

## Terms & Conditions of Service as of December 16, 2014

These terms and conditions of service constitute a legally binding contract between the “Customs Broker” and the “Customer.” In the event the Customs Broker renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall govern those services.

### 1. Definitions.

- (a). “Customs Broker” shall mean Harold Mistler C.H.B., designated freight forwarders, agents, and/or representatives.
- (b). “Customer” shall mean the person for which the Customs Broker is rendering service, as well as its agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper’s agents, insurers and underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives.
- (c). “Documentation” shall mean all information received directly or indirectly from Customer, whether in paper or electronic form.
- (d). “Third parties” shall include, but not be limited to, the following: carriers, truckmen, cartmen, lightermen, forwarders, non-vessel operating carriers, Ocean Transportation Intermediaries (OTIs), customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise.

2. **Customs Broker as agent.** The Customs Broker acts as the “agent” of the Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export and security documentation on behalf of the Customer and other dealings with Government Agencies: as to all other services, Customs Broker acts as an independent contractor.

### 3. Limitation of Actions.

- (a) Unless subject to a specific statute or international convention, all claims against the Customs Broker for a potential or actual loss, must be made in writing and received by the Customs Broker, within **sixty (60) days** of the event giving rise to claim; the failure to give the Customs Broker timely notice shall be a complete defense to any suit or action commenced by Customer.
- (b) All suits against Customs Broker must be filed and properly served on Customs Broker as follows:
  - (i). For claims arising out of the preparation and/or submission of an import entry(s), within **ninety (90) days** from the date of liquidation of the entry(s).
  - (ii). For any and all other claims of any other type, within **six months** from the date of the loss or damage.

4. **No Liability for the Selection or Services of Third Parties and/or Routes.** Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Customs Broker shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment; advice by the Customs Broker that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Customs Broker warrants or represents that such person or firm will render such services nor does Customs Broker assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party; all claims in connection with the Act of a third party shall be brought solely against such party and/or its agents; in connection with any such claim, the Customs Broker shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Customs Broker.

5. **Quotations Not Binding.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Customs Broker to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Customs Broker unless the Customs Broker

in writing agrees to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Customs Broker and the Customer.

**6. Reliance On and Use of Information Furnished.**

- (a). Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with U.S. Customs & Border Protection, other Government Agency and/or third parties, and will immediately advise the Customs Broker of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed on Customers behalf;
- (b). In preparing and submitting customs entries, export declarations, applications, security filings, documentation and/or other required data, the Customs Broker relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold the Customs Broker harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect, incomplete or false statement by the Customer or its agent, representative or contractor upon which the Customs Broker reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export, or enter the goods.
- (c). Customer waives the requirements of 19 C.F.R. § 111.24 to allow the Customs Broker, its subsidiaries, and related companies may share and have access to information about the Customer and its transactions as maybe necessary to provide Customer with services.

**7. Declaring Higher Value to Third Parties. Third parties to whom the goods are entrusted may limit liability for loss or damage; the Customs Broker will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefor.** In the absence of written instructions or the refusal of the third party to agree to a higher declared value, at Customs Broker's discretion, the goods may be tendered to the third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.

**8. Insurance.** Unless requested to do so in writing and confirmed to Customer in writing, Customs Broker is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance.

**9. Disclaimers; Limitation of Liability.**

- (a). Except as specifically set forth herein, Customs Broker makes no express or implied warranties in connection with its services.
- (b). In connection with all services performed by the Customs Broker, Customer may obtain additional liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefor, which request must be confirmed in writing by the Customs Broker prior to rendering services for the covered transaction(s).
- (c). In the absence of additional coverage under (b) above, the Customs Broker's liability shall be limited to the following:
  - (i). where the claim arises from activities other than those relating to "Customs Business" as defined in 19 C.F.R. 111.1, fifty dollars (US\$50) per shipment or transaction, or
  - (ii). where the claim arises from activities relating to "Customs Business," fifty (US\$50) per entry or the amount of brokerage fees paid to Customs Broker for the entry, whichever is less.
  - (iii). In no event shall Customs Broker be liable or responsible for consequential, indirect, incidental, statutory or punitive damages, even if it has been put on notice of the possibility of such damages, or for the acts of third parties.

