

Canadian Society of Customs Brokers

STANDARD TRADING CONDITIONS

These are the **Standard Trading conditions** which govern the **business practices of members of the Canadian Society of Customs Brokers. Both the Client and the Customs Broker agree to be bound by the Agency Agreement and the Power of Attorney as well as these Standard Trading Conditions unless or until a party advises the other party in writing to the contrary subject to the provisions of Section 8 of these Standard Trading Conditions.**

1. Definitions

« **Agency Agreement and Power of Attorney** » means that Canadian Society of Customs Brokers Continuous General Agency Agreement and Power of Attorney with Power to Appoint a Sub-Agent attached here to signed by the Client to appoint the Custom Broker as its agent and attorney in connection with the services described therein.

« **Applicable Laws** » has the meaning set out in Section 6(a).

« **Canada Customs** » means the Canada Border Services Agency, any other Department or Agency, and any other successor Department of Agency of the Government of Canada or any Province thereof having jurisdiction over the import and export of goods into and from Canada.

« **Client** » means that individual partnership, association, entity or corporation at whose request or on whose behalf, either directly or indirectly, the Custom Broker undertakes any business or provides advice, information or services, and who is named as the Client in Agency Agreement and Power of Attorney.

« **Customs Broker** » means that individual, partnership, entity or corporation licensed by the Canada Border Services Agency, or

other authorised body, to engage in the business of a custom broker and who is named as the Customs broker in the Agency Agreement and Power of Attorney.

« **Disbursements** » means any payment made by the Custom Broker, on behalf of the Client, for any product or service rendered in connection with the facilitation of the import and export of goods, including but not limited to Government Charges, and any additional taxes, freight, storage, penalties, interest, fines and any other amounts, charges or payments, including, without limitation, payments for goods on COD shipments made by the Customs Broker on behalf of the Client.

« **Disbursement Fees** » means those fees charged by the Customs Broker to the Client in connection with arranging making and/or managing Disbursements.

« **Fees** » has the meaning set out in Section 2(a), and includes, without limitation, Disbursement Fees.

« **Government Charges** » means those duties, taxes, penalties, interest, fines or other charges or amounts charged or levied by Canada Customs or other applicable governmental authority on imported or exported goods including, without limitation, goods imported into Canada, exported from Canada or reported or released or to be reported or released under the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act, the Special Import Measures Act and/or any other Applicable Laws relating to customs, import and/or export.

« **Losses** » means losses, damages, delays, costs, injuries, fees (including legal fees and expenses), liabilities, expenses, actions, suits, proceeding, demands and claims of any kind or nature whatsoever.

« **Services** » means those Customs Broker services described in Annex A which are required by the Client and agreed to be provided by the Customs Broker.

2. Fees and Disbursements

- (a) The fees for Services shall be in accordance with the fee schedule as agreed upon between the Client and the Customs Broker, as amended from time to time (the « **Fees** »)
- (b) The Client shall pay to the Customs Broker, as and when due in accordance herewith, all Fees for the Services.
- (c) Disbursements incurred by the Customs Broker on behalf of the Client shall be reimbursed to the Customs Broker by the Client.

3. Invoicing and Payment

- (a) The Customs Broker shall issue invoices to the Client for all Fees and Disbursements pertaining to the Services.
- (b) The Client shall pay all invoices upon receipt, unless otherwise agreed to in writing by the parties.
- (c) Interest on all late payments shall be charged and paid at a rate equal to the prime lending rate set by the Bank of Canada plus 5% per annum, as it fluctuates from time to time, which interest shall be calculated and charged commencing 14 days after the relevant invoice date unless otherwise agreed to in writing by the parties.
- (d) Upon default of payment by the Client, the Customs Broker, in addition to any other rights and remedies the Customs Broker may have, has the right to (i) retain, in its possession, all goods of the Client then in the Customs Broker's possession and all goods of the Client which may, in the future, come into the Customs Broker's possession; and (ii) sell any or all such goods by public auction if the Client's payment default continues for a period in excess of 45 days from the date of the relevant invoice therefor.

4. Advancement of Funds

- (a) Upon request by the Customs Broker, the Client shall, prior to the Customs Broker's release of any shipment of goods imported by the Client, promptly provide to the Customs Broker sufficient funds to enable the Customs Broker to pay on behalf of the Client all Disbursements that are estimated by the Customs Broker to be payable in connection with such shipment.
- (b) If, at any time, the Customs Broker or Canada Customs determines that additional funds are required with respect to goods imported by the Client, the Client shall upon demand of either the Customs Broker or Canada Customs promptly advance such additional funds to the Customs Broker.
- (c) If, after payment of Disbursements by the Customs Broker concerning the goods imported by the Client, any balance of funds remains outstanding to the credit of the Client, the Customs Broker shall promptly return to the Client any remaining balance of funds, unless otherwise instructed by the Client.
- (d) If the Client fails to advance funds to the Customs Broker when requested by the Customs Broker or Canada Customs, the Customs Broker shall have no obligation to render or perform any Services for or on behalf of the Client, and the Client shall be responsible, and reimburse, defend, indemnify and hold harmless the Customs Broker, for any Losses in connection therewith.

