



TERMS AND CONDITIONS OF SERVICE

These Terms and Conditions of service constitute a legally binding contract between Foreign Trade Export Packing Co. ("FTEP") and the "Customer". These Terms and Conditions shall apply to the Services rendered by FTEP for Customer and shall supersede any and all conflicting terms and conditions contained in any Customer documents, letters, e-mails, purchase orders or any other such Customer documents, whether referenced or not.

1. Definitions.

(a) "Customer" shall mean the person or corporate entity for which the FTEP is rendering the Services, as well as its agents, 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. It is the responsibility of the Customer to provide notice and copy(s) of these Terms and Conditions to all such parties;

(b) "Customer Group" shall mean the Customer, its parent, subsidiaries and affiliated companies and all of their respective affiliated companies, and each of their officers, directors, agents, representatives, employees, contractors and subcontractors of all tiers and each of their respective employees and representatives, invitees and the subrogees of all such parties.

(c) "FTEP Group" shall mean FTEP, its parent, subsidiaries and affiliated companies and all of their respective affiliated companies, and each of their officers, directors, agents, representatives, employees, contractors and subcontractors of all tiers and each of their respective employees and representatives, invitees and the subrogees of all such parties.

(d) "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;

(e) "OTI" shall mean ocean transportation intermediaries and shall include, but not be limited to, an "ocean freight forwarder" and a "non-vessel operating carrier";

(f) "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 as well as all persons and entities who are neither a member of FTEP Group nor Customer Group;

(g) "Services" shall mean the services provided by FTEP to Customer pursuant to any agreement between the Parties, whether written or verbal.

2. FTEP Role.

FTEP acts as the limited agent of the Customer for the sole purpose of performing the Services in connection with the 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 Governmental Agencies. With respect to all other services, FTEP acts solely as an independent contractor.

3. Limitation of Actions.

(a) Unless subject to a specific statute or international convention, all claims against FTEP for a potential or actual loss, must be made in writing and received by FTEP, within thirty (30) calendar days of Customer's discovery of the event of loss. Failure to provide such notice shall result in a forfeiture of any right to assert any such claim against FTEP for any potential or actual loss.

4. No Liability For The Selection or Services of Third Party Firms/Persons/Routes.

(a) FTEP shall use reasonable care in its selection of third party firms or persons, or in the selection of the means, routes and/or procedures to be followed in the handling, transportation, clearance and delivery of the shipment; advice by FTEP that any third party person or firm has been selected to render services with respect to the goods, shall not be construed to mean that FTEP warrants or represents that such third party person or firm will render such services nor does FTEP assume responsibility or liability for any acts or omissions of such third party persons or firms, and Customer waives all claims against all members of the FTEP Group for any delays, damages, or losses of any kind, which occurs while a shipment is in the care, custody or control of any such third party person or firm or their agent or representative. Any claims in connection with the acts or omissions of any such third party persons or firms shall be brought solely by Customer against such third party persons or firms in connection with any such claim. FTEP shall reasonably cooperate with the Customer for which Customer shall reimburse FTEP for all charges or costs incurred by FTEP.

(b) Notwithstanding anything to the contrary contained elsewhere herein, Customer shall release, defend, protect, indemnify and hold harmless all members of FTEP Group from and against any loss, cost, claim, suit, judgment, award or damage (including reasonable attorney's fees) arising out of, relating to or in connection with the acts or omissions of any third party firm or person selected by FTEP to render services with respect to the goods **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF FTEP GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE) OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, THE UNSEAWORTHINESS OF ANY VESSEL OR THE UNAIRWORTHINESS OF ANY AIRCRAFT AND INCLUDING PRE-EXISTING CONDITIONS.**

5. Quotations Not Binding.

Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by FTEP to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon FTEP unless FTEP agrees in writing 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 FTEP and the Customer. All quotations are subject to these Terms and Conditions.

