

MASTER POA – TERMS AND CONDITIONS OF SERVICE

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.

- Definitions. (a) "Company" shall mean SCHENKER, 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 agents and/or representatives, including, but not limited to, owners, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, consignors, transferees, transferors, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such persons or entities. (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, OTIs, customs brokers, agents, warehousemen, foreign trade zone ("zone") operator and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or purpose".
- Company as agent. The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with the zone admission, transfer, 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.
- Liability of Company (Limitations of Actions): In no event shall the Company be liable for any act, omission or default by it in connection with an admission, transfer, exportation or importation, unless a claim therefor shall be presented to it at its office within one hundred twenty (120) days from date of exportation or importation of the goods in a written statement to which sworn proof of claim shall be attached. No suit to recover for any claim or demand hereunder shall in any event be maintained against the Company unless instituted within six (6) months after presentation of the said claim, as above provided. No agent or employee of the Company shall have authority to alter or waive any of the provisions of this clause.
- 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, admission, transfer, 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.
- Liability Limitations of Third Parties. The Company is authorized to select and engage carriers, truckmen, lightermen, forwarders, customhouse brokers, agents, warehousemen, zone operators and others, as required, to transport, store, deal with and deliver the goods, all of whom shall be considered as the agents of the Customer, and the goods may be entrusted to such agencies subject to all conditions as to limitation of liability for loss, damage, expense or delay and to all rules, regulations, requirements and conditions, whether printed, written or stamped, appearing in bills of lading, receipts or tariffs issued by such carriers, truckmen, lightermen, forwarders, customhouse brokers, agents, warehousemen, operators and others. The Company shall under no circumstances be liable for any transport or render other services with respect to such goods.
- Declaring Higher Valuation. Inasmuch as truckers, carriers, warehousemen, zone operators and others to whom the goods are entrusted usually limit their liability for loss or damage unless a higher value is declared and a charge based on such higher value is agreed to by said truckers, etc., the Company must receive specific written instructions from the Customer to pay such higher charge based on valuation and the trucker, etc., must accept such higher declared value; otherwise the valuation placed by the Customer on the goods shall be considered solely for export or customs purposes and the goods will be delivered to the truckers, etc. subject to the limitation of liability set forth herein with respect to any claim against the Company and subject to the provisions set forth herein.
- 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.
- Duty To Furnish Information. (a) On an import at a reasonable time prior to entry or zone admission or transfer of the goods for Customs & Border Protection, the Customer shall furnish to the Company, invoices in proper form and other documents necessary or useful in the preparation of the Customs entry and, also, such further information as may be sufficient to establish the dutiable value, the classification and admissibility pursuant to U.S. law or regulation. If the Customer fails in a timely manner to furnish such information or documents in whole or in part, as may be required to complete Customs entry, or if the information or documents furnished is inaccurate or incomplete, the Company shall be obligated only to use its best judgment in connection with the shipment. Where a bond is required by Customs, the Customer shall be deemed bound by the terms of the bond notwithstanding the fact that the bond has been executed by the Company as principal, it being understood that the Company entered into such undertaking at the instance and on behalf of the Customer, and the Customer shall indemnify and hold the Company harmless for the consequences of any breach of the terms of the bond. (b) On an export at a reasonable time prior to the exportation of the shipment the Customer shall furnish to the Company the commercial invoice in proper form and number, a proper consular declaration, weights, measures, values and other information in the language of and as may be required by the laws and regulations of the U.S. and the country of destination of the goods. (c) On an export, import, zone admission or transfer, the Company shall not in any way be responsible or liable for increased duty, penalty, fine or expense unless caused by the negligence or other fault of the Company, in which event its liability to the Customer shall be governed by the provisions set forth herein. The Customer shall be bound by and warrant the accuracy of all invoices, documents and information furnished to the Company by the Customer or its agent for export, entry, admission, transfer, or other purposes, and Company shall not be liable for any losses, fines, penalties claims or any other amount payable as the result of Customer's failure to make timely presentation of any invoices, documents and information, even if not due to any negligence of Customer.
- Indemnification of Freight, Duties. In the event that a carrier, other person or any governmental agency makes a claim or institutes legal action against the Company for ocean or any other freight, duties, fines, penalties, liquidated damages or other money due arising from a Customer's shipment of goods and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, admission, export or security data supplied by Customer or its agent or representative, which violates any Federal, State and/or other laws, and further the Customer agrees to indemnify, defend and hold harmless the Company for any claim or amount the Company may be required to pay such carrier, other person or governmental agency together with reasonable expenses, including attorney fees, incurred by the Company in connection with defending such claim or legal action and obtaining reimbursement from the Customer. The confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of the Customer to the Company to pay all charges or other money due promptly on demand. 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.
