

# FYX Terms and Conditions

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# **GENERAL APPLICATION**

## **2.1 PURPOSE**

These *FYX Terms and Conditions* (the “Terms and Conditions”), set forth the terms and conditions of the agreement between TRAC Interstar LLC, d/b/a FYX (hereafter referred to as "FYX") and the customer named in the signature block on page [11 of 12] of these Terms and Conditions or provided in the digital acceptance on the Website (“Customer”). The Terms and Conditions include among other things rules governing the Customer on-boarding process, account administration (including pricing and billing rules and logic) and Roadside Assistance.

## **2.2 APPLICABILITY AND COVERAGE**

The Terms and Conditions apply whenever a customer requests Roadside Assistance.

## **2.3 MONETARY AMOUNTS**

Unless otherwise noted, all monetary amounts referred to in these Terms and Conditions, and the Website shall be in U.S. Dollars.

# **3 CUSTOMER REQUIREMENTS**

## **3.1 CUSTOMER REGISTRATION AND APPROVAL**

All potential customers can register for a FYX account by contacting the sales department via phone at 800.888.1001 ext.7 or locally at 859.962.4103. Sales representatives are also available via email at [sales@FYXFleet.com](mailto:sales@FYXFleet.com). All potential customers are required to complete the New Customer Form, which can be downloaded from the Website: <http://www.FYXFleet.com/customer-service/>, provide all information requested and agree to these Terms and Conditions by electronically signing the signature block provided on page [11 of 12], below, or checking the Accept checkbox and clicking the Send button on the Website. In addition, for those seeking credit, FYX utilizes a credit application, which can be downloaded from the Website: <http://www.FYXFleet.com/customer-service/>, to obtain information pertaining to credit history and references. Following approval, FYX will provide an account number, which can be used to reference the customer account when requesting service.

## **3.2 CREDIT**

Customer authorizes FYX to perform an initial and ongoing credit check to evaluate Customer’s credit worthiness. Customer may request FYX to re-evaluate its credit worthiness no more than once per year.

## **3.3 ACCOUNT ACTIVATION, SUSPENSION, AND CANCELLATION**

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FYX reserves the right to cancel or suspend Customer's account at any time, for any reason. Upon suspension of an account, Roadside Assistance will be refused until all outstanding Customer obligations are fully satisfied.

## 4 ROADSIDE ASSISTANCE

### 4.1 SERVICES OFFERED

FYX offers Roadside Assistance by Repair Vendors that covers, but is not limited to, the following container/chassis road services:

- Tire repair/replacement – new and retread
- Minor and major mechanical work
- FMCSA inspections
- Towing
- Load shifts
- Chassis flips
- Structural repair

### 4.2 REQUESTING ROADSIDE ASSISTANCE

For Roadside Assistance, please instruct your drivers and dispatchers to:

- dial (800) 888-1001
- or email FYX at [dispatch@FYXFleet.com](mailto:dispatch@FYXFleet.com)
- or go to <https://portal.FYXFleet.com>

## 5 CHARGES

### 5.1 RATES

All rates are subject to change, as well as temporary adjustments, in FYX's sole determination. Rate changes will be made via publication in these Terms and Conditions on the Website and will take effect on the date specified therein which shall in no event be earlier than five (5) days after the date of such publication, and will apply to all the Roadside Assistance services set forth in the notification.

All FYX rates set forth in this Section 5.1 are exclusive of all taxes including any applicable sales taxes.

Mileage and hourly charges will be calculated in accordance with "portal-to-portal" practice as follows:

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- The Mileage calculation will be equal to the distance between the service facility and the repair sight, *plus* the distance back from the repair site to the service facility.
- The Hourly charges calculation will be equal to the time between the time the technician leaves the service facility on initial dispatch and the time the technician arrives on scene, *plus* the time spent in service, *plus* the time required for the technician to travel back to the service facility.

