

TERMS AND CONDITIONS OF SERVICE

These EMO Trans, Inc. Terms & Conditions (T&Cs) of Service constitute a legally binding contract between the “Company” and the “Customer” (together, the Primary Parties) In the event the Company renders services and issues a document containing Terms & Conditions governing such services, the Terms & Conditions of Service set forth in such document (for example, including – but not limited to – the T&Cs of an Air Waybill, or Ocean Bill of Lading, etc.) shall govern those services.

- 1. Definitions.**
 - a. Company:** shall mean EMO Trans, Inc., its subsidiaries, related companies, agents and/or representatives;
 - b. Customer:** shall mean the Person for which the Company is directly or indirectly rendering service, as well as its principals, 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 Terms & Conditions of Service to all such Persons;
 - c. Government and/or Governmental Authority and/or Governmental Agency(ies):** means any national, regional, or local government or any agency, ministry, department, board, commission, court, or other public authority that is established by law and authorized to exercise governmental or regulatory powers, including the enforcement of laws, regulations, and permits, including – but not limited to – having the authority to issue Official Rulings (e.g., Customs Authorities);
 - d. Documentation:** shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;
 - e. Ocean Transportation Intermediaries (OTI):** shall include an "ocean freight forwarder" and a "non-vessel operating carrier";
 - f. Official Ruling (Binding Ruling / Advance Ruling):** means any official classification ruling, licensing determination, or other regulatory decision issued by a Regulatory Authority.
 - g. Person:** shall include an individual, trust, estate, partnership, association, business or nonprofit organization, Governmental Unit, or other legal entity.
 - h. Third Party(ies):** 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 and security documentation on behalf of the Customer and other dealings with Government Agencies, or for arranging for transportation services, both domestically and internationally, 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 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:
 1. For claims arising out of ocean transportation, within one (1) year from the date of the loss;
 2. For claims arising out of brokering domestic motor carrier transportation, within one (1) year from the date of loss;
 3. For claims arising out of air transportation, within two (2) years from the date of the loss;
 4. For claims arising out of the preparation and/or submission of an import entry(s), within 75 days from the date of liquidation of the entry(s);
 5. 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 & Rate Validity.**
 - a.** 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. Fuel, Currency, Security/War Risk, Equipment, and other surcharges imposed by land, sea, and/or air carriers are rated at current levels and subject to change at carrier's discretion. Current levels at the time of the actual shipment will apply.
 - b.** All rates are valid for thirty (30) days, unless otherwise specified.
- 6. Negotiated Rate Arrangement (NRA) Acceptance.** If the services provided are within the jurisdiction of the United States Federal Maritime Commission (FMC), the Shipper's booking of cargo after receiving the terms of an NRA and/or any NRA Amendment shall constitute the Shipper's acceptance of:
 - a.** the rates set forth in such NRA and/or NRA Amendment; and
 - b.** all terms and conditions applicable to such NRA and/or NRA Amendment.
- 7. Classification Rulings and Licensing Decisions.** The Company cannot issue Official Rulings regarding classification, licensing determinations, or any other regulatory decisions of any kind. Any information provided by the Company is for informational purposes only and is not binding on any Government Agency or licensing authority. Official Rulings and License Authority determinations can only be made and/or granted by the relevant Government Agencies having regulatory control or jurisdiction specific to the transaction. The Customer must apply directly to the relevant Governmental Authority for any such Official Rulings and/or classification and license determinations. Examples of such classifications and determinations include, but not limited to, Harmonized Tariff Codes, Export Control Classification Numbers, relevant Governmental Authority Import/Export Licenses, Authorizations, or Permits. The Company is not responsible for any decisions made by Authorities or for any consequences resulting from use of the information provided.
- 8. Reliance on Information Furnished.**
 - a.** Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with customs authorities, including national, regional, and local government agencies, as well as foreign regulatory authorities and/or Third Parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, 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, delivery orders and/or other required data, 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, 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 information required to import, export or enter the goods.
 - c.** Customer acknowledges that it is required to provide verified weights obtained on calibrated, certified equipment of all cargo that is to be tendered to carriers and authorities and represents that the Company is entitled to rely on the accuracy of such weights and to countersign or endorse it as agent of Customer in order to provide the certified weight to the carriers. The Customer agrees that it shall indemnify and hold the Company harmless from any and all claims, losses, penalties or other costs resulting from any incorrect or questionable statements of the weight provided by the Customer or its agent or contractor on which the Company relies.
 - d.** Customer acknowledges that it is required to advise Company in advance of its intention to tender hazardous material goods and that it will otherwise comply with all national and international hazardous material regulations.
- 9. 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 & Conditions of Service.
- 10. 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.
- 11. Disclaimers; Limitation of Liability.**
 - a.** Except as specifically set forth in these Terms & Conditions of Service, Company makes no express or implied warranties in connection with its services;
 - b.** Customer may obtain insurance coverage for cargo loss or damage, 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 all events, the Company's liability shall be limited to the following:
 1. where the claim arises from activities other than those relating to customs business, \$50.00 per shipment or transaction, or
 2. 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;
 - 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, or for the acts of Third Parties.
 - e.** With respect to domestic transportation, Customer shall not be liable for a motor carrier's failure to maintain insurance or for the accuracy of any documentation furnished by a motor carrier to Company or Customer evidencing said coverage.
