



Instructions for Completing the Customs Power of Attorney

1. Check the appropriate block which best identifies the type of importer you or your company will be.
2. Provide the company's Federal Tax ID number or, if an individual, your Social Security Number. Evidence of the authenticity of your Federal ID by means of correspondence from the IRS department will need to be provided as well as a copy of your business license or registration. If you are an individual, you must provide copy of your SS card and personal ID (driver's license or passport).
3. **Corporation or LLC:** State the complete legal name of the corporation, as shown in the Articles of Incorporation – no abbreviations.
4. **Partnership or LP:** Give the full name of each partner, and the business name of the partnership. Use an additional sheet if necessary. (See special instructions/information attached.)
5. **Proprietorship:** State the full name of the individual operating as a Sole Proprietorship and the business name under which business is transacted.
6. **Individual:** Give **full name** (including middle name) of the individual.
7. State the type of business of the Grantor, i.e. Corporation, Partnership, LLC, LLP, etc.
8. Indicate the State of Incorporation. If not a corporation, the state in which the company or individual is registered to transact business.
9. The physical address of the company or individual. Post Office Boxes are not permitted!!
10. Insert the name of the corporation, LLC, individual or proprietorship. In the case of a partnership, use the names of each of the general partners or the partnership name.
11. Signature of the person executing the Power of Attorney. **Be sure to type or print the full name immediately next to the signature!!** In the case of a corporation, the Power of Attorney **MUST** be signed by a Corporate Officer authorized to do so by a resolution of the Board of Directors, usually the President, Vice President, Secretary or Treasurer. **A manager, general manager or supervisor IS NOT ACCEPTABLE by LAW!!** In case of a LLC, an authorized official must sign the Power of Attorney, and by doing so, is certifying that they have been given such authority under the Articles or Bylaws of the company. In case of a partnership or LLP, any one of the "general partners" may execute the Power of Attorney.
12. Title of the officer or authorized person who has signed.
13. Date the Power of Attorney is executed.

§ 141.34 Duration of power of attorney.

Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of execution. All other powers of attorney may be granted for an unlimited period.

[T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.35 Revocation of power of attorney.

Any power of attorney shall be subject to revocation at any time by written notice given to and received by the port director.

§ 141.36 Nonresident principals in general.

A power of attorney executed by a nonresident principal shall not be accepted unless the agent designated thereby is a resident and is authorized to accept service of process against such nonresident.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.37 Additional requirements for nonresident corporations.

If a nonresident corporation has not qualified to conduct business under state law in the state in which Customs district the agent is empowered to perform the delegated authority, the power of attorney shall be supported by documentation establishing the authority of the grantor designated to execute the power of attorney on behalf of the corporation.

[T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.38 Resident corporations.

A power of attorney shall not be required if the person signing Customs documents on behalf of a resident corporation is known to the port director to be the president, vice president, treasurer, or secretary of the corporation. When a power of attorney is required for a resident corporation, it shall be executed by a person duly authorized to do so.

[T.D. 84-93, 49 FR 17754, Apr. 25, 1984]

§ 141.39 Partnerships.

(a)(1) *General.* A power of attorney granted by a partnership shall state the names of all members of the partnership. One member of the partnership may execute a power of attorney in the name of the partnership for the transaction of all its Customs business.

(2) *Limited partnership.* A power of attorney granted by a limited partnership need only state the names of the general partners who have authority to bind the firm unless the partnership agreement provides otherwise. A copy of the partnership agreement must accompany the power of attorney. For this purpose, a partnership or limited partnership means any business association recognized as such under the laws of the state where the association is organized.

(b) *Change in partners.* When a new firm is formed by a change in membership, no power of attorney filed by the antecedent firm shall thereafter be recognized for any Customs purpose.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 86-204, 51 FR 42999, Nov. 28, 1986]

§ 141.40 Trusteeships.

A trustee may execute a power of attorney for the transaction of Customs business incident to the trusteeship.

§ 141.41 Surety on Customs bonds.

Powers of attorney to sign as surety on Customs bonds are subject to the requirements set forth in part 113 of this chapter.

[T.D. 73-175, 38 FR 17447, July 2, 1973, as amended by T.D. 74-227, 39 FR 32023, Sept. 4, 1974]

§ 141.42 Protests.

Powers of attorney to file protests are subject to the requirements set forth in §174.3 of this chapter.

§ 141.43 Delegation to subagents.

(a) *Resident principals.* Except as otherwise provided for in paragraph (c) of this section, the holder of a power of attorney for a resident principal cannot appoint a subagent except for the purpose of executing shippers' export declarations. A subagent so appointed cannot delegate his power.

