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## **TCS - Standard Terms and Conditions for Customers/Clients\***

1. **Application:** All business conducted by Total Customs Services Inc., TCS Total Customs Services Inc., TCS Customs and Logistics, and Total Customs & Logistics (referred to as "TCS") is accepted and handled subject to these Standard Terms and Conditions. In these conditions "Client" or "Customer" means the person at whose request or on whose behalf TCS undertakes any business or provides any service. These conditions shall be read subject to any compulsorily applicable legislation. These conditions shall not be deemed to be a surrender by TCS of any of its rights or immunities under such legislation. If any part of these conditions are repugnant to such legislation such part shall be severable.

2. **Quotations:** Quotations are given by TCS on the basis of immediate acceptance and are subject to withdrawal or revision. TCS may after acceptance revise quotations in the event of changes outside its control.

3. **TCS'S Responsibility and Undertaking:** Unless otherwise stated TCS is acting as agent on behalf of the Client. Where TCS is acting as a principle and issues a bill of lading or similar document of title these terms and conditions shall be paramount in governing the relationship between TCS and the Client.

TCS shall perform its duties with a reasonable degree of care, diligence, skill and judgment within a reasonable time. Except under special arrangements, which shall be in writing, TCS accepts no responsibility for delay or for departure or arrival dates.

TCS shall be permitted to depart from the Client's instructions where reasonably required. TCS shall be entitled to reroute goods where reasonably required.

### **4. Client's Responsibility and Undertaking**

a) The Client expressly authorizes TCS to enter into contracts with carriers and other transportation service providers on behalf of the Client for the carriage, storage, packing, handling or customs clearance of the goods by any person, or at any place, and for any length of time.

b) The Client warrants that the description and particulars of goods furnished to TCS are accurate and complete.

c) The Client undertakes to advise and warn TCS if the goods are liable to taint or affect other goods.

d) The Client warrants that the goods have been properly and sufficiently packed, labelled, prepared, and marked for the intended mode, method, route and time of transportation.

e) The Client warrants that the goods are not dangerous or hazardous as defined in any legislation. Client shall advise TCS in writing if the goods are dangerous or hazardous. Such goods shall only be offered to TCS for transportation under special written arrangement.

f) The Client warrants that where it supplies the vehicle or container for transportation of the goods such conveyance unit shall be transportation worthy, suitable for the carriage and has been properly and competently loaded.

g) The Client warrants that the goods are not bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, bank notes, bonds, negotiable instruments, securities or plants. Such goods shall only be offered to TCS for transportation under special written arrangement.

h) The Client warrants that the goods are able to withstand the normal rigours of the transportation mode employed.

i) The Client warrants that it has authority to bind the shipper(s) or consignee(s) as the case may to the terms of this agreement for the services requested.

5. Client Indemnification to TCS: The Client agrees to indemnify and hold harmless TCS for:

- a) All duties, taxes, payments, fines, expenses suffered or incurred by TCS in the performance of its obligations;
- b) All losses, damages (including physical damage) and liabilities in excess of the liability of TCS in accordance with these conditions suffered by TCS in the performance of its obligations or to which TCS is claimed against by third parties;
- c) All freight, duties, charges or other expenses whether payable by the shipper or consignee or other person;
- d) All claims of a general average nature and / or maritime salvage and security for same; and
- e) All loss, damage or delay caused by the failure to disclose that the goods are dangerous, hazardous or of a damaging nature. The goods may be warehoused at the client's risk and expense.

6. Notice: Any claim by the Client against TCS shall be made in writing as soon as events which may give rise to a claim are known to the Client and in any event the lesser of:

- a) no later than the applicable legislation to the mode of carriage involved;
- b) within 7 days of the loss and/or damage to the goods or the date when the goods should have been delivered or from the date when the event giving rise to a claim arose.

Such notice shall set out particulars of the origin, destination, date of shipment and nature of the goods and the estimated amount claimed. If such notice in writing is not given the claim shall be absolutely barred. All freight must be paid prior to any claim being made, otherwise the claim shall be absolutely barred.

7. Suit Time: TCS shall be absolutely discharged of all liability whatsoever howsoever arising in respect of any service provided or undertaken to be provided to the Client by TCS unless the notice provision of these conditions has been complied with and suit be brought against TCS within nine months from the date of any event or occurrence alleged to give rise to a cause of action against TCS.

8. Insurance: TCS is not an insurer of the goods or services. TCS shall not, except under special arrangement, effect insurance for the goods or services provided. Where the Client requests TCS to obtain insurance, TCS will do so as agent for the Client. Such a request for insurance must be in writing and must be confirmed in writing by TCS. Even where insurance is obtained these standard terms and conditions shall apply to the relationship between TCS and the Client.

9. **Liability of TCS:** TCS shall be liable for loss of or damage to the goods occurring between the time when and only if TCS physically takes the goods into its charge and the time TCS physically delivers the goods to the Client, or other party including actual carriers. TCS shall not be liable for loss of or damage to the goods occurring while the goods are in the care, custody or control of others, including sub-contractors or other transportation providers it engages for or on behalf of the Client. In no event shall TCS or the carrier be liable for any loss or damage if such loss or damage was caused by an act of God, the Queen's or public enemies, riots, strikes lockouts or restraint of labour, a defect in the goods, inherent vice of the goods, insufficient or defective or improper packaging or labelling or marking of the goods, an act or default of the consignor, owner or consignee, authority of law, or quarantine or difference in weights of grain, seed or other commodities caused by natural shrinkage. No claim shall be made on any grounds whatsoever against any employee, officer or director of TCS.

