

# TERMS & CONDITIONS OF SERVICE

These terms and conditions of service are the agreement between Nuco Logistics, Inc. (the "Company") and the Customer identified on any quote, proposal or invoice (the "Agreement"). By placing an order with the Company and/or accepting services from Company, Customer agrees to these terms and conditions. In no event shall any term or conditions contained in any purchase order, confirmation, or other document issued by Customer be deemed to be incorporated into this Agreement, and the terms and conditions of this Agreement shall supersede all other terms and conditions contained in any other document.

## 1. Services; Company as Agent.

The Company acts as the agent of the Customer for the purpose of performing duties in connection with the import and export of Goods, including arranging for 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 interaction with Government Agencies in connection with import and export of Goods, and may arrange for services to be provided by 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 (the "Third Parties") (the "Services"). Notwithstanding such status, the provisions of Section 18 shall apply.

## 2. Reliance on Information Furnished; Customer Warranties and Representations.

(a) Customer is solely responsible for providing all information necessary to import and export the Goods (the "Information"). 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 accuracy of the Information, whether in written or electronic format supplied by the Customer. Customer represents and warrants that all Information is complete and accurate.

(b) Customer represents and warrants that it will review all documents and declarations prepared and/or filed with the Customs Service, other Government Agency and/or third parties (the "Documents") for accuracy, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions with respect to such Documents.

## 3. 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.

## 4. Compensation of Company; Invoices.

Company shall be paid the fees set forth in its quotation. Customer shall also pay the rates and charges of Third Parties directly to such Third Parties. Company's compensation is exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others. On ocean exports, upon request, the Company shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. Invoices are due net thirty (30) days. Invoices shall accrue interest at the lesser of the rate of 18% per year or the maximum rate allowed under applicable law.

## 5. 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.

## 6. C.O.D. or Cash Collect Shipments.

Company shall use reasonable care regarding written instructions relating to "Cash/Collect" or "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, and Customer waives all such claims in connection therewith.

## 7. No Requirement to Obtain Binding Rulings or Filing Protests.

Unless agreed 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, etc.

## 8. 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 specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same. Company shall rely upon and use the cargo weight supplied by Customer.

## 9. Declaring Higher Value to Third Parties.

Third parties to whom the Goods are entrusted may limit liability for loss or damage. The Company 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 Company'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.

## 10. Insurance.

Unless requested to do so in writing and confirmed to Customer in writing, Company is under no obligation to procure insurance on Customer's behalf. In the event that Customer elects to procure insurance, Customer shall pay all premiums and costs in connection with procuring requested insurance.

## 11. Limited Warranty.

Company shall use reasonable care in providing the Services, including the selection of Third Parties or selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the Goods.

**EXCEPT AS SET FORTH IN THIS AGREEMENT, THE COMPANY MAKES NO OTHER WARRANTY, WHETHER STATUTORY, EXPRESSED OR IMPLIED. ALL OTHER WARRANTIES AND GUARANTEES ARE DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

## 12. Use of the Third Parties.

Although the Company may select Third Parties to perform a portion of the Services, the Company shall not be liable in for the services performed by Third Parties, and such selection shall not be construed to be a guaranty or warranty or representation that any Third Party will render its services in any manner or on a timely basis. Company does not assume responsibility or liability for the acts and omissions of the Third Parties or any delay or loss of any kind. All claims in connection with the acts and omission of a Third Party shall be brought solely against such party, in the Customer's sole discretion and at the Customer's expense. The Company shall reasonably cooperate in connection with any such claim.

## 13. 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 ninety (90) days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer.

(b) All litigation against the Company must be filed as follows:

- (i) For claims arising out of ocean transportation, within one (1) year from the date of the loss;
- (ii) For claims arising out of air transportation, within two (2) years from the date of the loss;
- (iii) For claims arising out of the preparation and/or submission of an import entry(s), within seventy-five (75) days from the date of liquidation of the entry(s);
- (iv) For any and all other claims of any other type, within two (2) years from the date of the loss or damage.

(c) Notwithstanding anything in this Agreement to the contrary, in no event shall Company's liability exceed 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.

## 14. Indemnification/Hold Harmless.

The Customer agrees to defend, indemnify, and hold the Company and its affiliates, shareholders, directors, officers, employees, agents, and other representatives (the "Company Indemnified Parties") from and against any and all claims, demands, losses, liabilities, damages, expenses (including reasonable attorney fees) and causes of action ("Claims"), to the extent any such Claim arises from: (i) the importation or exportation of the Goods; (ii) any breach of this Agreement, including, without limitation, any breach of Customer's representations and warranties; (iii) the negligence of Customer or its violation of any Federal, State or local laws, regulations. This indemnity shall apply whether or not an Indemnitee was or is claimed to be passively, concurrently, or actively negligent, but Customer shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of the Company Indemnified Parties.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES OR EXPENSES OR LOST PROFITS, REGARDLESS OF HOW CHARACTERIZED AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTORY LIABILITY, OR OTHERWISE.

## 15. Forfeiture of Discounts.

All discounts offered, as indicated on the invoice faces, are forfeited should Customer fail to comply in all respects with payment terms.

## 16. General Lien and Right to Sell Customer's Property.

(a) Company shall have a general and continuing lien on any Good coming into Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;

(b) Company 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 Company's rights and/or the exercise of such lien.

(c) Unless, within thirty days of receiving notice of lien, Customer posts cash, a letter of credit, or a bond equal to 110% of the value of the total amount due, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Company shall have the right to sell the Goods at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.

## 17. 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 sole responsibility for maintaining all records required under Applicable Laws. Unless otherwise agreed to in writing, the Company shall only keep such records that it is required to maintain by Applicable Laws, but shall not act as a "recordkeeper" or "recordkeeping agent" for Customer, as those terms are defined under Applicable Law.

**18. Relationship of Parties.** Company shall provide the Services as an independent contractor. Except as explicitly set forth herein, nothing contained in this Agreement shall be construed to create the relationship of principal and agent, or employer and employee, between Company and Customer or create a joint venture. Neither Party, nor its agents, shall in any way act, or undertake to act, on behalf of, or hold itself out as, the agent of the other Party without the express prior written consent of such other party.

**19. Attorney's Fees and Costs.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, or to collect any unpaid invoices, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which the prevailing may be entitled.

**20. Governing Law; Jurisdiction.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to its choice of law principles. All actions, suits or legal proceedings arising out of or related to this Agreement will be brought only in the federal or state courts located in Harris County, Texas and the Parties consent to the exclusive jurisdiction of such courts.

**21. Severability.** In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect. The parties further agree to replace such illegal, void or unenforceable provision of this Agreement with a legal, valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.

**22. Force Majeure.** Neither party to this Agreement shall be liable for its failure to perform hereunder (other than the obligation to pay amounts) due to circumstances beyond its reasonable control, including but not limited to strike, riot, war, fire, act of God, accident, plant breakdown not caused by the fault or neglect of such party, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any other governmental body.

**23. Entire Agreement; Amendment.** This Agreement constitutes the full and complete understanding and agreement of the parties relating to the subject matter hereof and supersedes all prior or contemporaneous understandings and agreements relating to such subject matter. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the parties hereto.