(b) *Nonresident principals.* Except as otherwise provided for in paragraph (c) of this section, an agent who has power of attorney for a nonresident principal may execute a power of attorney delegating authority to a subagent only if the original power of attorney contains express authority from the principal for the appointment of a subagent or subagents. Any subagent so appointed must be a resident authorized to accept service of process in accordance with §141.36.

(c) *Customhouse brokers.* A power of attorney executed in favor of a licensed customhouse broker may specify that the power of attorney is granted to the broker to act through any of its licensed officers or authorized employees as provided in part 111 of this chapter.

§ 141.44 Designation of Customs ports in which power of attorney is valid.

Unless a power of attorney specifically authorizes the agent to act thereunder at all Customs ports, the name of each port where the agent is authorized to act thereunder shall be stated in the power of attorney. The power of attorney shall be filed with any port director, in a sufficient number of copies for distribution to each port where the agent is to act, unless exempted from filing by §141.46. The port director with whom a power of attorney is filed, irrespective of whether his port is named therein, shall approve it, if it is in the correct form and the provisions of this subpart are complied with, and forward any copies intended for other ports as appropriate.

§ 141.45 Certified copies of power of attorney.

Upon request of a party in interest, a port director having on file an original power of attorney document (which is not limited to transactions in a specific Customs location) will forward a certified copy of the document to another port director.

[T.D. 95-77, 60 FR 50020, Sept. 27, 1995]

§ 141.46 Power of attorney retained by customhouse broker.

Before transacting Customs business in the name of his principal, a customhouse broker is required to obtain a valid power of attorney to do so. He is not required to file the power of attorney with a port director. Customhouse brokers shall retain powers of attorney with their books and papers, and make them available to representatives of the Department of the Treasury as provided in subpart C of part 111 of this chapter.

Using a Power of Attorney

Resident Corporations - The President, Vice President, Secretary, or Treasurer of the corporation is assumed to have authority to bind the corporation. (HRL 221480). Nonetheless, if questioned by CBP, the burden remains on the officer signing and asserting his authority to provide evidence of his authority to bind the corporation. (HRL 228104). Otherwise, the *Power of Attorney* should be accompanied by a certification attesting to the authority of the executor to bind the corporation. The certification must certify that the executor is authorized to sign the *Power of Attorney* by resolution of the Board of Directors and must be consistent with the articles of incorporation and bylaws of the corporation.

Nonresident Corporations - Unless authorized to conduct business under the laws of the state in which the Customs district designated in the *Power of Attorney* is located, the *Power of Attorney* should be supported by documentation establishing the authority of the signator to bind the corporation. (Section 141.37, CR). Proper supporting documentation is a certification from the appropriate corporate official attesting to the ability of the grantor to act on the corporation's behalf (HRL 729775). Such documentation must be consistent with the laws of the country in which the corporation is registered.

Limited Liability Corporations - The *Power of Attorney* should state the names of all members of the LLC that have the authority to execute the *Power of Attorney* on behalf of the LLC. In addition, if the signator is not a named member, documentation must be provided certifying the signator is authorized to sign the *Power of Attorney* under the terms of the LLC Agreement.

Partnerships - The *Power of Attorney* may be executed by any member of the partnership. (Section 141.39(a)(1), CR). If the executor is not a general partner, the partnership must certify that the executor is authorized to sign the *Power of Attorney* under the terms of the partnership agreement.

Limited Partnerships - For purposes of executing a *Power of Attorney*, a limited partnership is any business association recognized as such under the laws of the State where the association is organized. The *Power of Attorney* should reflect only the names of the general partners who have authority to bind the firm unless the partnership agreement provides otherwise. In addition, a copy of the partnership agreement must accompany the *Power of Attorney*. (Section 141.39(a)(2), CR). If the executor is not a general partner with the authority to bind the firm, the partnership must certify the executor is authorized to sign the *Power of Attorney* under the terms of the partnership agreement.

Questions to Consider:

Q: Is the *Power of Attorney* valid if not dated?

A: Yes. However, to avoid questions as to when the *Power of Attorney* became effective, it should be routinely dated. If there is no date, the broker should note the date it received the *Power of Attorney* by "date stamp" preceded by the word "Received."

Q: If the importer is the "XYZ Division" of the "ABC Corp." may the *Power of Attorney* be signed by the president of the XYZ Division?

A: No, unless it is accompanied by evidence of a board resolution empowering that person to sign. An officer of a division or branch of a corporation is not assumed to have corporate

What is a valid *Power of Attorney*?

Customs Regulations require that the broker obtain a "valid *Power of Attorney* to transact customs business" in the name of a principal. (Sections 141.31, 141.32, and 141.46, CR) This means a written appointment of the broker, in the words of the CBPF 5291, to act as "a true and lawful agent and attorney of the grantor." A valid *Power of Attorney* should be written in English.