- Reliance On Information Furnished. (a) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with 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 filed on Customers behalf; (b) In preparing and submitting customs entries, export declarations, applications, security filings ,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 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 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.
- Declaring Higher Value To Third Parties. Third parties to whom the goods are entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefor; in the absence of written instructions or the refusal of the third party to agree to a higher declared value, at Company's discretion, the goods may be tendered to the third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.
- Insurance. The Company will make reasonable efforts to effect marine, fire, theft and other insurance upon the goods only after specific written instructions have been received by the Company in sufficient time prior to shipment from point of origin, and the Customer at the same time states specifically the kind and amount of insurance to be placed. 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. The Company does not undertake or warrant that such insurance can or will be placed. Unless the Customer has its own open marine policy and instructs the Company to effect insurance under such policy, insurance is to be effected with one or more insurance companies or other underwriters to be selected by the Company. Any insurance placed shall be governed by the certificate or policy issued and will only be effective when accepted by such Insurance companies or other underwriters. Should an insurer dispute its liability for any reason, the insured shall have recourse against the insurer only and the Company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rates as that charged or paid to the Company by the Customer, or that the shipment was insured under a policy in the name of the Company. Insurance premiums and the charge of the Company for arranging the same shall be at the Customer's expense. If for any reason the goods are held in warehouse, or elsewhere, the same will not be covered by any insurance, unless the Company receives written instructions from the Customer. Unless specifically agreed in writing, the Company assumes no responsibility to effect insurance on any export or import shipment which it does not handle.
- 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, 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 any injury to Customer, including loss or 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 therefor, 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 brokerage, \$50.00 per shipment, admission, 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., or for the acts of third parties.
- Loss, Damage or Expense Due To Delay. Unless the services to be performed by the Company on behalf of the Customer are unduly delayed by reason of the negligence or other fault of the Company, the Company shall not be responsible for any loss, damage or expense incurred by the Customer because of such delay. In the event the Company is at fault, as aforesaid, its liability is limited in accordance with the provisions set forth herein.
- 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.
- Indemnification/Hold Harmless. The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising from the importation, admission, transfer, 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 the 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 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.
- C.O.D. Shipments or Cash Collect Shipments. Goods received with Customer's or other person's written instructions to "Collect on Delivery" (C.O.D.) by drafts letter(s) of credit or otherwise, or to collect on any specified terms by time drafts or otherwise, are accepted by the Company only upon the express understanding that it will exercise reasonable care in the selection of a bank, correspondent, carrier or agent to whom it will send such item for collection, and the Company will not be responsible for any act, omission, default, suspension, insolvency or want of care, negligence, or fault of such bank, correspondent, carrier or agent, nor for any delay in remittance lost in exchange, or loss during transmission, or while in the course of collection of monies, and shall not have liability if the bank or consignee refuses to pay for the shipment.
- 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, unless a lower amount is agreed to by Company.
- 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 ongoing 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.
- Picking Up Shipments Or Samples. The Company shall not itself be obligated to pick up a shipment from a carrier or a sample from Customs & Border Protection. Should the Company render such a service for and on behalf of the Customer, the Company shall not be responsible for loss or damage to the shipment unless it is in the actual custody and control of the Company or its employee and the loss or damage is caused by the negligence or other fault of the Company or its employee, in which event the limitation of liability set forth herein shall apply.
- No Responsibility For Governmental Requirements. It is the responsibility of the Customer to know and comply with the marking requirements of Customs & Border Protection, the regulations of the U.S. Food and Drug Administration and all other requirements of law or official regulations. The Company shall not be responsible for action taken or fines or penalties assessed by any governmental agency against the shipment because of the failure of the Customer to comply with the law or the requirements or regulations of any governmental agency or with a notification issued to the Customer by any such agency.
- Sale of Perishable Goods. Perishable goods or live animals to be exported or which are cleared through customs concerning which no instructions for disposition are furnished by the Customer may be sold or otherwise disposed of without any notice to the Customer, owner or consignee of the goods, and payment or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery. In the event that any shipment is refused or remains unclaimed at destination or any transshipping point in the course of transit or is returned for any reason, the Customer shall nevertheless pay the Company for all charges and expenses in connection therewith. Nothing herein contained shall obligate the Company to forward or enter or clear the goods or arrange for this disposal.
- Due 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 "record keeper" or "recordkeeping agent" for Customer.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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 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 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 personam* jurisdiction by said courts over it, and (d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.