10. **Limitation of Liability:** The liability of TCS shall be the lesser of:

- (a) \$2 per pound multiplied by the number of pounds or fraction thereof, of the cargo which may have been lost, damaged or destroyed;
- (b) the actual value of such piece(s) at the place of origin including the freight and other charges if paid;
- (c) 2 SDR (SDR=Special Drawing Right) units per kilo of gross weight of the goods lost or damaged;
- (d) \$25,000.00 Canadian
- (e) the limitation of liability of the actual carrier in whose possession the goods were lost or damaged; and
- (f) the minimum liability as set out in the laws of the provinces of Canada or the laws of the United States of America that are found to be of compulsory application to the contract of carriage; unless the value is declared for carriage in writing to TCS, provided such declaration was made prior to the commencement of transit and is accepted by TCS in writing prior to the commencement of transit.

11. **Consequential Damages:** In no event (including but not limited to fundamental breach of contract, breach of fundamental term of a contract and the negligence or gross negligence of TCS whether arising from damage to the goods, mis-delivery, failure to deliver or delay in delivery) shall TCS be liable, whether at the suit of the party or parties contracting directly with TCS, or at the suit of any third party and whether in contract or in tort, for indirect or consequential damages or for damages for the loss of use or for the loss of earnings or profit or for punitive, exemplary or aggravated damages.

12. **Non-Receipt of Goods:** Where the Client, or the consignee does not take delivery of the goods at the time and place of delivery contracted for, TCS shall be entitled to store the goods in a public or licensed warehouse at the expense of the Client or consignee, without liability on the part of TCS and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage. On 21 days notice in writing to the Client or the consignee TCS shall be entitled to dispose of the goods (by sale or otherwise as may be reasonable).

13. **Moneys Due and Liens:** The Client, the consignor, and the consignee are jointly and severally liable for freight. The Client shall pay to TCS in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set off. Despite the acceptance by the carrier or TCS of instructions to collect freight, duties, charges or other expenses from the consignee or any other person the Client shall remain responsible for such freight, duties, charges or expenses on receipt of evidence of proper demand and in the absence of evidence of payment (for whatever reason) by such consignee or other person when due. All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies due either in respect of such goods or for any particular or general balance or other monies due from the Client or the sender, consignee or owner to the actual carrier or to TCS. If any monies due the carrier or TCS are not paid within one calendar month after notice has been given to the person from whom the monies are due and such goods are being detained, they may be sold by auction or otherwise at the sole discretion of the carrier or TCS and at the expense of such person, and the net proceeds applied in or towards satisfaction of such indebtedness and the carrier or TCS shall not be liable for any deficiencies or reduction in value received on the sale of the goods nor, will the Client, the consignor or the consignee of such be relieved from the liability for payment merely because the goods have been sold.

14. **Carrier Terms:** TCS is entitled to rely on the terms and conditions, including at law or by contract, imposed on or by any carrier which define and limit the obligations and liabilities of the carrier where such terms are more favourable to TCS than the terms and conditions specified herein and in so far as those terms are not inconsistent nor contravene any law of the Province of Canada or any law of the United States of America compulsorily applicable to the carriage of the goods. The carrier terms and conditions are available for inspection from TCS at its offices or upon written request and are deemed to be part of this contract.

15. **Applicable Law and Arbitration:** The parties hereto agree that all disputes, disagreements or differences between them relating to their business relationship with each other, including any dispute, disagreement or difference relating to the validity, enforceability or applicability of these terms and conditions to arbitrate, shall be submitted to final and binding arbitration. The arbitration shall be commenced by one (or more) party (or parties) delivering to the other party (or parties) a Notice to Arbitrate which shall set out a brief description of the dispute, disagreement or difference to be arbitrated and a summary of the relief claimed. The arbitration shall be conducted under the arbitration laws of Ontario, and specifically the Arbitration Act (Ontario) or the International Commercial Arbitration Act, 2017, SO 2017, c. 2, Sch. 5 (Ontario), whichever is applicable. The arbitration shall be conducted in Montreal Quebec Canada in the English language. This Standard Terms & Conditions shall be governed by the substantive law of Ontario. The arbitration shall be conducted by a single arbitrator who shall be agreed upon by all parties to the arbitration. In the event the parties cannot agree on an arbitrator, the arbitrator shall be appointed by an Appointing Authority.



The Appointing Authority shall be the ADR Institute of Canada. The arbitration rules and procedures shall be as agreed between the parties. In the event that the parties fail to reach agreement as to the rules and procedures to be followed in the arbitration within thirty days of the appointment of the arbitrator, any party may apply to the arbitrator for a determination of the rules and procedures to be applied in the arbitration. The parties shall be entitled pre-hearing disclosure. The parties shall be entitled to obtain relevant documentary evidence which will assist it in making out its own case and which may assist the arbitrator in determining the facts upon which the arbitrator should render its decision.

16. Language. The Parties have expressly required and mutually agree that this Agreement and all related documents, including notices and other communications, be written exclusively in English. Les parties ont expressément exigé et conviennent mutuellement que la présente convention ainsi que tous les documents qui s'y rattachent, incluant les avis et autres communications, soient rédigés exclusivement en anglais.

\*July 2024

Agreed to by: \_\_\_\_\_ [ Customer Name]

Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

TCS

\_\_\_\_\_ [Signature]                      Date: \_\_\_\_\_