

## Heizwerthy Terms and Conditions



In accordance with the National Customs Brokers and Freight Forwarders Association of America, Inc. both the Client and the Customs Broker agree to be bound by the Power of Attorney and the Service Terms and Conditions until one of the parties advises the other in writing. 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 and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other documents(s) shall govern those services.

### 1) Definitions

- a) "Company" shall mean Heizwerthy Customs & Freight Solutions LLC dba Heizwerthy., 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, 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 Service Terms and Conditions 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, OTIs, customs brokers, agents, warehousemen and others 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/or security documentation on behalf of the Customer and other dealings with Government Agencies, or for arranging for transportation services or other logistics services in any capacity other than as a carrier.

### 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 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 (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); and
  - 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 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 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. 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 Company and/or filed by 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 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 asserted and/or liability or losses suffered by reason of the Customer's failure to disclose documentation or 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 documentation and information required to import, export or enter the goods.

### 7) Compliance with Law

- a) Customer represents and warrants to 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 Company that neither Customer, nor any of its officers, directors, or controlling owners, is:
  - i) is, or is 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, Customer shall immediately 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 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.

### 9) 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.

### 10) Disclaimers: Limitations 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 therefore, 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, \$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; or,
  - 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.

### 11) 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. If the Customer fails to advance funds to the Company or comply with the terms of any

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credit 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, 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 Customer's merchandise, any conduct of the Customer, and/or Customer's breach of any representation, warranty or covenant herein, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agent or representative, 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 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.

### 13) 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 have no liability if the bank or consignee refuses to pay for the shipment.

### 14) Invoicing, Payment and Costs of Collection

- a) The Company shall issue invoices to Customer for all fees and charges pertaining to services rendered to and on behalf of the Customer;
- b) All such 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) Customer shall pay 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) 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, 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 sales or auction any net proceeds remaining thereafter shall be refunded to Customer.

### 16) Limited Waiver of Record Confidentiality

Pursuant to section 111.24 of the Customs Regulations, information relating to the business of the Customer serviced by the Company is to be considered "confidential" unless waived by the Customer. In order to permit the facilitation of non-customs business at the offices of Heizwerthy Customs & Freight Solutions LLC. and/or its affiliates, to the extent required, the Customer expressly waives confidential treatment of these records under this Agreement. The information contained in these records will not be disclosed to parties other than Heizwerthy Customs & Freight Solutions LLC and/or its affiliates, except where required by regulation or where requested in writing by the Customer.

### 17) 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 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 "record keeping agent" for Customer.

### 18) 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 pre or post release actions, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.

### 19) 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.

### 20) SOLAS Verified Gross Mass Requirement

Customer understands that the International Convention for the Safety of Life at Sea (SOLAS) requires a shipper to provide the verified gross mass (VGM) of a packed container to a carrier. Implementation of the VGM requirement varies by jurisdiction. If a certified VGM is required, a carrier may refuse to load a shipment without one. Therefore, upon request by Company, Customer shall provide the VGM for a shipment as obtained on calibrated and certified equipment in accordance with SOLAS, and Company and the carrier shall be entitled to rely on the accuracy of such VGM provided by Customer for all purposes. Company is hereby authorized by Customer to tender, counter-sign or endorse the Customer's VGM certification, weight tickets or other weight data provided by Customer, or to issue a VGM certification on Customer's behalf pursuant to Customer's instructions. Customer agrees to indemnify and hold Company harmless from any and all claims, losses, penalties and/or costs resulting from an inaccurate, missing or late VGM or other information provided by Customer. Customer further agrees that any inaccuracy or delay in provision of the VGM could result in a delay of shipment and that Company shall not be liable for any delay resulting from Customer's late, inaccurate or missing VGM, or any costs, fees, losses, damages or charges associated therewith. In no event shall Company's liability relating to the VGM of any shipment exceed the fees paid to Company for communicating the VGM of that particular shipment to the relevant carrier.

### 21) Modification of Service Terms and Conditions

These Service Terms and Conditions may be modified by Company at any time, and from time to time. Company will notify you by posting notice at <http://www.heizwerthy.com/terms>. Subject to the foregoing, these service terms and conditions may only be modified, altered or amended in writing signed by both Customer and Company.

### 22) Compensation of Company

The compensation of the Company for its services may 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.

### 23) 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 sub-contractors, 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, (v) civil commotions or riots, (vi) defects, nature or inherent vice of the goods; (vii) acts, breaches of contract or omissions by 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.

### 24) 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 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.

### 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 Company:

- a) irrevocably consent to the jurisdiction of the United States District Court and the State of Georgia,
- 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 jurisdiction by said courts over it, and
- d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.