### Authorized FYX Rates for Standard Customers:

Tire - Retreads	Midwest	Gulf	Southeast	Northeast	North Central	West
<b>Tire</b>						
10.00x20		\$164.00		\$194.00		\$221.00
11x22.5		\$191.00		\$221.00		\$248.00
11R22.5		\$241.00		\$281.00		\$279.00
LP22.5		\$271.00		\$281.00		\$281.00
<b>Tube (10.00x20 Only)</b>				\$20.00		
<b>Flap (10.00x20 Only)</b>				\$7.00		
<b>Mount/Dismount</b>				\$40.00		
<b>Tire Disposal</b>				\$10.00		
<b>Hourly Service Call A.M.</b>		\$85.00		\$95.00		\$100.00
<b>Hourly Service Call P.M.</b>		\$95.00		\$105.00		\$110.00

Tire - New	Midwest	Gulf	Southeast	Northeast	North Central	West
<b>Tire</b>						
10.00x20				\$293.00		
11x22.5				Market Rates Apply		
11R22.5				Market Rates Apply		
LP22.5				Market Rates Apply		
<b>Tube (10.00x20 Only)</b>				\$20.00		
<b>Flap (10.00x20 Only)</b>				\$7.00		
<b>Mount/Dismount</b>				\$40.00		
<b>Tire Disposal</b>				\$10.00		
<b>Hourly Service Call A.M.</b>		\$85.00		\$95.00		\$100.00
<b>Hourly Service Call P.M.</b>		\$95.00		\$105.00		\$110.00

Tire - Flat Repair	Midwest	Gulf	Southeast	Northeast	North Central	West
<b>Dispatch Fee</b>				\$66.00		
<b>Other Charge</b>				Vendor Cost Apply		

Mechanical Repair	Midwest	Gulf	Southeast	Northeast	North Central	West
<b>Labor (Per Hour)</b>						
Reefer Repair				Vendor Rates Apply		
Other Repairs		\$90.00		\$100.00		\$110.00
<b>Service Call (Flat Rate)</b>						
Reefer Repair				Vendor Rates Apply		
Other Repairs		\$80.00		\$90.00		\$100.00
<b>Parts</b>				Market Rates Apply		
<b>Mileage (Per Mile)</b>				\$1.20		
<b>Dispatch Fee</b>				\$66.00		

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## 5.2 FUEL SURCHARGE, INCENTIVES, AND OTHER CHARGES

FYX uses an index-based fuel surcharge, as outlined in the table below. The cost is based on the data provided from the National U.S. Average On Highway Diesel Fuel Prices reported by the U.S. Department of Energy: [https://www.eia.gov/dnav/pet/pet\\_pri\\_gnd\\_dcus\\_nus\\_m.htm](https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_nus_m.htm).

Diesel Fuel Cost	Fuel Surcharge
\$0.94 - \$1.38	\$ -
\$1.39 - \$1.82	\$ 1.50
\$1.83 - \$2.27	\$ 3.50
\$2.28 - \$3.63	\$ 5.50
\$3.64 - \$4.95	\$ 11.50
\$4.96 - \$6.28	\$ 17.50
\$6.29 - \$7.60	\$ 23.50

FYX reserves the right to offer incentives and volume discounts off standard rates, relating to Roadside Assistance.

## 6 BILLING AND COLLECTIONS

### 6.1 INVOICING

FYX will send all billing invoices to Customer at the email address on record or via other electronic means (e.g. web, EDI). Individual invoices are sent for each repair or other Roadside Assistance service. Invoices are attached to an email as a PDF file. Multiple invoices may be received in one day. FYX will provide Customer with sufficient detail (e.g. chassis number, date) to support the invoiced amounts. FYX will send invoices automatically when they are ready for invoicing. Except for any portion properly disputed under section 6.2, Customer must pay all invoices within 30 days of invoice date.

### 6.2 DISPUTES

If Customer disputes an invoice it must notify FYX in writing within thirty (30) days of the invoice date via email to [customerservice@FYXFleet.com](mailto:customerservice@FYXFleet.com). If Customer fails to submit its dispute via email within such 30-day period, then FYX will not review the disputed invoice and the entire amount of such invoice will be due and payable per section 6.1. FYX will review all invoice disputes for which it receives proper and

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timely notice, and will credit Customer for any disputed charges that in FYX's reasonable judgment are not for Customer's account. Disputes submitted in accordance with the first sentence hereof will be reviewed by FYX within fifteen (15) days of receipt. FYX is not responsible for detention fees or any fees related to driver's down time.

