

Terms and Conditions of Services

These terms and conditions of service are a legally binding contract between the "Company" and the "Customer." If the Company renders services and issues a document containing other contract provisions, the following Sections of this agreement shall prevail over like provisions of the other contract: Section 3. (Limitations of Actions); Section 4. (Dispute Resolution); Section 5. (No Liability for the Selection or Services of Third Parties and/or Routes); Section 8. (Declaring Higher Value to Third Parties); Section 9. (Insurance); Section 10. (Disclaimers; Limitation of Liability); Section 12. (Indemnification/Hold Harmless; Section 14. (Costs of Collection); Section 15. (Security Interest and Right to Sell Customer's Property); Section 17. (Obtaining Binding Rulings, Filing Protests); Section 19. (No Modification or Amendment Unless Written); and Section 21. (Governing Law; Consent to Jurisdiction and Venue).

1) Definitions

- a. "Company" shall represent Premier Customhouse Brokers, Inc., its agents and/or representatives;
- b. "Customer" shall represent the person for which the Company 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 and consignees. **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 represent all information received directly or indirectly from Customer, whether in paper or electronic form;
- d. "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier";
- e. "Third parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, 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) Company as agent

The Company 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 documentation on behalf of the Customer and other dealings with Government Agencies: as to all other services, Company acts as an independent contractor.

3) Limitation of Actions

- a. Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company, within one hundred eighty (180) days of the event giving rise to the claim; the failure to give the Company timely notice shall be a complete defense to any arbitration, suit or action commenced by Customer.
- b. All claims shall be resolved through mediation and binding arbitration as further described in Section 4. Dispute Resolution.

4) Dispute Resolution

a. Covenant to Mediate. Customer and Company agree to submit first to mediation and then to binding arbitration all claims, controversies, differences, demands or causes of action relating to or arising out of this Agreement. The mediation shall take place in San Diego County, California. It shall be conducted by a mediator mutually agreed upon by the parties. If the parties are not able to agree upon a mediator within ten (10) business days, the party bringing the claim shall refer the mediation to the San Diego office of the American Arbitration Association to be conducted in accordance with its Commercial Mediation Rules then in effect. The cost of the mediation shall be shared equally by the parties to the mediation.

b. Confidentiality of Mediation. Any mediation arising under this Agreement is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such mediation from later discovery or use in evidence at arbitration or trial.

c. Binding Arbitration. If the parties have been unable to resolve the claim through mediation, any unsatisfied party may submit the matter to binding arbitration. The arbitration shall take place in San Diego County, California. It shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The parties shall have the right to discovery in accordance with California Code of Civil Procedure Section 1283.05. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The prevailing party in the arbitration proceeding shall be entitled to an award of its attorney's fees and costs incurred in the arbitration and in all subsequent proceedings to enter the arbitration award as a judgment of the court, or to appeal or enforce the award.

d. Enforcement of Covenant to Mediate/Arbitrate. This Section 4, including the provision for mandatory mediation, shall be deemed an arbitration clause for the purpose of enforcing compliance therewith.

Any party to the Agreement may seek compliance with the provision by petition to the California Superior Court for San Diego County, Central division. The prevailing party or parties in any proceeding to enforce these clauses shall be entitled to the court's order for payment of its attorney fees and costs in connection with the enforcement proceeding.

5) 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, Company shall use reasonable care in its selection of handling, transportation, clearance and delivery of the shipment; advice by the Company 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 Company warrants or represents that such person or firm will render such services nor does Company 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 Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

6) Quotations Not Binding

Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless the Company 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 Company and the Customer.

7) Reliance On Information Furnished

a. Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with the Customs Service, other Government Agency and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customers behalf;

b. In preparing and submitting customs entries, export declarations, applications, documentation and/or export data to the United States and/or a third party, the Company 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 insure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to

disclose information or the Customer providing any incorrect or false statement upon which the Company 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.

8) Declaring Higher Value to Third Parties

Third parties to whom the goods are entrusted may limit liability for loss or damage by declaring higher values for the goods. However, the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefore. In the absence of written instructions or the refusal of the third party to agree to a higher declared value, the Company may, in its discretion, tender the goods to the third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.

