

Form Version January 2021

U.S. Customs Brokerage and Freight Forwarding Terms & Conditions

In accordance with the National Customs Brokers and Freight Forwarders Association of America, Inc. both the Customer and the Company 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 Service Terms and Conditions 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 Capin-Vyborny, LLC., 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
- c. limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and
- d. underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these Service Terms
- e. and Conditions to all such agents or representatives;
- f. **"Documentation"** shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;
- g. **"Ocean Transportation Intermediaries"** ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier";
- h. **"Third parties"** shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers,
- i. agents, warehousemen and others which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or
- j. otherwise".

2. Company as Agent

The Company acts as the "agent" of the Customer for the purposes of performing the duly authorized duties in connection with the entry and release of goods, post entry services, assist in the application for 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. Third-party freight

quotes are not subject to the written requirement, but Company will utilize reasonable care and judgment to ensure quotes are in-line with actual rates.

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.
- c) On an import at a reasonable time prior to entering of the goods for U.S. Customs, the Customer shall furnish to the Company invoices in proper form and other documents necessary or useful in the preparation in the U.S. Customs entry and, also, such further information as may be sufficient to establish, inter alia, the dutiable value, the HTSUS classification, the country of origin, the genuineness of the merchandise and any mark or symbol associated with it, the Customer's right to import and/or distribute the merchandise, and the merchandise's admissibility, pursuant to U.S. law or regulation. If the Customer fails in a timely manner to furnish such information or documents, in whole or in part, as may be required to complete U.S. Customs entry or comply with U.S. laws or regulations, or if the information or documents furnished are inaccurate or incomplete, the Company shall be obligated only to use its best judgment in connection with the shipment and in no instance shall be charged with knowledge by the Customer of the true circumstances to which such inaccurate, incomplete, or omitted information or document pertains.
- d) Where a bond is required by U.S. Customs to be given for the production of any document or the performance of any act, the Customer shall be deemed bound by the terms of the bond notwithstanding the fact that the bond has been executed

by the Company as principal, it being understood that the Company entered into such undertaking at the instance and on behalf of the Customer, and the Customer shall indemnify and hold the Company harmless for the consequences of any breach of the terms of the bond.

- e) On an export at a reasonable time prior to the exportation of the shipment the Customer shall furnish to the Company the commercial invoice in proper form and number, a proper consular declaration, the Schedule B number or HTSUS classification, weights, measures, values, Export Control Classification Number (ECCN), and other information in the language of and as may be required by the laws and regulations of the U.S. and the country of destination of the goods.
- f) On an export or import the Company shall not in any way be responsible or liable for increased duty, penalty, fine or expense unless caused by the negligence or other fault of the Company, in which event its liability to the Customer shall be governed by the provisions of these Terms & Conditions .
- g) The Customer shall be bound by and warrant the accuracy of all invoices, documents and information furnished to the Company by the Customer or its agent for export, entry or other purposes and the Customer agrees to indemnify and hold harmless the Company against any increased duty, penalty, fine or expense including attorneys' fees, resulting from any inaccuracy, incomplete statement, omission or any failure to make timely presentation, even if not due to any negligence of the Customer.

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. 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,
 - iii. if no other terms and conditions apply for freight carried on Company trucks or stored in Company's warehouses, the maximum liability for loss or damage to cargo is \$15.00 per pound per piece, subject to a maximum liability of \$100,000 per shipment unless the shipper/consignor requests Excess Declared Value Coverage, which

has been arranged through and with the consent of Company. The agreed value on household goods, used machinery, or personal effects will not exceed \$.10 per lb. per article where the claim arises from activities other than those in (i) or (ii) above, \$50.00 per shipment or transaction;

- 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 Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company. If Customer fails to advance funds to the Company or comply with the terms of any 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. No Responsibility for Government Requirements

It is the responsibility of the Customer to know and comply with all regulations of Federal, state and/or local agencies pertaining to the merchandise. The Company shall not be responsible for action taken or fines or penalty assessed by any governmental agency against the shipment because of the failure of the Customer to comply with the law or the requirements or regulations of any governmental agency or with a notification issued to the Customer by any such agency.

