Presentment of Claims**

13. Company carries named risk insurance covering baled cotton in our possession or control. **Except to the extent of this insurance coverage, all cotton is stored at the owner's risk.** Owners having cotton stored with the Company which is contracted for sale at prices higher than market value, as determined by the Company's policy, have the duty to obtain additional insurance, if it is desired and at Owner's expense, to cover the difference between contracted value and market value. In the case of damage to, or casualty of a bale, the Company expressly disclaims any liability or obligation to pay any price for the cotton other than in accordance with the valuation provisions contained within the applicable policy of insurance and only to the extent coverage is available. **IN NO EVENT SHALL THE COMPANY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR MULTIPLE DAMAGES OF ANY KIND ARISING OUT OF DAMAGE OR CASUALTY TO COTTON.**
14. Nothing contained within this agreement shall be construed as placing a duty on the Company to inspect for possible damage to any bale delivered for storage.
15. The Company assumes no responsibility for the density and/or weight of any cotton not compressed at its facility.
16. The weights on all warehouse receipts issued by this Company are recorded by certified electronic scales provided by gins. **Consequently, the company shall not be liable for any claims arising out of or resulting from bale weight of any kind.** This Company is not responsible for invisible damage, misshapen bales, or latent or inherent defects, or claims otherwise resulting from the compression and/or ginning process. This Company makes no representations or warranties as to the quality or grade of any cotton stored in its warehouse. The Company is not liable for loss, damage or unmerchantability of cotton received with insufficient, inadequate, low quality, defective bale covering and/or ties.
17. Except as provided in Rule 13, Owner assumes all risks of loss, including but not limited to damage or delay by acts of God, acts of civil or military authority, invasion, insurrection, riots, strikes, labor disturbances, acts of enemies of the Government, sprinkler malfunction, loss in weight or concealed damage. This Company is not responsible for non-performance of any service due directly or indirectly to war, communicable disease, national emergencies or priorities or to its inability to obtain products, materials, supplies, machinery, labor, fuels, transportation facilities, or anything necessary to the performance of service requested, or to the action

of any Governmental body or agency of the United States or any State or Sub-Division thereof or any other cause beyond the Company's control.

18. **This Company is not liable for any damages of whatever nature, either direct or consequential, Owners of the cotton might suffer because of a delay in performance of services and damages as described by Rule 16, even if said delays or damages are caused in whole or in part by the negligence of the Company.**
19. Each Owner that stores cotton with the Company warrants that such cotton is free and clear of all liens except those disclosed and described on the warehouse receipts issued by the Company. The Company is under no obligation to honor liens claimed by third parties that are not expressly noted on the applicable warehouse receipt.
20. **Timely Presentment of Claims:** The Company shall not consider or be liable for any claim for damaged cotton unless presented in the following manner:
  - a. **Cotton Immediately Destined For Export:** This subsection is applicable to cotton which is shipped immediately for export without diversion of any kind, to a third-party warehouse or other facility located within the continental United States. **With respect to cotton immediately destined for export, the Company will not consider or be liable for any claim for damaged cotton where such damage is not discovered prior to, or at time of shipment from its plant, unless the Company is advised of the damaged condition in writing within sixty (60) days from the date of shipment, or within ten (10) days of the date upon which Owner receives actual notice of the damage to the cotton, whichever is sooner. In either case, Company shall be given an opportunity to inspect the cotton before repairing or reconditioning is done as a condition precedent to the consideration of a claim.**
  - b. **Cotton Destined For Points Within The Continental United States:** This subsection is applicable to cotton which is shipped to a third-party warehouse or other facility located within the continental United States or otherwise to a mill located within the continental United States. **With respect to cotton destined to points within the continental United States, the Company will not consider or be liable for any claim for damaged cotton where such damage is not discovered prior to, or at time of shipment from its plant, unless the Company is advised of the damaged condition in writing within (14) days from the date of shipment or within ten (10) days of the date upon which Owner receives actual notice of the damage to the cotton, whichever is sooner. In either case, Company shall be given an opportunity to inspect the cotton before repairing or reconditioning is done as a condition precedent to the consideration of a claim.**

### Miscellaneous

21. The Company's electronic warehouse receipt provider will be EWR, Inc. The company hereby disclaims any and all liability for any conduct of EWR, Inc. that results in delays in service or other damage or injury to the Owner's cotton or any consequential damages arising therefrom.
22. This Tariff is binding on Owner and Company and will be interpreted, construed and governed according to the laws of the State of Texas. The parties agree that the exclusive venue for any dispute arising out of this agreement or arising out of Owner's storage of cotton with the Company shall lie in the State District Courts of Lubbock, Lubbock County, Texas and Owner hereby knowingly and voluntarily waives (a) any objection to the laying of venue there or (b) the right to bring an action in some other forum premised upon the existence of federal jurisdiction or some other legal and/or statutory right.
23. This Tariff and warehouse receipt of the Company constitute the entire contract between the Company and the holder of the warehouse receipt for all services and agreements related to the bale of cotton represented by the warehouse receipt. This Tariff may be modified by the Company upon thirty days written notice to the Owner.

24. If the Owner fails to remove all cotton stored with the Company prior to the effective date of the proposed amendment, the Owner shall be deemed to have accepted the Amended Tariff. Absent such action by the Company, said agreement cannot be amended, changed or modified except by publication of a new tariff or by written instrument signed by the President of the Company modifying the same. The warehouse receipt may not be amended except by the issuance of a new replacement written or electronic warehouse receipt.
25. In the event that any part of this Tariff is adjudicated by any court and/or arbitral authority of competent jurisdiction to be invalid or unenforceable, then this Tariff shall be automatically modified to eliminate that part which is affected thereby. In such case, the remainder of this Tariff shall remain in full force and effect between the Company and the Owner.