

# COLE INTERNATIONAL USA INC. TERMS AND CONDITIONS

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These terms and conditions of service constitute a legally binding contract between the "Company" and the "Client". 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 Cole International USA, Inc., its subsidiaries, related companies, agents and/or representatives; (b) "Client" shall mean 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, consignees, etc. It is the responsibility of the Client 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 Client, 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", "Customs Service" shall mean the Department of Homeland Security, US Customs and Border Protection

## 2. Company as Agent

The Company acts as the "agent" of the Client 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 Client 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 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 Client.

(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 (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.

## 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 Client, 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 Client, and the Client 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 Client 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 i) the services in Paragraph 2 of this agreement; or ii) the handling or transportation of the shipment at the specific rates or amounts set forth in the quotation and payment arrangements are agreed to between the Company and the Client.

## **6. Reliance on Information Furnished**

(a) Client 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 Client's 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 Client; Client 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 Client's failure to disclose information or any incorrect or false statement by the Client upon which the Company reasonably relied. The Client agrees that the Client 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 Client, 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 Client in writing, Company is under no obligation to procure insurance on Client's behalf; in all cases, Client 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) Subject to (c) below, Client 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 Client, including loss or damage to Client'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, Client 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.

## **10. Advancing Money**

All charges must be paid by Client in advance unless the Company agrees in writing to extend credit to Client; the granting of credit to a Client in connection with a particular transaction shall not be considered a waiver of this provision by the Company.

## **11. Indemnification/Hold Harmless**

The Client agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising from the importation or exportation of Clients merchandise and/or any conduct of the Client, 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 Client 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, cashiers and/or certified checks, letter(s) of credit and other similar payment documents and/or instructions regarding collection of monies but shall have not 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 15% per annum or the highest rate allowed by law, whichever is less.

#### **14. General Lien and Right to Sell Client's Property**

(a) Company shall have a general and continuing lien on any and all property of Client 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 Client 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; Client 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, Client 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 Client.

#### **15. No Duty to Maintain Records for Client**

Client 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 Client.

#### **16. Obtaining Binding Rulings, Filing Protests, etc.**

Unless requested by Client 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 Client or its agent and Client agrees to pay for same, Company shall rely upon and use the cargo weight supplied by Client.

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

#### **19. Privacy**

Client acknowledges that the Company and any of its affiliates, subsidiaries, divisions and related companies, may have access to confidential materials or data relating to the Client's business, when required in providing services to the Client. Except with actual or implied consent, or as permitted or required by law, the Company, including its affiliates, subsidiaries, divisions and related businesses, will not sell or distribute your personal information outside the Company.

## **20. 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.

## **21. Severability**

In the event any Paragraph(s) and/or portion(s) hereof are 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 Nevada without giving consideration to principals of conflict of law. Client and Company (a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of Nevada; (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 personae jurisdiction by said courts over it, and (d) further agree that any action to enforce a judgment may be instituted in any jurisdiction. Terms and Conditions on second page.

## **23. Fees and Disbursements**

(a) The fees for Services shall be in accordance with the fee schedule agreed upon between the Client and the Company as may be amended from time to time. (b) The Client shall pay to the Company the Fees for the Services rendered by the Company to the Client pursuant to this Agreement. (c) Disbursements incurred by the Company on behalf of the Client shall be reimbursed to the Company by the Client as provided herein.

## **24. Invoicing and Payment**

(a) The Company shall issue Invoices to the Client for all Fees and Disbursements pertaining to Services rendered to and on behalf of the Client. (b) All such Invoices shall be payable within 30 days of receipt by the Client. (c) Interest on late payments shall be paid at the rate of 1% per month. (d) In the event of default of any payment required hereunder, the Company, in addition to any other legal rights and remedies of the Company, shall be subrogated to the rights of US Customs and the United States of America, for the recovery of any Customs Duties outstanding. If the Client is in default of payment of any monies under this Agreement, the Company will be entitled to retain possession of Client's goods until payment in full has been received. If such payment is not received within 30 days of notice of default, then Company will be entitled to cause the goods to be sold at public auction. The Company will be entitled to retain the proceeds of any such sale to set off any amounts due hereunder together with all reasonable costs associated with the storage, transportation and auction of such goods. The balance of proceeds, if any, will be paid to the Client within a reasonable time after receipt of such proceeds by the Company.

## 25. Advancement of Funds

(a) Upon request by the Company, the Client shall provide to the Company, prior to the release of a shipment of the Client's goods at a US Customs office of entry, sufficient funds to enable the Company to pay on behalf of the Client all Disbursements that are estimated by the Company to be payable on such shipment. (b) All funds advanced to the Company shall be held by the Company and applied only to goods imported by the Client. (c) If at any time, the Company or US Customs determines that additional funds are reasonably required with respect to air; shipment, the Client shall forthwith advance to the Company upon demand such additional funds. (d) If, after payment of Disbursements by the Company concerning a shipment, any balance of funds remains outstanding to the credit of the Client, the Company shall within a reasonable time return such funds to the Client, subject to the instructions of the Client to retain the remaining credit balance for subsequent Disbursements or to pay Fees and Disbursements for the account of the Client or to pay the Fees and Disbursements of the Company payable by the Client to the Company after issuance of an invoice therefore by the Company to the Client. (e) If the Client fails to advance funds to the Company upon request by the Company as aforesaid, the Company shall have no obligation with respect to rendering Services concerning the shipment for which advance funds had been requested by the Company.

## 26. Duties and Responsibilities of the Client

(a) The client shall:

- (i) provide all information necessary for the Company to provide the Services including all information required to complete US Customs documentation and to ensure the Client is in compliance with all USA import and export requirements;
- (ii) review all documentation promptly and notify the Company of any inaccuracies, errors or omissions found therein and advise the Company promptly of any corrections or additions to be made on such documents within the time periods set out in paragraph 27 hereof; and
- (iii) indemnify and save harmless the Company against any and all actions, claims, suits or demands of any nature whatsoever arising from third party claims pertaining to the Services or the Client's goods which result from inaccuracies mistakes or omissions in the information and documentation provided to the Company by or on behalf of the Client and relied upon by the Company.

(b) The Client warrants that it is the importer, exporter or owner of the goods for which it has retained the Company; that it has full power and authority to retain appoint as attorney and instruct the Company; and that all information provided to the Company shall be complete, true and accurate and the Client acknowledges that the Company shall be relying on such information to provide the Services.

(c) Without limiting any statutory liability of the Company, as between the Company and the Client, the Client shall be solely liable for:

- (i) any and all Disbursements made by the Company on behalf of the Client;
- (ii) any Customs Duties, fines, penalties or interest imposed with respect to the Client's goods; and
- (iii) any loss or damage incurred or sustained by the Company in relation to the provision of Services to the Client herein due to Client's negligence or willful misconduct.

## 27. Errors and Omissions

Any errors or omissions on the US Customs documents must be reported in writing to the Company by the Client as soon as possible but in any event within 45 days of release of the goods from US Customs control.



## 28. Non-Solicitation

Customer will not solicit for employment, employ, hire, consult with, or otherwise retain, directly or indirectly, the services of any personnel of the Attorney during the term of this Agreement and for a period of year (1) year following expiration or termination of this Agreement, except with the prior written consent of the Attorney. Any such actions in violation of these provisions will be considered a Breach of this Agreement and will entitle the Attorney to seek either: immediate injunctive relief, and/or payment equal to fifty percent (50%) of the personnel's total annual salary from the Customer to the Attorney as compensation for any violation of this provision