**10. Advancing Money.** All charges must be paid by Customer in advance unless the Customs Broker agrees in writing to extend credit to customer. The granting of credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Customs Broker.

11. **Indemnification/Hold Harmless.** The Customer agrees to indemnify, defend, and hold the Customs Broker harmless from any claims and/or liability, fines, penalties and/or attorneys' fees arising from the importation or exportation of customers merchandise and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agent or representative, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Customs Broker harmless against any and all liability, loss, damages, costs, claims, penalties, fines and/or expenses, including but not limited to reasonable attorney's fees, which the Customs Broker may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Customs Broker, it shall give notice in writing to the Customer by mail at its address on file with the Customs Broker.
12. **C.O.D. or Cash Collect Shipments.** Customs Broker shall use reasonable care regarding written instructions relating to "Cash/Collect on Deliver (C.O.D.)" shipments, bank drafts, cashier's and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall not have liability if the bank or consignee refuses to pay for the shipment.
13. **Costs of Collection.** All invoices are due upon presentation to Customer. For any amount unpaid within 30 days from the date of the invoice, the Customs Broker shall be entitled to interest from the date of the invoice until payment at 2% per month or the highest rate allowed by law, whichever is less. In any dispute involving monies owed to Customs Broker, the Customs Broker shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 2% per month or the highest rate allowed by law, whichever is less, unless a lower amount is agreed to by Customs Broker.
14. **General Lien and Right to Sell Customer's Property.**
  - (a). Customs Broker shall have a general and continuing lien on any and all property of Customer coming into Customs Broker's actual or constructive possession or control for monies owed to Customs Broker with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both.
  - (b). Customs Broker shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Customs Broker's rights and/or the exercise of such lien.
  - (c). Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Customs Broker, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Customs Broker shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.
15. **No Duty To Maintain Records For Customer.** Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC §1508 and 1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other Laws and Regulations of the United States; unless otherwise agreed to in writing, the Customs Broker shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as a "recordkeeper" or "recordkeeping agent" for Customer.
16. **Obtaining Binding Rulings, Filing Protests, etc.** Unless requested by Customer in writing and agreed to by Customs Broker in writing, Customs Broker shall be under no obligation to undertake any pre- or post-Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.
17. **Preparation and Issuance of Bills of Lading.** Where Customs Broker prepares and/or issues a bill of lading, Customs Broker shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same, Customs Broker shall rely upon and use the cargo weight supplied by Customer. Unless otherwise provided, Where Customs Broker prepares and/or issues a bill of lading, the Customs

Broker's Standard Trading Conditions applicable to the bill of lading shall apply and supplement these terms and conditions of service.

18. **No Modification or Amendment Unless Written.** These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Customs Broker; any attempt to unilaterally modify, alter or amend same shall be null and void.
19. **Compensation of Customs Broker.** The compensation of the Customs Broker for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by the Customs Broker to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Customs Broker from carriers, insurers and others in connection with the shipment. On ocean exports, upon request, the Customs Broker shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. In any referral for collection or action against the Customer for monies due the Customs Broker, upon recovery by the Customs Broker, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee. All invoices are due upon presentation to Customer. If your charges are to be billed through a freight forwarder, to be collected by or through the forwarder, Customer waives the confidentiality requirements of 19 C.F.R. §§ 111.24 and 111.36 that the Customs Broker transmit a copy of its bill for service directly to the importer, and authorizes the Customs Broker to transmit its bill for services and copies of the customs entry documents and related documents through Customer's forwarder. A copy of the Customs Broker's brokerage charges is always available upon request.
20. **Severability.** In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect. Customs Broker's decision to waive any provision herein, either by conduct or otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.
21. **Governing Law; Consent to Jurisdiction and Venue.** These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of New York without giving consideration to principals of conflict of law. Customer and Customs Broker:
  - (a). irrevocably consent to the jurisdiction of the United States District Court and the State courts of New York and venue within the Eastern District of New York and/or the Country of Queens;
  - (b). agree that any action relating to the services performed by Customs Broker, shall only be brought in said courts;
  - (c). consent to the exercise of in personam jurisdiction by said courts over it; and.
  - (d). further agree that any action to enforce a judgment may be instituted in any jurisdiction.

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