6. Reliance on Information Furnished.

(a) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with the U.S. Customs & Border Protection, other governmental agencies and/or third parties, and will immediately advise FTEP of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed by or on Customer's behalf regardless of whether filed by FTEP;

(b) In preparing and submitting customs entries, export declarations, applications, security filings, documentation and/or other required data, FTEP 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 protect, defend, indemnify and hold harmless all members of FTEP Group from and against any and all claims asserted and/or liability or losses suffered by reason of Customer's failure to disclose information or any incorrect, incomplete or false statement by Customer or its agents, representatives or contractors upon which FTEP has 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.

(c) Customer shall be responsible for determining all export licensing requirements and for obtaining all necessary export licenses and authorizations as required by the laws of the United States of America, including, but not limited to, all United States Export Administration Regulations (15 CFR §730-774), the International Traffic in Arms Regulations (22 CFR §120-130) and all other statutes and regulations in force and effect as controlled by the United States Commerce Department – Bureau of Industry and Security, the United States Defense Department – Directorate of Defense Trade Controls, the United States Census Bureau – Foreign Trade Division and the United States Treasury Department – Office of Foreign Assets Control, the United States Department of Defense, the United States Department of Commerce, the United States Department of the Treasury, and any other department or agency of the United States Government that imposes any obligations relating to the export of goods, materials and/or intellectual property, including those of any foreign governments (i.e. non-United States governments). Customer shall be solely and exclusively responsible for providing written authorization or power of attorney to its agent or freight forwarder so that Customer's agent or freight forwarder can act on Customer's behalf for the export of the goods, materials and/or intellectual property. Copies of the written authorization or power of attorney given by Customer to Customer's agent or freight forwarder must be delivered to FTEP as a condition to the transfer of any goods by FTEP. Customer shall be listed on all export documents as the Principal Party in Interest and/or Exporter of Record, and Customer shall assume full responsibility for the proper handling, classification, and exporting of goods. Customer shall assume responsibility for determining the export classification status of the goods, materials and/or intellectual property.

(d) Notwithstanding anything to the contrary contained elsewhere herein, Customer shall be responsible for filing for and obtaining all such export licenses and authorizations for all goods, materials and/or intellectual property relating to goods being shipped and Customer shall release, defend, protect, indemnify and hold harmless all members of the FTEP Group from and against any loss, cost, claim, liability, suit, judgment, award or damage (including reasonable attorney's fees) on account of failing to file for and properly obtain all such export licenses and authorizations for all goods, materials and/or intellectual property relating to the Services being provided by FTEP.

7. Declaring Higher Value To Third Parties.

Third parties to whom the goods are entrusted may limit their liability for loss or damage. FTEP will request excess valuation coverage only upon specific written instructions from the Customer, for which Customer must agree to pay all charges therefore. In the absence of Customer's written instructions or the refusal of the third party to agree to a higher declared value, at FTEP'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 their terms and conditions.

8. Insurance.

Unless requested to do so in writing and confirmed to Customer in writing, FTEP 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 all Customer requested insurances.

9. Disclaimers; Limitation of Liability.

(a) Except as specifically set forth herein, FTEP makes no warranties or guarantees to Customer with respect to the Services, either express or implied and the warranties provided in these Terms and Conditions shall be exclusive of any other warranties including **ANY IMPLIED OR STATUTORY WARRANTIES OF FITNESS FOR PURPOSE AND OTHER STATUTORY REMEDIES WHICH ARE INCONSISTENT WITH THIS CLAUSE ARE EXPRESSLY WAIVED.**

(b) In connection with the Services performed by FTEP, 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 of all premiums therefore. Any such request for additional coverage must be confirmed in writing by FTEP prior to rendering the Services.