5. Duties and Responsibilities of the Client

- (a) The Client shall :
 - (i) promptly provide to the Customs Broker all information necessary for the Customs Broker to provide the Services including, without limitation, all information required to complete Canada Customs's documentation

- and/or furnish required data to Canada Customs or other applicable government authorities;
- (ii) promptly review all documentation and/or data and notify the Customs Broker of any inaccuracies, errors or omissions found therein, and
 - (iii) reimburse, defend, indemnify and save harmless the Customs Broker with respect to each matter set out in Section 5(c) and against any and all Losses which result from or arise in connection with inaccuracies, mistakes or omissions in the information and documentation provided to the Customs Broker by the Client or its employees, representatives and/or agents and relied upon by the Customs Broker.
- (b) The Client warrants that (i) it is the importer, exporter and/or owner of the goods (as applicable) for which it has retained the Services of the Customs Broker; (ii) it has full power and authority to retain and appoint as agent and attorney and authorize and instruct the Customs Broker including, without limitation, as set out in the Agency Agreement an Power of Attorney; and (iii) all information provided to the Customs Broker is complete, true and accurate. The Client acknowledges that the Customs Broker is relying on such information to provide the Services.
 - (c) The Client is solely liable and responsible for each and all of :
 - (i) Disbursements made by the Customs Broker on behalf of the Client;
 - (ii) Government Charges; and
 - (iii) Losses incurred or sustained by the Customs Broker in relation to the provision of Services to the Client.

6. Duties and Responsibilities of the Customs Broker

- (a) The Customs Broker shall at all times provide Services in a timely and professional manner in accordance with the

- generally accepted standards of the Canadian customs brokerage industry and in compliance with all applicable laws and regulations of Canada and any applicable Province, Territory and municipality thereof (« **Applicable Laws** »)
- (b) All information pertaining to the Client is, and shall be kept, confidential by the Customs Broker and its sub-agents, if applicable, and shall only be released to Canada Customs or other applicable government, police or official investigation authorities, if and as (i) required by Applicable Laws or order of a body, agency or court of competent jurisdiction and authority; and/or (ii) directed or authorized by written instructions from the Client to the Customs Broker to release confidential information, or any part thereof, to third parties.
 - (c) The Customs Broker shall take all reasonable steps to provide Services in accordance with the instructions from the Client, provided however, that if in the Customs Broker's judgement it is in the Client's interest to depart from the Client's instructions, the Customs Broker is hereby instructed and directed to do so and shall be reimbursed, defended, indemnified and saved harmless by the Client for all Losses incurred in so doing.
 - (d) The Customs Broker shall provide to the Client in respect of each transaction or summary accounting made on the Client's behalf a copy of the accounting documents and data pertaining thereto.
 - (e) The Customs Broker shall promptly account to the Client for funds received by the Customs Broker to the extent that these funds are :
 - i. for the credit of the Client from the Receiver General for Canada or other applicable government authorities; or
 - ii. from the Client by way of advances provided in Section 4 in excess of the Disbursements payable in respect of the Client or the Client's business.
 - (f) The Customs Broker shall not be liable for any Losses resulting from or caused in any part by (i) the Customs Broker's negligence, misconduct or breach or for anything

which it may do or refrain from doing; (ii) any act of God, unavoidable delay or event, or other act or cause beyond the reasonable control of the Customs Broker; or (iii) the Customs Broker's failure to provide the Services as a result of or due to the operation of the Applicable Laws or the applicable laws of any other country that affects the Services or a charge in the policies of Canada Customs or other applicable government authorities.

- (g) The Customs Broker shall use its commercially reasonable efforts, in accordance with industry standards, to advise the Client on matters referred to the Customs Broker. The Client (i) acknowledges that the Customs Broker has given no assurances, representations or warranties to the Client regarding the outcome of these matters, and (ii) understands that there is no guarantee of any specific results from the Services.

7. Limitation of Liability

Neither the Customs Broker nor the Client will be liable for any consequential, special, incidental, indirect, punitive or exemplary damages resulting from these Standard Trading Conditions, the Agency Agreement and Power of Attorney, any act of God, « force majeure » or unavoidable delay, or event beyond the reasonable control of the affected party. In addition, the Customs Broker shall not be liable for any loss of profit, loss of revenue, loss of use or other like damages or losses, or damages arising in tort, whether or not known or contemplated, in connection with the Services, these Standard Trading Conditions and/or the Agency Agreement and Power of Attorney.

8. Termination

In the event that the Agency Agreement and Power of Attorney is terminated and there are any outstanding matters pertaining to the

Client for which the Customs Broker has been engaged by the Client and for which the Customs Broker remains liable to make payment, the Agency Agreement and Power of Attorney shall continue in force with respect to such matters until such matters are concluded and payment by the Client to the Customs Broker of such funds as may be required to satisfy all outstanding payment liabilities of the Customs Brokers to Canada Customs and others (including all Fees and Disbursements) has been made by the Client.

9. Governing Law

These Standard Trading Conditions are governed by the laws of the Province or Territory in Canada within which the Customs Broker has its principal place of business, and the federal laws of Canada applicable therein, and the Client hereby irrevocably attorns to the courts of such Province or Territory. The Agency Agreement and Power of Attorney, together with these Standard Trading Conditions, enure to the benefit of and are binding upon the parties and their respective executors, administrators, successors and assigns.

The parties agree that where they have used electronic communications in whole or in part to transact any business, those communications will be given legal effect in accordance with the provisions of the Uniform Electronic Commerce Act as approved by the Uniform Law Conference of Canada.

10. Severability

Each of the clauses of these Standard Trading Conditions is and shall be deemed to be separate and severable and if any provision or part of these conditions is held for any reason to be unenforceable, the remainder of these Standard Trading Conditions shall remain in full force and effect.