### 6.3 REPAIR EXPECTATIONS

- Direct Bill/Approval Process
  - FYX understands that in some cases, the Customer may have an arrangement with the IEP for whom Customer is transporting the Equipment, whereby the IEP has agreed to be responsible and pay for roadside services and repairs of the Equipment. In such cases, when Customer's driver and/or company representative contacts FYX for Roadside Assistance, FYX will make every attempt to bill the IEP, if applicable, for any and all repairs within the IEP guidelines with the understanding that any and all items that are not covered by the IEP's, per their road service policies, will be for Customer's account. If the Customer fails to provide proper equipment numbers at the time of repair, this may result in improper billing for which the Customer will be responsible.
  - If a reference, purchase order, pro number and/or any other special requirements for Customer's account are required when Roadside Assistance is requested and/or for invoicing purposes, they must be submitted at the time of the Roadside Assistance request by the requesting party (Customer's driver or company representative) and agreed upon by FYX. The failure to meet these requirements by either party does not alleviate the Customer's responsibility for the payment of Roadside Assistance provided hereunder.
- Estimated Time of Arrival (ETA) Communication  
Customer should contact FYX as follows if Customer has not received an ETA within thirty minutes of request: [dispatch@FYXFleet.com](mailto:dispatch@FYXFleet.com).
- Reporting Changes to a Service Request  
All changes which occur from the originally documented service event, i.e., equipment numbers, equipment type, component detail requiring repair, tire size, location change, should be reported to FYX immediately as follows to avoid service delays and/or dry run charges: [dispatch@FYXFleet.com](mailto:dispatch@FYXFleet.com).
- Canceling a Service Request  
After submitting a service request, any cancellation must be reported immediately to FYX as follows to avoid dry run charges: [dispatch@FYXFleet.com](mailto:dispatch@FYXFleet.com). Any and all charges for a dry run that are not properly communicated to the FYX team in a timely fashion would be for the Customer's account.
- Dry Run/Service Call Only  
Once the Repair Vendor arrives at the break down location and is not able to locate the unit or locate the equipment issue, FYX will contact the Customer's company representative







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and expenses (including, without limitation, attorney's fees) arising out of Customer's failure to comply with its obligations under these Terms and Conditions or any attempt by any third party (whether private or governmental) to impose upon an Indemnified Party liability for Customer's acts or omissions. The obligations of Customer under this section 7.3 shall survive the termination of these terms and conditions.

### **7.4 TERMINATION AND SUSPENSION; NOTICES**

FYX may terminate these Terms and Conditions upon thirty (30) days prior written notice to the customer. In addition, FYX may suspend service or terminate these Terms and Conditions at any time if Customer fails to pay any amount due hereunder that is not being properly disputed pursuant to Section 6.2, above, within five (5) days of its due date, fails to observe any other material term or condition hereunder, becomes insolvent, or seeks relief or protection under any law relating to bankruptcy. In addition to and without limiting FYX's suspension of services or termination rights hereunder, FYX shall have all rights and remedies provided hereunder and/or under applicable law, arising from any breach by or default of Customer hereunder.

Any notice required by these Terms and Conditions shall be in writing addressed to the party at the email address provided along with the digital acceptance on the Website or last known to FYX.

### **7.5 FORCE MAJEURE; LIMITATION OF LIABILITY**

FYX shall not be liable to Customer or any other person for any failure or delay in the performance of any obligation due to events beyond its reasonable control, including without limitation, fire, storm, flood, earthquake, explosion, accidents, sabotage, riots, civil disorder, strikes, lockouts, labor disputes, labor shortages, work stoppages, transportation embargoes or delays, and acts of God.

Under no circumstances shall FYX be liable, and Customer hereby waives any claim against FYX, for any lost profits or for special, consequential or exemplary damages, including, without limitation, damages to cargo and Equipment, downtime, detention and lost business, even if FYX has been advised of the possibility of such damage.