While the language contained in the CBPF 5291 (the CBP *Power of Attorney* form) represents CBP policy, it is merely illustrative and subordinate to the regulatory requirements (HRL 221480). Thus, a CBPF 5291 or a privately printed form, which is incomplete or erroneously completed, may still nonetheless be "valid" - in the sense of creating a legally binding principal/agency relationship - provided that the error or omission does not violate a specific regulatory requirement in creating a legally binding principal/agency relationship and does not otherwise violate the Customs Regulations. (See discussion under "**Completing the Form.**")

Many *Power of Attorney* forms include a provision for inserting the grantor's tax identification number or social security number. While this information can be useful in validating the grantor's identity, this information is not legally required. (See discussion under "**After the Form Is Completed.**")

There is a paucity of rulings relating to the effect of errors and omissions in completing the *Power of Attorney* form. Incomplete *Powers of Attorney* forms, even if missing non-required information, are frequently the subject of broker enforcement actions by CBP. In order to avoid issues, every effort should be made to execute the *Power of Attorney* form accurately and completely.

Employee Powers of Attorney

Section 111.2 of the Customs Regulations provides that a person must obtain a license to transact customs business as a broker. A broker's employee, whether or not individually licensed, is permitted to sign documents pertaining to customs business under the broker's license when the following conditions are met: (1) the broker has authorized the employee to do so on his behalf and, (2) the broker has executed a power of attorney for that purpose. (Section 111.2(a)(2)(ii)(1), CR).

The NCBFAA has provided in the appendix an example of the requisite *Employee Power of Attorney*. (See **Appendix C**).

Conclusion

Sound business practice requires that brokers and/or forwarders provide detailed written instructions for the execution of the *Power of Attorney* and to fill in as much information as possible on the form prior to sending it to the principal; this will facilitate prompt and correct execution and return. The *Power of Attorney* should be inspected upon receipt to insure completeness. The broker should immediately return the *Power of Attorney* to the grantor for correction of material deficiencies and/or for re-execution. The retention of *Powers of Attorney*

**CUSTOMS POWER OF ATTORNEY/
DESIGNATION AS EXPORT FORWARDING AGENT**

**and
Acknowledgement of Terms and Conditions**

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(Revised 01/00)

(1) appropriate box:

- ☐ Individual
☐ Partnership
☐ Corporation
☐ Sole Proprietorship
☐ Limited Liability Company

(2) IRS# _____

KNOW ALL MEN BY THESE PRESENTS: That, (3) _____ doing
(Full name of individual, partnership, corporation, sole proprietorship, or limited liability company) (Identify)
business as a (4) _____ under the laws of the State of (5) _____,
(Individual, partnership, corporation, sole proprietorship, or limited liability company) (Insert one)
residing or having a principal place of business at (6) _____, hereby constitutes and
appoints FRED HALL & ASSOCIATES, INC., its officers, employees, and/or specifically authorized agents, to act for and
(Grantee's Name)
on its behalf as a true and lawful agent and attorney of the grantor for and in the name, place and stead of said grantor, from this date,
in the United States (the "territory") either in writing, electronically, or by other authorized means, to:

Make, endorse, sign, declare, or swear to any customs entry, withdrawal, declaration, certificate, bill of lading, carnet or any other documents required by law or regulation in connection with the importation, exportation, transportation, of any merchandise in or through the customs territory, shipped or consigned by or to said grantor;

Perform any act or condition which may be required by law or regulation in connection with such merchandise deliverable to said grantor; to receive any merchandise;

Make endorsements on bills of lading conferring authority to transfer title; make entry or collect drawback; and to make, sign, declare, or swear to any statement or certificate required by law or regulation for drawback purposes, regardless of whether such document is intended for filing with Customs;

Sign, seal, and deliver for and as the act of said grantor any bond required by law or regulation in connection with the entry or withdrawal of imported merchandise or merchandise exported with or without benefit of drawback, or in connection with the entry, clearance, lading, unloading or navigation of any vessel or other means of conveyance owned or operated by said grantor, and any and all bonds which may be voluntarily given and accepted under applicable laws and regulations, consignee's and owner's declarations provided for in section 485, Tariff Act of 1930, as amended, or affidavits or statements in connection with the entry of merchandise;

Sign and swear to any document and to perform any act that may be necessary or required by law or regulation in connection with the entering, clearing, lading, unloading, or operation of any vessel or other means of conveyance owned or operated by said grantor;

Authorize other Customs Brokers duly licensed within the territory to act as grantor's agent; to receive, endorse and collect checks issued for Customs duty refunds in grantor's name drawn on the Treasurer of the United States; if the grantor is a nonresident of the United States, to accept service of process on behalf of the grantor;

And generally to transact Customs business, including filing of claims or protests under section 514 of the Tariff Act of 1930, or pursuant to other laws of the territories, in which said grantor is or may be concerned or interested and which may properly be transacted or performed by an agent and attorney;