(c) Subject to FTEP's indemnification obligations under Clause 11(c) below but notwithstanding anything else to the contrary herein and to the fullest extent permitted by applicable law, the Parties agree that FTEP's aggregate liability to Customer for any loss, damage, injury, claim or expense arising out of the performance of the Services from any cause or causes whatsoever shall not exceed ten percent (10%) of the total compensation payable to FTEP for the Services above which amount Customer shall protect, defend, indemnify and hold harmless all members of FTEP Group **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF FTEP GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE) OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, THE UNSEAWORTHINESS OF ANY VESSEL OR THE UNAIRWORTHINESS OF ANY AIRCRAFT AND INCLUDING PRE-EXISTING CONDITIONS.**

(d) Notwithstanding anything to the contrary contained elsewhere herein, each Party for and on behalf of itself and its parent, subsidiary and affiliated companies releases the other Party and their parent, subsidiary and affiliated companies from any claims for consequential, incidental, indirect or punitive damages of any kind or character, including, but not limited to, loss of use, loss of profit, loss of business opportunities, loss of contract (collectively "Consequential Damages") whenever arising out of, in connection with or related to the performance of the Services, and no claim shall be made by either Party, its parent, subsidiary and affiliated companies against the other Party, its parent, subsidiary and affiliated companies **REGARDLESS OF WHETHER SUCH CLAIM IS BASED OR CLAIMED TO BE BASED ON NEGLIGENCE (INCLUDING SOLE, JOINT, ACTIVE, PASSIVE, GROSS OR CONCURRENT NEGLIGENCE), UNSEAWORTHINESS, UNAIRWORTHINESS, FAULT, BREACH OF WARRANTY, BREACH OF CONTRACT, STATUTE, STRICT LIABILITY OR OTHERWISE AND INCLUDING PRE-EXISTING CONDITIONS.**



10. Advancing Money. All Third party charges must be paid by Customer in advance unless FTEP agrees in writing to extend credit to Customer. Any granting of credit to a Customer in connection with any particular Services shall not be considered a waiver of this provision by FTEP.

11. Indemnification/Hold Harmless.

(a) Customer agrees to protect, defend, indemnify and hold harmless all members of FTEP Group from and against any loss, cost, claim, suit, judgment, award or damage (including reasonable attorney's fees) arising from the importation or exportation of Customers goods or merchandise and/or any conduct of any member of Customer Group, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agents or representatives, which violates any Federal, State and/or other laws.

(b) Notwithstanding anything to the contrary contained elsewhere herein, Customer shall release, defend, protect, indemnify and hold harmless FTEP from and against any loss, cost, claim, suit, judgment, award or damage (including reasonable attorney's fees) in any case of illness, injury or death, suffered by any member of Customer Group's personnel and in any case of loss or damage to any member of Customer Group's property (including the goods and merchandise which are the subject of the Services) arising out of or relating to the performance of the Services and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF FTEP GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE) OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, THE UNSEAWORTHNESS OF ANY VESSEL OR THE UNAIRWORTHINESS OF ANY AIRCRAFT AND INCLUDING PRE-EXISTING CONDITIONS.**

(c) Notwithstanding anything to the contrary contained elsewhere herein, FTEP shall release, defend, protect, indemnify and hold harmless Customer from and against any loss, cost, claim, suit, judgment, award or damage (including reasonable attorney's fees) in any case of illness, injury or death, suffered by any member of FTEP Group's personnel and in any case of loss or damage to any member of FTEP Group's property (including the goods and merchandise which are the subject of the Services) arising out of or relating to the performance of the Services and **REGARDLESS OF WHETHER CAUSED OR BROUGHT ABOUT BY ANY MEMBER OF CUSTOMER GROUP'S NEGLIGENCE (INCLUDING ACTIVE, PASSIVE, SOLE, JOINT OR CONCURRENT NEGLIGENCE) OR ANY OTHER THEORY OF LEGAL LIABILITY, INCLUDING STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, THE UNSEAWORTHNESS OF ANY VESSEL OR THE UNAIRWORTHINESS OF ANY AIRCRAFT AND INCLUDING PRE-EXISTING CONDITIONS.**

