

Terms & Conditions

Terms & Conditions of Service

National Brokerage LLC

These Terms and Conditions of Service constitute a legally binding contract between the “Company” and the “Customer” governing the provision of customs brokerage and related services by the Company to the Customer. In the event the Company renders any other services to Customer, the Terms and Conditions of Service as set forth for such other service(s) shall govern those services. The most current Terms and Conditions of Service and the controlling version of the National Brokerage LLC Terms and Conditions of Service are published at www.gonational.com and are subject to change by Company, without prior notice.

1. Definitions.

- a. “Company” mean National Brokerage LLC, its related companies, agents and/or representatives.
- b. “Customer” means 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 Customer to provide notice and copy(s) of these Terms and Conditions of Service to all of its agents or representatives.
- c. “Documentation” means all information received directly or indirectly from Customer, whether in paper or electronic form.
- d. “Ocean Transportation Intermediaries” (“OTI”) means an “ocean freight forwarder” and/or a “non-vessel operating carrier.”

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e. “Third parties” means any Person other than the Company or the Customer, including but not be limited to, the following: carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen and others to whom 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 filing of security documentation on behalf of the Customer and other dealings with Government Agencies. As to all other services, Company acts as an independent contractor. Customer agrees that the version of these Terms and Conditions of Service in effect at the time of tender will apply to services provided by the Company. Except to the extent of any written agreement between Company and Customer, these Terms and Conditions of Service supersede any claimed, alleged or asserted oral agreement, promise, representation, or understanding between or among the parties with respect to the customs brokerage services provided by Company.

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 the claim. Customer’s failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer. Claims may not be deducted from charges and no claim will be considered until all fees due hereunder have been paid in full. If the Company pays a claim, the Company shall be entitled to possession of the portion of the shipment for which the claim was made as salvage, if applicable. The failure to provide the salvage shall be a bar to recovery of any claim.

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(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, however for shipments subject to the U.S. Carriage of Goods by Sea Act, such time period shall be nine (9) months;

(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 claims arising out of the preparation and/or submission of an importer security filing, within one (1) year from the date of loss; and

(v) 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 Customer, the 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 the Company assume responsibility or liability for any action(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.

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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 by the Company and/or filed by the Company on Customer's behalf with U.S. Customs and Border Protection, other Government Agencies and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements or classifications, or omissions on any declaration or other submission filed on Customer's behalf.

(b) In preparing and submitting customs entries, export declarations, applications, security filings, documentation and/or required data, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by the Customer, including but not limited to tariff classification and information relating thereto. Customer shall use reasonable care to ensure the correctness of all such documentation and information and shall indemnify and hold the Company harmless from and against any and all claims, liability or losses, including but not limited to attorneys' fees, suffered by reason of the Customer's failure to disclose documentation or information, or any incorrect, incomplete or false statement by the

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Customer or any of its agents, representatives or contractors upon which the Company reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all documentation and information required to import, export or enter the goods.

7. Compliance with Law.

(a) The Customer represents and warrants to the Company that it will comply with all laws and regulations applicable to the Customer and/or any shipment or transaction hereunder, including without limitation, Presidential Executive Order 13224, the USA Patriot Act, the Bank Secrecy Act and the Money Laundering Control Act.

(b) Without limiting the generality of Paragraph 7(a), after diligent inquiry the Customer represents and warrants to the Company that neither the Customer, nor any of its officers, directors, or controlling owners, is:

(i) designated as, a person, group, entity, or nation named by any Executive Order, the United States Department of Justice, or the United States Treasury Department as a terrorist, "Specifically Designated National or Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control or any other legal or governmental authority of competent jurisdiction (in each case, a "SDN");

(ii) acting, directly or indirectly, for or on behalf of any SDN; or

(iii) engaged in any transaction or shipment, directly or indirectly, on behalf of, or is instigating or facilitating any transaction or shipment, directly or indirectly, on behalf of, any SDN.

(c) In the event of any change resulting in the Customer being non-compliant with any of the above representations and warranties, the Customer shall immediately

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notify the Company of such fact and the Company may, at its sole option, immediately terminate the services.

8. 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 related charges. 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.

9. Insurance. Unless requested to do so in sufficient time prior to shipment from point of origin, and confirmed to Customer in writing, Company is under no obligation to procure insurance on Customer's behalf. The Company does not undertake or warrant that such insurance can or will be placed. In the event that Customer requests insurance from Company, all insurance placed will be governed by the certificate or applicable policy issued, and will only be effective upon acceptance by the insurance company selected by the Company. In all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance. If for any reason the goods are held in warehouse, or elsewhere, the goods will not be covered by insurance, unless the Customer specifically requests such coverage in writing, and in advance, and Company confirms in writing that such coverage has been obtained.

