



## **TERMS AND CONDITIONS OF SERVICE**

These terms and conditions of service constitute a legally binding contract between Kuehne + Nagel Inc. (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 to the extent they are inconsistent with these terms and conditions. When affiliates of the Company provide services to Customer, their standard trading terms and conditions will govern such services.

### **1. Definitions.**

- (a) "**Company**" shall mean *Kuehne + Nagel Inc.*, its subsidiaries, 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. **It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to its 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 to 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 documentation on behalf of the Customer and other dealings with Government Agencies: as to all other services, Company acts as an independent contractor.

### **3. Limitation of Actions.**

- (a) All claims against Company for a potential or actual loss must be made in writing and received by Company within ninety (90) days of the event giving rise to claim; the failure to give 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);
  - (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 used for the handling, transportation, clearance and delivery of the shipment. Unless the Company carries, stores or otherwise physically handles the shipment, and the loss, damage, expense or delay occurs during such activity, the Company assumes no liability as a carrier, and is not to be held responsible for any loss, damage, expense or delay to 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 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 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 Customers 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 Customer; Customer 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 Customer's failure to disclose information or any incorrect or false statement by the Customer 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.

**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 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.

**8. 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.

**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, 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, delay 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 (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 violation 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 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.

**11. Indemnification/Hold Harmless.** The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising from the importation or exportation of customers merchandise and/or any conduct of the Customer, 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.

**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, 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.

**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, unless a lower amount is agreed to by Company.

**14. General Lien and Right To Sell Customer's Property.**

(a) General Lien. Company shall have a general and continuing lien on any and all property (and documents relating thereto) of Customer in its possession, custody, control, or en route / in transit, or 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, including for all claims for charges, expenses, or advances incurred by the Company in connection with any shipments of the Customer.

(b) Notice. 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) Right to Sell. Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or 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), including goods, wares, or merchandise as may be necessary to satisfy such lien, at public auction or private sale and any net proceeds remaining thereafter, after payment of amounts due Company, shall be refunded to Customer, provided that Customer shall remain liable for any deficiency arising from the sale.

(d) Warehouseman's Lien. In connection with warehouse services provided by Company, Company shall have a general warehouse lien for all lawful charges for storage and preservation of goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing cooperating, and other charges and expenses in relation to such goods, and for the balance on any other accounts that may be due. Company further claims a general warehouse lien for all such charges, advances and expenses with respect to any other goods stored by Customer in any other facility owned or operated by Company. In order to protect its lien, Company reserves



the right to require advance payment of all charges prior to shipment of goods.

(e) Limitation of Damages for Goods Stored. Company shall not be liable for any loss or damage to goods tendered, stored or handled, however caused unless such loss or damage resulted from the failure by Company to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances and Company is not liable for damages which could not have been avoided by the exercise of such care. Customer declares that damages for loss, damage or delay are limited to \$.50 per pound provided, however, that such liability may be increased upon Customer requesting in writing such excess valuation coverage and agreeing to make payment therefor, which request must be confirmed in writing by the Company.

(f) Liability. Any liability of Company for whatever reason shall in any event be limited to a maximum of \$10,000 per event or series of events with one and the same cause of damage. In further consideration of the rates herein, and in keeping with the definitions of company's legal liability as a warehouseman contained herein and in Article 7-204 of the Uniform Commercial Code, Customer agrees to a shrinkage allowance of 0.5 % of the value of the goods stored for which, in the case of loss or damage to goods or mysterious disappearance, however caused, Company will not be liable.

**15. No 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 "**recordkeeper**" or "**recordkeeping agent**" for Customer.

**16. 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.

**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 Customer or its agent and Customer agrees to pay for same, Company shall rely upon and use the cargo weight supplied by Customer. Relative to the liability limits set forth elsewhere in this Agreement, Customer and Company hereby waive all rights and remedies under the Carmack Amendment and the ICC Termination Act of 1995 (the "Act"), pursuant to Section 14101(b) of the Act. As required by regulation, Customer and Company do not waive the provisions governing registration, insurance, or safety fitness. Unless Company physically handles and carries the shipment, and the loss, damage, expense or delay occurs during such carriage activity, the Company assumes no liability as a carrier.

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

**19. Compensation of Company.** The compensation of the Company for all its services shall be included with and is in addition to the rates and charges of all carriers and all 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.

**20. Severability.** In the event any Paragraph(s) and/or portions(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in full force and effect.

**21. 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 the principles 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 judgement may be instituted in any jurisdiction.