

# Revising the Rate Confirmation Sheet

11 Reasons Why Yours Needs to Change



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### If there is no contract or bill of lading, what actually are the terms of carriage?

The transportation industry's use of the "rate" or "load" confirmation is in its simplicity deficient of the important service terms and conditions required by law. By including that additional language, controversy with shippers and their carriers or 3PL partners over claims about damage, service failures or payments can be minimized or eliminated. This paper identifies eleven reasons why these one-page documents need to be part of a separate transportation contractual relationship in order to have the proper impact on a freight movement, especially with multiple parties involved.

While the concerns and criticisms enumerated herein are substantial, a few simple changes in the typical rate confirmation sheets can make their use more appropriate in our high-speed business environment that allows e-mail and fax to make life easier, but also breeds negligence.

### The Rate (Load) Confirmation

The "rate confirmation sheet" also known as the "RCS" or "load confirmation sheet" has served as a poor alternate to the bill of lading. The bill of lading has all the terms and conditions necessary to make transactions legal, complete, and perfectly useful for proving claims, getting the freight where it is supposed to go and getting carriers paid.

The world of transportation is confusing enough. Shipper claims and insurance carrier denials of cargo claims are so common despite broad coverages. So why give so much opportunity to create controversy by using a document that on its face does little more than confirm what a carrier will charge and what a shipper/3PL will pay? Everything typically found on rate confirmation sheets is remedial and administrative in nature; nothing is included to safeguard the transaction for all parties.

If a bill of lading is created, it too often has a release of valuation provision unknown to the shipper and is usually the major source of controversy when a cargo claim occurs.

The world of transportation agreements between shippers and their carriers, brokers or forwarders is filled with hundreds of documents reflecting the opinions of their drafters, and years

**The rate confirmation sheet is oftentimes the only document outside of a manifest that is created for many transactions.**

of case law attempting to sort out the true meaning of terms and intentions of the parties involved in transportation transactions.

It is well understood that technology, smart phones, increased use of owner-operators and third parties effect relationships and communications. These trends have also led to the use of a one-page simplified document that has all but eliminated the use or reliability of the standard bill of lading.

When a cargo claim is first reported to an insurer, one of the first documents it requests is the “contract” between the parties that are part of the transaction. Next is the request for the tariffs to show the liability of the carrier and determine the release value, if any, that applies so that the claim can be paid in pennies, not dollars.

Despite all the risks involved in using these ‘one-pagers’, the industry persists in promoting their use because they are easy to use, don’t have confusing legal language that can create controversy and misunderstandings and are very simple to transmit to all the stakeholders involved in a load transaction—3PL load Booker, dispatcher, driver and, finally, to carrier billing.

In fact, its simplicity alone makes it very troublesome. A rate confirmation should be *referenced as an addendum* to a separate freight agreement between the shipper and carrier or carrier and broker.

What is the downside of using these documents alone and without any agreement behind them? They simply do not have the necessary shipper or carrier contract provisions that are critical to protecting the parties from claims for unpaid freight bills or cargo claims. There are statutes and regulations that still exist that govern the conduct of shippers, carriers and brokers that specify the necessary service terms and conditions to be included in transportation documents. There needs to be a document evidencing who is in control of a shipment, the valuation of cargo, collection rights and many other legal responsibilities of the parties.

## A Case in Point

A major US carrier signs a master freight agreement with a broker with appropriate terms and conditions in 2002. In 2010, a damage claim is filed against the carrier for full value and the carrier denies the claim, in part because of the “release” value provision in the original agreement. However, the broker has been using a rate confirmation with language that indicates that it supersedes the language of the original agreement including the following:

*‘Note to Motor Carrier: Shipment subject to full value Carmack Liability – no release value applies. Carrier agrees to be liable for the actual loss for damage to goods.’*

In addition to this language, the rate confirmation was signed by the agent for the carrier.

# 11 Reasons Why Your Rate Confirmation Needs to Change

A rate confirmation on its own is not enough. The following items illustrate why yours may need to change:

## 1 A rate confirmation sheet should not be used in the absence of a contract or standard bill of lading.

The carrier's written service terms and conditions that deviate from general rules of transportation law are not necessarily disclosed to the shipper or 3PL and would not apply to the shipper or 3PL.

## 2 The originating carrier could be responsible for full value if valuation terms are not specified or there is no meeting of the minds based on the shipper's expectations of cargo valuation.

If a standard bill of lading is used, then the rate confirmation for all carriers and connecting carriers should be consistent and Carmack Liability (full value) should apply.

## 3 Rate confirmation sheets must contain language or reference to any prior agreements or to any bill of lading that may have conflicting language as respects to many terms and conditions, especially valuation.

If a "spot" transportation transaction is used for a regular shipper move and the carrier issues a bill of lading with a released value and all that the shipper or 3PL issues is a rate confirmation, what is the carrier's' liability in the event of a loss?

- What if there is no contract with the "spot" carrier and the shipper or 3PL?
- If a carrier charges for detention and the shipper is billed, where is the agreement for that charge?
- What about agreements for changes in service billed to the carrier without its prior approval?