### **7.6 ASSIGNMENT; MODIFICATION; WAIVER**

Customer may not assign these Terms and Conditions or any of the services to be performed hereunder (including without limitation, Roadside Assistance), without the prior written consent of FYX. FYX may, without the consent of Customer, (i) assign these Terms and Conditions, (ii) grant a security interest in these Terms and Conditions and/or the proceeds to be paid hereunder to a lender or lenders and (iii) delegate the performance of Roadside Assistance or other services to be performed hereunder to one or more Repair Vendors. Subject to the foregoing restrictions, these Terms and Conditions shall inure to the benefit of and be binding upon all successors and assigns.

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FYX may amend and modify the terms and conditions hereof (including without limitation, the terms and conditions of the Appendices and Pricing Schedules contained therein) at any time and from time to time by modifying the appropriate section of these Terms and Conditions and publishing such modified version of these Terms and Conditions on the Website. Any such modifications shall become effective on the effective date indicated on such publication and shall be applicable to any Roadside Assistance and other services hereunder requested or provided on or after such effective date. For the avoidance of doubt, such amendments and modifications may include, without limitation, annual Consumer Price Index adjustments and quarterly fuel surcharge adjustments to the Fuel Surcharge Schedule set out in Section 5.2, above.

The waiver of any breach of any of the terms and conditions hereof shall be limited to the act or acts constituting such breach and shall not be construed as a continuing or permanent waiver of any such terms and conditions, all of which shall be and remain in full force and effect as to future acts or happenings notwithstanding such waiver.

### **7.7 AUTHORITY; EFFECTIVENESS**

By its execution of these Terms and Conditions, the Customer named in the ACCEPTANCE/SIGNATURE BLOCK at the end of these Terms and Conditions or provided in the digital acceptance on the Website acknowledges and agrees that (i) it consents to entering into these Terms and Conditions by electronic means, (ii) it executes these Terms and Conditions (as evidenced by electronically signing the signature block provided on page [11 of 12], below, or checking the Accept checkbox and clicking the Send button on the Website) with the intent to be bound, (iii) it will be bound by the terms and conditions hereof and subsequent amendments and modifications hereto, and (iv) the person signing these Terms and Conditions (as evidenced by electronically signing the signature block provided on page [11 of 12], below, or checking the Accept checkbox and clicking the Send button on the Website) has the necessary power and authority to bind Customer to the terms and conditions hereof.

These Terms and Conditions shall become effective, and FYX shall be bound hereby, on the date (the “Effective Date”) that FYX is satisfied that Customer has complied with all of the conditions for obtaining services hereunder that are set out herein (including without limitation, in the Credit Application Form and the New Customer Form) and has signed these Terms and Conditions in the signature space provided at the end of these Terms and Conditions or has provided a digital acceptance on the Website. The Effective Date shall appear beneath FYX’s signature space.

On and after January 1, 2018, a party’s request for Roadside Assistance or any utilization of FYX’s Roadside Assistance services by a party shall be deemed to be an acceptance by such party of these Terms and Conditions, even if such party has not signed these Terms and Conditions as provided, above.

### **7.8 VENUE; WAIVER OF JURY TRIAL; GOVERNING LAW**



## Terms and Conditions

### **APPENDIX A – DEFINITION OF TERMS**

“ACH” – Automatic Clearing House

“Day” – any day regardless of weekends or holidays.

“DOT” – Department of Transportation

“EDI” – Electronic Data Interchange

“Effective Date” – the date that all the conditions of the Terms and Conditions, have been met.

“Equipment” – any trailers, tractors and trucks operated by the Customer.

“Pricing Schedule” – the schedule of prices for the repairs, services and parts set out under section 5.1.

“Repair Vendor” – an independent business (that is not an employee or agent of TRAC Interstar) that TRAC Interstar has contracted with to provide Roadside Assistance for the Customer.

“Roadside Assistance” – a Repair Vendor’s inspection of Equipment located on the roadside anywhere in the continental United States or Canada (but excluding Mexico) at the request of Customer made in accordance with Section 4.2, below, and the Repair Vendor’s related repair, replacement of parts and/or performance of other services set out on in section 4.1 that may be requested.

“Website” – [www.FYXFleet.com](http://www.FYXFleet.com)