(d) The indemnity obligations assumed by Customer under this Article 11 shall be supported by liability insurance and shall have coverage of no less than \$5,000,000 per occurrence and which shall be primary to any other insurances provided by FTEP. Customer agrees to have its underwriters name FTEP as additional assured and waive subrogation against all members of FTEP Group but only to the extent of the liabilities assumed by Customer. Likewise, FTEP agrees to have its underwriters name Customer as additional assured and waive subrogation against all members of Customer Group but only to the extent of the liabilities assumed by FTEP. Customer agrees to have the "watercraft Exclusion" deleted in all cases where vessels are utilized. The limits and coverages of the said insurances shall in no way limit the liabilities or obligations assumed by the parties under this Article. If it is judicially determined that the monetary limits of insurance required hereunder or the indemnities assumed under this Paragraph exceed the maximum monetary limits or scope permitted under applicable law, it is agreed that said insurance requirements or indemnities shall automatically be amended to conform to the maximum monetary limits or scope permitted under such law.

12. C.O.D. or Cash Collect Shipments. FTEP shall use reasonable care regarding written instructions relating to "Cash/Collect on Delivery (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; *provided, however*, that FTEP shall have no liability for and Customer waives all claims against FTEP if the bank or consignee refuses to pay for the shipment.

13. Costs of Collection. In any dispute involving monies owed to FTEP, FTEP shall be entitled to all costs of collection, including reasonable attorney's fees and interest at one percent (1%) per month until paid.

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

(a) FTEP shall have a general and continuing lien on any and all property of Customer coming into FTEP's actual or constructive possession or control for amounts owed to FTEP with regard to the shipment on which the lien is claimed as well as on any prior shipment(s);

(b) FTEP shall provide written notice to Customer of its intention to exercise such lien, the 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 FTEP's rights and/or the exercise of such lien.

(c) Unless, within thirty (30) calendar days of receiving notice of a lien, Customer posts cash or a letter of credit, or, if the amount due is in dispute, a bond acceptable to FTEP equal to 100% of the value of the total amounts due, in favor of FTEP, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, FTEP 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.

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, 1509) Customer 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, FTEP shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but FTEP shall not act as a "record keeper" or "record keeping agent" for Customer.

16. Obtaining Binding Rulings, Filing Protests, etc. Unless requested by Customer in writing and agreed to by FTEP in writing, FTEP 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. NOT USED

18. No Modification or Amendment Unless Written. These Terms and Conditions are the entire terms between the Parties and supersede all prior terms and conditions, agreements, promises, correspondence, discussions, representations and understandings, except those expressly set forth herein. No other agreements, promises, correspondence, discussions, representations or understandings, either express or implied, unless expressly set forth herein, are binding between the Parties. No benefit or right

accruing to either Party under these Terms and Conditions shall be waived unless the waiver is reduced to writing and signed by both Parties. The failure of either Party to exercise any of its rights shall in no way constitute a waiver of those rights, nor shall such failure excuse the other Party from any of its obligations.

19. Compensation of FTEP. The compensation to FTEP for the Services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by FTEP to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by FTEP from carriers, insurers and others in connection with the shipment. On ocean exports, FTEP 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 FTEP, upon recovery by FTEP, the Customer shall pay the expenses of collection and/or litigation, including reasonable attorney fees.

20. Severability. If, in any legal proceeding, it is determined that any provision of these Terms and Conditions is unenforceable under applicable law, the unenforceable provision shall automatically be amended to conform to that which is enforceable under the law. In any event, the validity or enforceability of any provision shall not affect any other provision of these Terms and Conditions, and these Terms and Conditions shall be construed and enforced as if such provision had not been included.

21. Governing Law. To the extent that maritime activities are involved in the performance of the Services, then these Terms and Conditions shall be interpreted and construed in accordance with United States General Maritime law excluding any conflicts of laws principles which would direct the substantive law of another jurisdiction to apply. To the extent that maritime law is inapplicable, the laws of the State of Texas, exclusive of its principles of conflicts of laws, shall control the validity, construction and interpretation of these Terms and Conditions.