10. Disclaimers: Limitations of Liability.

(a) Except as specifically set forth herein, the Company makes no express or implied warranties in connection with its services.

(b) Subject to (d) 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 injury to Customer, including loss or

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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 (c) 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, \$50.00 per shipment or transaction.

(ii) Where the claim arises from activities relating to "Customs business," including importer security filing services or other filings, activities, shipments, or transactions, liability shall be limited to \$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 (i) consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages, or for (ii) the acts of third parties.

11. Advancing Money. All charges (including but not limited to duties and taxes) must be paid by the Customer in advance unless the Company agrees in writing to extend credit to the Customer. The granting of credit to the Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company. The Company will not advance funds for payment of duties or taxes. If the Customer fails to advance funds to the Company or comply with the terms of any credit

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extended to the Customer as aforesaid, the Company shall have no obligation with respect to rendering services concerning the goods for which the advance funds or credit apply.

12. Indemnification/Hold Harmless. The Customer agrees to indemnify, and hold the Company harmless from any claims and/or liability, fines, penalties and/or attorneys' fees (regardless of whether or not litigation is filed) arising from the importation or exportation of Customer's merchandise, any/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or any of its agents or representatives, which violates any applicable 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 attorneys' fees (regardless of whether litigation is filed), 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, the Company 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. The 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. All payment documents tendered in satisfaction of C.O.D. shipments will be accepted based solely on Customer's accepting all risks related thereto, including without limitation, Customer's responsibility for risk of non-payment, insufficient funds, and forgery.

14. Invoicing, Payment and Costs of Collection.

(a) The Company shall issue invoices to the Customer for all fees and charges pertaining to services rendered to and on behalf of the Customer.

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(b) All invoices shall be payable upon receipt, or as otherwise agreed between the Customer and the Company.

(c) Interest on all late payments shall be paid at the rate of one and a half percent (1.5%) per month, upon which interest shall be charged commencing 30 days after the invoice due date or as otherwise agreed.

(d) The Customer shall pay the Company for all costs and expenses incurred by the Company in connection with the recovery of all payments due under this agreement including, but not limited to, costs of collection, reasonable legal fees, court costs and reasonable compensation for all time expended by the Company as result of such collection action.

15. No Duty To Maintain Records For Customer. Customer acknowledges that pursuant to Sections 508 and 509 of the Traffic 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 Unites 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 “record keeping agent” for Customer.

16. Right to Inspect Property. All shipments are subject to inspection by Company. Company is not obligated to perform such inspection except as mandated by law. Company reserves the right to unilaterally reject a shipment it deems unfit for transport after inspection.

17. General Lien and Right to Sell Customer’s Property.

(a) The Company shall have a general and continuing lien on any and all property and documents relating thereto of Customer coming into the Company ‘s actual or constructive possession, custody or control or enroute, which lien shall survive delivery, for all charges, expenses or advances owed to the Company with regard to the

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shipment on which the lien is claimed, a prior shipment(s) and/or both. Customs duties, transportation charges, and related payments advanced by the Company shall be deemed paid in trust on behalf of the Customer and treated as pass through payments made on behalf of the Customer for which the Company is acting as a mere conduit.

(b) The 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 the Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, the 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.

18. Obtaining Binding Rulings, Filing Protests. Unless requested by Customer in writing and agreed to by the Company in writing, the Company shall be under no obligation to undertake pre or post release actions, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests.

19. Preparation and Issuance of Bills of Lading; Security Filings. Where the Company prepares and/or issues a bill of lading, the 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. The Company shall rely upon and use the cargo weight supplied by Customer. If, and to the extent the Company is preparing or is otherwise required to prepare, make, endorse, sign, declare or swear to any security filing or other document required for compliance with any law, the Customer hereby consents, agrees and

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authorizes the Company to take all such actions to effect the making, endorsement, declaration or swearing to such document.

20. 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.

21. 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.

22. 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 subcontractors, 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, breaches of contract or omissions by the 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.

23. Severability; Waiver. 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

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remain in full force and effect. Company's decisions 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.

24. Notices. All notices to the Company shall be provided by certified U.S. mail and shall be effective upon receipt by the Company at the following address: 350 Windward Drive, Orchard Park, NY 14127, Attn: Director, Brokerage Services.

25. 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 New York, without giving consideration to principles of conflict of law. Customer and the Company:

(a) irrevocably consent to the jurisdiction of any federal or state court located in Erie County, New York;

(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 person am jurisdiction by said courts over it; and

(d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.