



GENERAL TERMS AND CONDITIONS OF SERVICE OF KINTETSU WORLD EXPRESS (CANADA) INC.

These terms and conditions of service constitute a legally binding contract between the “Company” and the “Customer”. In the event the Company renders services and issues a document, including a bill of lading, air waybill or sea waybill, containing terms and conditions governing such services, the terms and conditions set forth in such other document shall prevail if there is any conflict with the present General Terms and Conditions of Service.

1. Definitions:

- (a) “Attorney's Fees” shall include the reasonable fees charged by the Company’s attorney(s) along with the court costs, disbursements, expert fees, investigation costs and other costs incurred by the Company;
- (b) “Company” shall mean KINTETSU WORLD EXPRESS (CANADA) INC. its subsidiaries, related companies, agents and/or representatives;
- (c) “Customer” shall mean the person for which the Company is rendering service, as well as its 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 and consignees. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives;
- (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 / co-loaders;
- (f) “Third parties” shall include, but not be limited to the following: carriers, trucking companies, freight 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;
- (g) “Cargo Transport Unit” shall mean an intermodal container, crate, portable tank or other means of containment in which goods are stowed for carriage and includes closed or open units.

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, customs brokerage services, and other dealings with government agencies: as to all other services, Company acts as an independent contractor.

3. **Limitation of Actions.** Unless subject to a specific statute or enforceable international convention, all claims against the Company for a potential or actual loss must be made in writing and received by the Company within (45) days of the event giving rise to claim. If a claim was not discoverable by the exercise of reasonable care within the applicable time period, the Customer must give notice forthwith after receiving information as to events that may give rise to a claim. If written notice is not given in accordance with this clause, and without prejudice to the provisions of Section 18, the claim is absolutely time barred and no action can be brought against the Company for any claim.

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 actions 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 Third 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. **Customer’s Responsibility for Packaging and Containerized Goods** (A) Except where the Company has accepted instructions in respect of the preparation, packing, stowage, labeling or marking of the goods the Customer warrants that all goods have been properly and sufficiently prepared, packed, stowed, labeled and/or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the goods and the characteristics of the goods. (B) Unless the Company has accepted instructions to arrange for or to perform the loading of a Cargo Transport Unit by its employees, the Customer warrants that: (a) the Cargo Transport Unit has been properly and competently loaded; (b) the goods are suitable for carriage in or on the Cargo Transport Unit; and (c) the Cargo Transport Unit is in a suitable condition to carry the goods loaded therein (save to such extent as the Company has approved the suitability of the Cargo Transport Unit).

6. **Quotation and Invoicing** A) The Company does not assume a role as principal by providing a fixed price quotation, or by rendering an invoice where the difference between the amounts payable to Third parties retained to carry out the Customer’s instructions and the fixed price represents the Company’s gross profit for its services. A Customer agrees that the Company is an agent as provided in Section 2 where the Customer (a) accepts a fixed price quotation, or (b) does not within thirty days after receipt of the invoice object to the Company charging a fixed price for its services. (B) Quotations are given on the basis of immediate acceptance and are subject to withdrawal or revision. Unless otherwise



provided in the quotation the Company may, after acceptance, revise quotations or charges upon notice in the event of changes beyond the Company's control, including changes in exchange rates, rates of freight, carrier surcharges, or any charges applicable to the goods

7. 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 customs and/or 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 they have an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.

8. Insurance. (A) The Customer must give the Company instructions in writing to arrange insurance on its goods a reasonable time before the tender of goods for storage or transport. The Company may carry out these instructions by declaring the value of the goods under an open marine cargo policy taken out by the Company, and, upon request, provide a certificate or declaration of insurance or other evidence of insurance. The coverage on goods so declared is subject to the terms and conditions of the policy. The Company is not liable if the Customer for any reason whatsoever fails to recover a loss in whole or in part from the insurer under the policy, even though the premium charged by the insurer is different from the Company's charges to the Customer. (B) If coverage under its open marine cargo policy is not satisfactory, the Company will recommend an insurance broker to arrange insurance appropriate to the Customer's needs. After making this recommendation, the Company has no further duty regarding insurance, and no liability for loss of or damage to the goods during transport or storage that could have been covered by insurance on the goods, whether such loss or damage has been caused or contributed to by its negligence or breach of these conditions, or otherwise.

9. Limitation of Liability. Unless specified under the terms and conditions one of one of KWE's bill of lading, sea or air waybills, or Standard Trading Conditions relating to customs brokerage, compensation for any claim for which the Company is liable shall not in any event exceed 2 Special Drawing Rights ("SDR") per kilo of the gross weight of the goods lost or damaged that are the subject of the claim. Without prejudice to any other conditions herein or other defenses available to the Company, in no circumstances whatsoever shall the Company be liable to the Customer or owner for:

- (a) consequential or indirect loss, including loss of market, except as provided for in paragraph (b);
- (b) loss of, damage to or consequential or indirect loss caused by delay or deviation in connection with the transport of goods in a sum in excess of twice the difference between the charges invoiced by the Company and amounts paid by the Company to Third parties for transport or other service related to those goods;
- (c) amounts in excess of a maximum recoverable of 75,000 SDR's per transaction.