22. Arbitration. All claims, disputes or controversies arising out of, in connection with or in relation to the Services or these Terms and Conditions, including any and all issues of arbitrability of any such claim, dispute or controversy, and regardless of whether any such claim, dispute or controversy is based or claimed to be based in whole or in part on a claim by either Party of breach of these Terms and Conditions by the other Party shall be decided by resort to arbitration utilizing a single arbitrator in accordance with the Houston Maritime Arbitrators Association. The arbitration shall be held in Houston, Texas. The decision of the arbitrator shall be final, binding and enforceable in any court of competent jurisdiction and the Parties agree that there shall be no appeal from the arbitrator's decision. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding. The right to arbitrate shall survive the termination of the Services and these Terms and Conditions. Except for the exchange of documents that the Parties intend to use to support their claims and defend against the other Parties' claims, there shall be no interrogatories, depositions or other discovery in any arbitration hereunder. The arbitrator shall apply the choice of law as set forth in Article 21 exclusive of its principles of conflicts of laws for determination of the rights and remedies under these Terms and Conditions and for all aspects of the award hereunder. The Arbitrator shall have the power to award attorneys fees, costs and expenses to the prevailing Party in any such arbitration proceeding. The Parties acknowledge and agree that this Agreement includes activities in Interstate Commerce and that the Federal Arbitration Act, 9 U.S.C. § 1 *et seq* shall control and apply to all arbitrations conducted hereunder, notwithstanding any state law provisions to the contrary.

23. Force Majeure. Any delays in or failures of performance by FTEP shall not constitute default hereunder or give rise to any claims for damages, if and to the extent such delays or failures of performance are caused by occurrences of *Force Majeure*. For purposes of these Terms and Conditions, *Force Majeure* includes, but is not limited to, Acts of God, acts of the public enemy, Laws and Regulations, wars or warlike action (whether actual or impending) arrests and other restraints of government (civil or military), blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, sabotage, tropical storms and hurricanes, civil disturbances, tidal waves, explosions, confiscation or seizure by any government or other public authority, and any other causes, whether of the kind herein enumerated or otherwise, that are not reasonably within the control of FTEP and that could not have been overcome by the exercise of ordinary diligence but shall not include Customer's obligations to make payments to FTEP. FTEP shall notify Customer with reasonable promptness of the existence of any such *Force Majeure* and the probable duration thereof, and shall provide Customer from time to time with correct information concerning same.

24. Assignment. Neither Party to this Agreement shall assign, transfer or sublet the Agreement, any portion thereof or any of the obligations, benefits or interests contained therein or created thereby in any manner whatsoever without the prior written consent of the other Party.

25. Anti-Corruption Provisions. Notwithstanding anything herein, no provision shall be interpreted or applied so as to require FTEP or Customer to do, or refrain from doing, anything which would constitute a violation of, or result in a loss of economic benefit under, United States anti-boycott and other export laws and regulations. Customer and FTEP represent and agree that they will not, directly or indirectly, in connection with the Services, and the business resulting therefrom, offer, pay, promise to pay, or authorize the giving of money or anything of value to a government official (including but not limited to employees of government owned instrumentalities), to any officer or employee of a public international organization, to any political party or official thereof or to any candidate for political office, or to any persons, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any government official, to any officer or employee of a public international organization, to any political party or official thereof, or to any candidate for political office, for the purpose of:

(a) influencing any act or decision of such official, officer, employee, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or

(b) inducing such official, officer, employee, political party, or candidate to use his or its influence with the government or instrumentality thereof or organization to affect or influence any act or decision of such government or instrumentality or organization, or to obtain an improper advantage in order to assist FTEP or Customer in obtaining or retaining business for or with, or directing business to FTEP or Customer, or any other person in relation to the Services.