14. Indemnity Against Liability Arising from the Importation or Exportation of Merchandise

The Customer agrees to identify and hold the Company harmless from any claims and/or liability arising from the importation or exportation of merchandise which violates any Federal, state and/or other laws or regulations and further claims and/or expenses, including but not limited to attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of claims by any government agency or private party. In the event that any action, suit or proceeding is brought against the Company by any government agency or any private party, the Company shall give notice in writing to the Customer by mail at its address on file with the Company. Upon receipt of such notice, the Customer at its own expenses shall defend against such action and take all steps as may be necessary or proper to prevent the obtaining of a judgment and/or order against the Company.

15. Loss, Damage or Expense Due to Delay

Unless the services to be performed by the Company on behalf of the Customer are delayed by reason of gross negligence of the Company, the Company shall not be responsible for any loss, damage or expense incurred by the Customer because of such delay. In the event the Company is at fault, as aforesaid, its liability is limited in accordance with the provisions of the Terms & Conditions.

16. 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.

17. 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 upon receipt of invoice or as otherwise agreed;
 - a. 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.

- d) If Customer is the importer of record, payment to the Company will not relieve Customer of liability for customs charges (duties, taxes, or other debts owed CBP) in the event the charges are not paid by the Company. Therefore, if Customer pays by check, customs charges may be paid with a separate check payable to the "U.S. Customs and Border Protection" which will be delivered to CBP by the Company.

18. 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. 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.

19. Limited Waiver of Record Confidentiality

Pursuant to section 111.24 of the Customs Regulations, information relating to the business of the Customer is to be considered "confidential". Customer hereby grants authorization for Company, its subsidiaries and affiliates, to share the confidential information and records in their possession with their affiliates not otherwise empowered under the Power of Attorney, their agents or their representatives, as is necessary to fully perform all the services, all of them being bound by the confidentiality obligations to Customer by which Company is bound.

20. 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 of America. 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.

21. 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.

22. Preparation and Issuance of Bills of Lading and Security Filings

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. If, and to the extent Company is preparing or is otherwise required to prepare, make, endorse, sign, declare or swear to any security filing or other document required for compliance with any law, Customer hereby consents, agrees and authorizes Company to take all such actions to effect the making, endorsement, declaration or swearing to such document.

23. 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.

24. 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 in a Customs Bulletin by email.

25. 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. 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.

26. 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, viruses, 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.

27. 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.

28. 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 Arizona 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 Arizona;
- 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 judgment may be instituted in any jurisdiction.

Reasonable Care Notice: U.S. Customs Brokerage

Under statute, the legal responsibility for assuring that the conduct of U.S. Customs business is fully correct and compliant lays with the Customer. The Customer is required to exercise “reasonable care” in the conduct of Customs business. Reasonable care means taking the necessary steps to ensure that U.S. Customs related business is conducted accurately and correctly, to include but not be limited to, entry, classification, and valuation of imported merchandise. Inadvertence, good-faith belief and ignorance are not defensible positions. Failure to meet the standard of “reasonable care” may result in severe penalties.

The Customer may satisfy the “reasonable care” standard in a variety of ways including, but not limited to:

- having knowledge of suppliers, products, values, and country(ies) of origin
- maintaining a full and complete record keeping system where information is easily verifiable
- identifying U.S. Customs tariff classifications, duty rates and value(s) for duty
- accounting of any anti-dumping or countervailing duties
- assuring proper country of origin marking
- assuring proper use of NAFTA or other special programs
- seeking U.S. Customs Rulings
- accurate use of statistical codes
- consulting with “experts” such as Customs brokers, Customs consultants, or Customs Attorneys, etc.

The Customer’s ability to demonstrate having taken “reasonable care” can help to limit both corporate and individual liabilities. To assist in this effort, the Company offers a full array of consulting services to help satisfy the “reasonable care” criteria.

The Customer can contact the Company if the Customer would like assistance in helping to assure it is meeting the “reasonable care” standards.