These are just some examples of how the use of the "bar napkin approach", compared to a clear transportation document, can make a difference, maintain relationships and avoid commercial and legal conflicts.

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## 4 Rate confirmation sheets must reference a contract or bill of lading in which a carrier specifies that no claims for delay, loss of market or consequential damages will be accepted when the cause of such conditions is beyond the control of the carrier exercising reasonable precautions to transport in minimal time allowed by law and conditions of traffic.

This language should be clearly stated as part of a transaction and, in the absence of a contract or standard bill of lading, the carrier and shipper could be subject to unintended consequences.

## 5 Shippers need a clear, legally supportable indication of who is the actual carrier in possession and control of the cargo and that the named carrier is responsible for the safe transport and any cargo claims. A standard rate confirmation does not support this.

## 6 The rate confirmation sheet does not make clear who is responsible for payment. A clear statement as to who is responsible for freight charges and terms of payment should be available to the shipper, consignee or broker. This protects all parties and should govern who is paid by whom.

**A clear statement as to who is responsible for freight charges and terms of payment should be available to the shipper, consignee or broker.**

## 7 Rate confirmation sheets must contain special services requirements as respects to special handling or load securement procedures, temperature control requirements, proper loading or unloading requirements or critical time issues that are not disclosed to the driver.

**8 Rate confirmation sheets fail to disclose the time limits to file claims** or lawsuits although set by law. While this may seem unnecessary and redundant, many shippers are not aware of this provision and, when part of a contract, it puts out clear notice about the requirement.

**9 Rate confirmation sheets do not satisfy the requirement that no claims for loss or damage will be accepted** unless all freight charges pertaining to the subject shipment have been paid.

Failure to pay the appropriate freight charges will result in a claim denial. The expectations of the shipper and the carrier in this matter of claims and payments are best handled by a clear statement within the shipping documents.

Freight that is lost or damaged and therefore never delivered is declared by many shippers as not in completion of the transportation. Therefore, they refuse to pay the freight charges. This refusal normally derails any attempt to file a damage claim.

**10 Rate confirmation sheets do not address the very important issue of the inability of the**

**carrier to deliver a load in whole or in part** to the agreed destination for reason that are beyond the control of the carrier. The carriers' liability should be clearly stated to be limited to the equivalent of a warehouse only.

The carrier should have expressed discretion to store the load on its vehicle or some other location until it can be delivered with appropriate storage charges assessed.

**11 Finally, while there are issues that should be addressed in all transportation transactions where a bill of lading or contract is not used other than those mentioned here, the final issue to be considered is the matter of liability and vicarious (shipper being held liable for the acts of the carrier) liability.**

Carriers (and their drivers) are independent contractors and should operate free from the direction and control of the shipper or 3PL. Their liability and indemnification of the principals in these transactions should be clearly stated and not be compromised by words or actions of either party.

In many transactions through the intervention of a 3PL intermediary, a direct contractual relationship does not exist between the shipper and the carrier. Consequently, the lack of use of a transportation agreement or bill of lading or the use of an improper bill of lading (such as an air bill for truck freight) does not bind the carrier to the obligations assigned to it by the 3PL.

The holes created by the rate confirmation should alert motor carriers that this type of document, however efficient and convenient, issued by a shipper or intermediary or themselves, should contain at least the 11 provisions described above as a part of the RCS document. At the very least, the terms and conditions should be referenced in the RCS and be available online with a website address shown and a signature attesting and acknowledging that the terms and conditions have been read and agreed to. This will make the "bar napkin" approach much more professional and useful when controversy arises.

**The holes created by the rate confirmation should alert motor carriers to require that a rate confirmation issued by a shipper or intermediary or themselves should contain at least the 11 provisions described above as a part of the RCS document.**

Shippers, carriers and 3PLs would do well to review these provisions with their key staff and operations personnel and consider the necessary revisions in their documents, online web pages and internal procedures to avoid disputes with fellow stakeholders in day-to-day transactions.

## Summary & Next Steps

As you can see, the use of the transportation document called a rate (load) confirmation is not an agreement-based memorandum of a freight movement, it leaves out many vital legal issues of concern to all the parties involved, and it is subject to controversy and conflict.

Too often, legal action to sort out the issues follows a transaction. The sweet smell of simplicity, low cost and desire for revenue substantially undermines the necessity of having the right documentation and legal issues clearly defined before a dispute or claim occurs.

Shippers, carriers and 3PLs would do well to create the necessary structure if they wish to continue using these “short” documents. There are four necessary actions to take to make it all come together when it is needed.

1. Have a contract with Shipper/Carrier and Shipper/3PL/Carrier as appropriate.
2. Incorporate the necessary terms and conditions as outlined in the 11 reasons above into the documents backed up by a proper transportation contract.
3. Reference the contract and the terms and conditions on the rate (load) confirmation sheet, on the 3PL and/or carrier website.
4. Acknowledge in writing by signature, agreement to the terms and conditions prior to a pick-up.

Finally, train your key people on the issues and proper use of the rate (load) confirmation and related documents. Whether you ship, arrange or transport freight, there is more to it than just shipping, arranging or transporting. It is like getting married. You have to have agreement to the terms and conditions and all the paperwork understood and acknowledged.



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