9) Insurance

Unless Customer provides Company a written request to procure insurance on Customer's behalf and Company provides Customer with written confirmation of receipt of the request, Company 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 the requested insurance.

10) Disclaimers; Limitation of Liability

- a. Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services;
- b. Subject to (c) below, Customer agrees that in connection with any and all services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to Customer, including loss or damage to Customer's goods, and the Company shall in no event be liable for the acts of third parties;
- c. In connection with all services performed by the Company, 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 therefore, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s).
- d. In the absence of additional coverage under (b) above, the Company's liability shall be limited to the following:
 - i. Where the claim arises from activities other than those relating to customs brokerage, \$50.00 per shipment or transaction, or
 - ii. Where the claim arises from activities relating to 'Customs business,' \$50.00 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less;

e. In no event shall Company 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.

11) Advancing Money

All charges must be paid by Customer in advance unless the Company 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 Company.

12) Indemnification/Hold Harmless

The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising from the importation or exportation of customers merchandise and/or any conduct of the Customer, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees, which the Company 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 Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

13) C.O.D. or Cash Collect Shipments

Company 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 have no liability if the bank or consignee refuses to pay for the shipment.

14) Costs of Collection

In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is less, unless a lower amount is agreed to by Company.

15) Security Interest and Right to Sell Customer's Property

a. Customer hereby grants Company a security interest in any and all property of Customer coming into Company's actual or constructive possession or control, to secure monies owed to Company for services rendered in connection with this shipment a prior shipment(s) or both. If Customer fails to pay amounts due Company or defaults in performing other terms and conditions, Company shall have the right to foreclose on the lien in accordance with the provisions of the California Uniform Commercial Code.

b. Company shall provide written notice to Customer of (i) its intent

to foreclose on the lien property lien; and (ii) the exact amount of monies due and owing, and any on-going storage or other charges. Customer shall provide Company with a list of all parties having an interest in its shipment(s), including their address and other contact information, and Company shall notify the interested parties of the foreclosure of the lien and other information required by the California Commercial Code.

c. Unless, within thirty days of receiving notice of foreclosure 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 Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Company shall have the right to sell the lien property by private sale or auction pursuant to the terms of the California Commercial Code, and any net proceeds remaining thereafter shall be refunded to Customer.

16) 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 Company shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as a "record keeper" or "recordkeeping agent" for Customer.

17) Obtaining Binding Rulings, Filing Protests

Unless requested by Customer in writing and agreed to by Company in writing, Company 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.

18) Preparation and Issuance of Bills of Lading

Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, unless (i) specifically requested to do so in writing by Customer or its agent, and (ii) Customer agrees to pay for same. In preparing a bill of lading, Company shall rely upon and use the cargo weight supplied by Customer.

19) 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 Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

20) Force Majeure

Company shall not be liable for losses, damages, delays, wrongful or missed deliveries or nonperformance, in whole or in part, of its responsibilities under the Agreement, resulting from circumstances beyond the control of either Company or its sub-



2280 Enrico Fermi Drive, Suite 23
San Diego, CA 92154
tel: 619-651-9200 fax: 619-651-9201

contractors, including but not limited to: (i) acts of God, including flood, earthquake, storm, hurricane, power failure or other natural disaster; (ii) war, hijacking, robbery, theft or terrorist activities; (iii) incidents or deteriorations to means of transportation, (iv) embargoes, (v) civil commotions or riots, (vi) defects, nature or inherent vice of the goods; (vii) acts, breaches of contract or omissions by Customer, Shipper, Consignee or anyone else who may have an interest in the shipment, (viii) acts by any government or any agency or subdivision thereof, including denial or cancellation of any import/export or other necessary license; or (ix) strikes, lockouts or other labor conflicts.

21) 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.

22) 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 California without consideration of its conflicts of law rules. The venue for all mediations, arbitrations and judicial proceedings shall be San Diego County, California.

Date Signed: _____ Date Signed: _____

Company Name: _____ Premier Customhouse Brokers, Inc.: _____

By: _____ By: _____

Title: _____ Title: _____