- 12. 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.
- 13. Indemnification/Hold Harmless.** The Customer shall indemnify, defend, and hold harmless the Company and its officers, directors, employees, agents, affiliates, successors and assigns, and contractors (the "Indemnified Parties") from and against any and all claims, liabilities, fines, penalties, losses, damages, costs, and expenses (including reasonable attorneys' fees) arising from or in connection with:
 - a.** the importation, exportation, or any other handling of Customer's goods;
 - b.** any inaccuracy, error, misstatement, or omission in any data or documentation provided by Customer or its agents or representatives;
 - c.** any violation of any applicable law, regulation, sanction, license, or government requirement by Customer or its agents;
 - d.** any acts or omissions of Customer or its agents that give rise to liability to any Third Party;
 - e.** any conduct by Customer that causes the Company to incur liability or regulatory or enforcement action.The Company shall have the right to participate in the defense of any such claim with its own counsel, at the expense of the Customer. The Customer shall not settle any such claim without the Company's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. The Company shall provide written notice of any claim to the Customer at the address on file. Notwithstanding the foregoing, indemnification shall extend to claims and costs arising directly or indirectly from actions the Company is required to take under applicable regulatory or customs laws in connection with the representation or withdrawal of representation of Customer, including but not limited to actions taken in response to suspected fraud or other illegal activity by Customer, provided such actions are taken in accordance with applicable law. The Customer's obligations under this section are subject to any limitations of liability or indemnity that may be imposed by applicable law.
- 14. 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 not have liability if the bank or consignee refuses to pay for the shipment.
- 15. 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.
- 16. General Lien and Right to Sell Customer's Property.**
 - a.** Company shall have a continuing lien on any and all property and documents relating thereto of Customer coming into Company's actual or constructive possession, custody or control or enroute, which lien shall survive delivery, for all charges, expenses or advances owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both. Customs duties, transportation charges, and related payments advanced by the Company shall be deemed paid in trust on behalf of the Customer and treated as pass through payments made on behalf of the Customer for which the Company is acting as a mere conduit.
 - 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 sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.
- 17. 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 a "recordkeeper" or "recordkeeping 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 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.
- 19. No Duty to Provide Licensing Authority.** Unless requested by Customer in writing and agreed to by the Company in writing, Company shall not be responsible for determining licensing authority or obtaining any license or other authority pertaining to the export from or import into the United States.
- 20. No Duty to Serve as a Party to the Transaction.** Unless requested by Customer in writing and agreed to by an officer of the Company in writing, Company shall not be construed as a party to the Transaction including but not limited to manufacturer, seller, buyer, importer, importer of record, exporter, with any attendant obligations or responsibilities pertaining to the export from or import of merchandise into the United States or transactions in connection therewith.
- 21. Preparation and Issuance of Bills of Lading.** Where Company prepares and/or issues a bill of lading, Customer or its agent shall supply to Company the marks necessary to identify the goods, the number of packages, the quantity, weight, and apparent condition of the goods. 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 on any bill of lading or shipping document the information supplied by Customer.
- 22. No Modification or Amendment Unless Written.** These T&Cs 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.
- 23. 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.
- 24. Importer of Record - IOR.** If the Customer is the IOR, payment to the Broker does not relieve the Customer of liability for any charges, duties, taxes, fees, penalties, or other amounts owed to any Governmental Authority or Customs Authority in any jurisdiction, in the event such amounts are not remitted by the Broker. If the Customer pays by check or other negotiable instrument, any government-assessed charges may be required to be paid with a separate instrument made payable directly to the applicable Governmental Authority, to be submitted by the Broker on the Customer's behalf. Importers wishing to utilize this procedure must contact the Company in advance to ensure timely processing and delivery of such payments.
- 25. 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, tornado, storm, hurricane, power failure, epidemic or other severe health crisis, or other natural disaster; (ii) breaches of cyber security including but not limited to cyber outages or attacks; (iii) war, hijacking, robbery, theft or terrorist activities; (iv) incidents or deteriorations to means of transportation, (v) embargoes, (vi) civil commotions or riots, (vii) defects, nature or inherent vice of the goods; (viii) acts, breaches of contract or omissions by Customer, Shipper, Consignee or anyone else who may have an interest in the shipment, (ix) acts by any government or any agency or subdivision thereof, including denial or cancellation of any import/export or other necessary license; or (x) strikes, lockouts or other labor conflicts. In such event, Company reserves the right to amend any tariff or negotiated freight or logistics rates, on one day's notice, as necessary to provide the required service.
- 26. 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.
- 27. Governing Law.** These T&Cs of Service, and the relationship between the parties, shall be governed by and construed in accordance with the laws of the State of New York (NY), USA, without regard to its principles of conflict of laws. The parties (a) irrevocably consent to the exclusive jurisdiction and venue of the state courts of NY located in Nassau County and the federal courts of the USA sitting in the Eastern District of NY; (b) agree that any action or proceeding arising out of or relating to the services provided by the Company shall be brought solely in such courts; (c) consent to the exercise of personal jurisdiction by such courts; and (d) agree that any action to enforce a judgment rendered by such courts may be brought in any jurisdiction where enforcement is sought.