These limitations, defences and exclusions of liability shall apply in all circumstances whatsoever, including where the loss of damage was caused or contributed to by the negligence, gross negligence or willful of the Company, its agents, servants or sub-contractors.

10. C.O.D. or Cash Collect Shipments. Company shall use reasonable care regarding written instructions relation to "Cash/Collect" on "delivery (C.O.D.)" shipments, bank drafts, and cashier's and /or certified cheques, 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. All charges must be paid by Customer in advance unless the Company agrees in writing to authorize and 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 and is subject to terms and conditions of the approved credit application. When goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for the same if they are not paid by such consignee or other person immediately when due.

11. 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 Third parties 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 Third parties, insurers and others in connection with the shipment. The Company shall be entitled to be paid and retain all brokerages paid by Third parties, commissions, documentation allowances, profits on foreign exchange and other remunerations paid by Third parties as is customary in the trade.

12. Charges and Invoicing.

- (a) All overdue amounts shall bear interest, compounded monthly, at the rate of 2% per month (26.84% per annum) from the date each amount became due. Any waiver by the Company of accrued interest on a particular invoice shall not be construed as a waiver of its right to impose such interest on other invoices.
- (b) The Customer agrees to pay the Attorney's Fees incurred by Company in collecting any overdue amount, including the costs associated with the enforcement of the Company' lien.



(c) All sums remitted by the Customer or recovered by the Company, shall be applied to the expenses of collection and/or litigation, including a Attorney's Fees first, followed by interest accrued on overdue amounts and then to the oldest invoices.

13. **Right of Detention and Lien.** All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies owing either in respect of such goods, or for any particular or general balance or other monies owed, whether then due or not, by the Customer, sender or owner of the goods to the Company. If these monies remain unpaid for 10 days after the Company sends notice of the exercise of its rights to these persons by any means of communication reasonable in the circumstances, the goods may be sold or disposed of by private contract or otherwise at the sole discretion of the Company without further notice, and the net proceeds applied on account of the monies owing. The Company will not be liable for any deficiencies or reduction in value received on the sale of the goods nor, will the Customer be relieved from the liability merely because the goods have been sold.

14. **Indemnity.**

(a) The Customer shall defend, indemnify and hold the Company harmless against all duties, taxes, payments, fines, expenses, losses, damages, claims and liabilities, including without limitation any storage, demurrage, port, or terminal charges and any liability to indemnify any other person against claims made against such other person by the Customer or by the owner of the goods:

- (i) for which the Company may be held responsible unless caused or contributed to by any negligence or breach of duty of the Company; or
- (ii) in excess of the liability of the Company in accordance with these Conditions, resulting from or connected with the actions of the Company related to any service to which these terms and conditions apply.

(b) The Customer shall be solely liable for any loss, damage, cost, claim and/or expense arising from the importation or exportation of Customer's goods and/or a violation by the Customer of any federal, state, provincial and/or other applicable laws, and the Customer further agrees to defend, indemnify and hold the Company harmless against any and all liability, loss, damages, costs, 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 such claims.

The obligation to indemnify and hold the Company harmless shall include but not be limited to the obligation to reimburse reasonable Attorney's Fees. 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.

15. **No Modification or Amendment Unless Written.** The Customer must give instructions in writing to the Company within reasonable time before the tender of goods for storage or transport. These terms and conditions of service may only be modified, altered or amended in a written document signed by both Customer and Company. Any attempt to unilaterally modify, alter or amend same shall be null and void.

16. **Severability.** If any provision of these Terms and Conditions of Service shall at any time, for any reason, be declared invalid, void or otherwise inoperative by a court of competent jurisdiction, such declaration or decision shall not affect the validity of any other provision or provisions of these Terms and Conditions of Service, or the validity of these Terms and Conditions of Service as a whole and, to the fullest extent permitted by law, the other provisions hereof shall remain in full force and effect. The invalidity and unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

17. **Waiver.** No delay or failure to exercise any right or remedy under this these Terms and Conditions of Service will operate as an amendment to or waiver of any term of these Terms and Conditions of Service, except where specifically provided to the contrary.

18. **Time Bar: The Company shall, unless otherwise expressly agreed, be absolutely discharged of all liability under these Terms and Conditions of Service unless suit is brought within 9 months from:**

- (a) **the date of delivery of the goods for claims to damage to goods; or**
- (b) **the date when the goods should have been delivered for claims for delay in delivery or loss of goods. With respect to loss or damage other than loss of or damage to the goods, the 9 months period shall be counted from the time when the act or omission of the Company giving rise to the claim occurred.**

19. **Governing Law:** These conditions shall be governed by the laws of the province of Ontario and the laws of Canada applicable therein. By accepting the services provided under these Terms and Conditions of Service, the Customer irrevocably attorns to the exclusive jurisdiction of the Courts of Ontario and the Federal Court of Canada. The Parties agree that where they have used electronic communications to transact in whole or in part any business such communications will be given legal effect in accordance with the provisions (so far as they may be applicable) of the Uniform Electronic Commerce Act as approved by the Uniform Law Conference of Canada.