Giving to said agent and attorney full power and authority to do anything whatever requisite and necessary to be done in the premises as fully as said grantor could do if present and acting, hereby ratifying and confirming all that the said agent and attorney shall lawfully do by virtue of these presents;

This power of attorney to remain full force and effect until revocation in writing is duly given to and received by grantee (if the donor of this power of attorney is a partnership, the said power shall in no case have any force or effect in the United States after the expiration 2 years from the dates of its execution);

Appointment as Forwarding Agent: Grantor authorizes the above Grantee to act within the territory as lawful agent and sign or endorse export documents (i.e., commercial invoices, bill of lading, insurance certificates, drafts and any other document) necessary for the completion of an export on grantor's behalf as may be required under law and regulation in the territory and to appoint forwarding agents on grantor's behalf;

Grantor acknowledges receipt of FRED HALL & ASSOCIATES, INC. Terms and Conditions of Service governing all transactions between the Parties.

If the Grantor is a Limited Liability Company, the signatory certifies that he/she has full authority to execute this power on behalf of the Grantor.

IN WITNESS WHEREOF, the said (7) _____
(Full name of company)

caused these presents to be sealed and signed: (Signature) (8) _____

(Capacity) (9) _____ Date: (10) _____

Witness: (if required) _____

If you are the importer of record, payment to the broker will not relieve you of liability for U.S. Customs charges (duties, taxes or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to the "U.S. Customs Service" which shall be delivered to Customs by the broker. Importers who wish to utilize this procedure must contact our office in advance to arrange timely receipt of duty checks.

CLIENT DATA SHEET

NAME: _____

MAILING ADDRESS: _____

STREET ADDRESS: _____

CONTACT: _____ TELEPHONE: _____

ALT. CONTACT: _____ FAX: _____

E-MAIL: _____ WEB SITE: _____

IRS NO: _____ CUSTOMS BOND ON FILE: **Y** or **N**

ARE WE TO INSURE YOUR CARGO FROM ORIGIN TO YOUR DOOR???: **Y** or **N**

IF YOU WAIVE INSURANCE COVERAGE, PLEASE INITIAL HERE --> _____

SPECIAL INSTRUCTIONS: _____

DOCUMENTS TO ACCOMPANY OUR INVOICE: _____

PERSON TO WHOM OUR INVOICE SHOULD BE ADDRESSED: _____

COMPLETED BY: _____ DATE: _____

POA REC'D: _____ CUSTOMER CODE: _____ AE: _____

CREDIT TERMS, IF OTHER THAN "NET ON RECEIT": _____

APPROVED BY: _____ DATE: _____

These terms and conditions of service constitute a legally binding contract between the "Company" and the "Customer". In the event the Company 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) "Company" shall mean **FRED HALL & ASSOCIATES, INC.**, its subsidiaries, related companies, agents and/or representatives;
- b) "Customer" shall mean the person for which the Company is rendering service, as well as its principals, 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) "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, OTI's, 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 and security 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 30 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 suits against Company must be filed and properly served on Company as follows:
 - (i) For claims arising out of ocean transportation, within one year from the date of the loss;
 - (ii) For claims arising out of air transportation, within 30 days from the date of the loss;
 - (iii) For claims arising out of the preparation and/or submission of an import entry(s), within 60 days from the date of liquidation of the entry(s);
 - (iv) For any and all other claims of any other type, within 90 days 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, Company 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 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.

5. 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.

6. Reliance On 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 Company 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 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 ensure 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 any incorrect, incomplete or false statement by the Customer or its agent, representative or contractor 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.

7. 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 therefore; 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.

8. 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 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, Company makes no express or implied warranties in connection with its services;

b) 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 therefor, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s).

c) 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 business, \$500.00 per shipment or transaction, or

(ii) where the claim arises from activities relating to "Customs business," the amount of brokerage fees paid to Company for the entry;

d) 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, or for the acts of third parties.

10. 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.

11. Indemnification/Hold Harmless: The Customer agrees to indemnify, defend, and hold the Company 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 Company 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 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.

12. 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 not have liability if the bank or consignee refuses to pay for the shipment.

13. 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 21% per annum or the highest rate allowed by law, whichever is less unless a lower amount is agreed to by Company.

14. General Lien and Right To Sell Customer's Property:

- a) Company shall have a general and continuing lien on any and all property of Customer 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 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 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 Company 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 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, etc.

17. 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, etc.; 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.

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

19. Compensation of Company: The compensation of the Company 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 Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others in connection with the shipment. 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. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.

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. Company'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 TEXAS without giving consideration to principals of conflict of law.

Customer and Company

- a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of TEXAS;
- b) agree that any action relating to the services performed by Company, 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.