

Agility Logistics, LTD. Customer Services Agreement

1) APPLICATION:

All Services provided by Agility Logistics, LTD. ("Agility") for its customer ("Client") are subject to and governed by i) these Terms and Conditions and ii) those contained in the Schedules described at paragraph 5) below, the same being expressly incorporated herein by reference (collectively referred hereafter as the "Customer Services Agreement"). In the event of any conflict between the Terms and Conditions herein and any Schedule, the latter shall govern to the extent of any inconsistency. The Client acknowledges that the terms of this Customer Services Agreement are legally binding upon it.

2) DEFINITIONS:

For the purposes of this Customer Services Agreement, the following definitions apply:

- (a) **Freight Forwarding Services** – Any Services whereby Agility accepts to transport and/or make arrangements for the transportation by a third party carrier of goods for, on instruction from, and/or on behalf of Client which services are not the subject of sub-paragraphs b), c), d) and e) below;
- (b) **Carriage of Goods by Air Services** - Services whereby Agility issues its own house air waybill for transportation of goods and said house air waybill identifies Agility as the operating carrier of the services by air;
- (c) **Warehousing Services** - Services whereby Agility accepts goods from, for and/or on behalf of Client for storage for reward, except where storage is incidental to Freight Forwarding Services; and
- (d) **Customs Brokerage Services** - Services whereby Agility facilitates, as agent of Client, the importation, entry and/or release of goods into Canada.
- (e) **Load Brokerage Services** – Services whereby Agility accepts to transport and/or make arrangements for the transportation exclusively by road by a third party commercial motor carrier of goods and/or pursuant to a multi-modal road – rail arrangement for, on instruction from, and/or on behalf of Client

3) AGILITY'S RIGHT TO AMEND AGREEMENT FROM TIME TO TIME

Agility reserves the right to amend this Customer Services Agreement from time to time. Agility will post the current version of this Agreement as may be amended from time to time on its website at www.Agility.com/service-agreement/. A copy of the Agreement and Schedules will also be provided to Client upon request. In the event of any inconsistency between the content of this Agreement and that posted on the aforesaid Agility website, the latter will govern to the extent of any inconsistency.

4) APPLICATION OF SCHEDULES:

The following Schedules shall govern the respective services provided by Agility

- **Schedule A** governs Freight Forwarding Services provided by Agility, being the version of the Standard Trading Conditions of the Canadian International Freight Forwarders Association ("CIFFA") as posted at www.ciffa.com as may be amended by CIFFA from time to time.
- **Schedule B** governs Carriage of Goods by Air Services provided by Agility.
- **Schedule C** governs Warehousing Services provided by Agility being the Canadian Standard Contract and Conditions for Merchandise Storers or Warehouses approved and promulgated by the Canadian Association of Warehousing and Distribution Services from time to time.
- **Schedule D** governs Customs Brokerage Services provided by Agility, being the Standard Trading Conditions adopted by the Canadian Society of Customs Brokers ("CSCB") as amended by CSCB from time to time.
- **Schedule E** governs Load Brokerage Services provided by Agility.

5) MULTIPLE SERVICES:

- (a) Where Agility tenders more one than one service as defined herein, in the event of loss, damage or delay to goods, liability will be governed by the Schedule most favourable to Agility unless Client is able to prove that loss, damage and/or delay occurred during services defined in another Schedule hereto.
- (b) Where Agility provides Freight Forwarding Services and Warehousing Services, Agility is deemed to be providing Warehousing Services from the time that a vehicle arrives at a warehouse location carrying goods for storage and until a vehicle departs a warehouse already loaded with goods for transportation.

6) INSURANCE

Agility is not responsible for obtaining insurance for Customer's goods. Agility will only obtain insurance on behalf of Customer where Customer expressly requests this in writing and Agility expressly confirms to undertake to procure such insurance in writing to Customer. Customer will be responsible for all premiums and costs in connection with procuring such insurance, and any failure of Customer to do so will void any previous undertaking made by Agility in writing to procure same insurance.

7) QUOTATIONS NOT BINDING:

Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Agility to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Agility unless the Agility 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 Agility and the Customer.

8) INDEPENDENT CONTRACTOR:

Agility and Client intend and agree that Agility shall be an independent contractor in the performance of each and every part of this Contract, and that Agility shall be liable for

all labor and expenses incurred by Agility in connection with this Contract. No agent, employee, or servant of Agility shall be or shall be deemed to be the employee, agent, or servant of Client. Client is only interested in the results to be obtained under this Contract. Except as provided for under this Contract, the selection of carriers, routing, and all related billing procedures are under the exclusive control of Agility who shall thereby have working control of Client's freight for purposes of this Contract. This Contract shall be non-exclusive. Nothing contained herein shall be construed as a commitment by Client to utilize Agility for any specific number of shipments or volume of freight.

9) ADVANCING MONEY: (Note: not applicable to Customs Brokerage Services)

All charges must be paid by Customer in advance unless Agility agrees in writing to extend credit to customer; the granting of all credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Agility.

10) C.O.D. OR CASH COLLECT SHIPMENTS:

Agility 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.

11) COST OF COLLECTION:

In any dispute involving monies owed to Agility, the Agility 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 Agility.

12) NO MODIFICATION OR AMENDMENT UNLESS WRITTEN:

These terms and conditions of service may only be modified altered or amended in writing signed by both Customer and Agility; any attempt to unilaterally modify, alter or amend same shall be null and void.

13) COMPENSATION OF AGILITY:

The compensation of the Agility 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 Agility to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Agility from carriers, insurers and others in connection with the shipment. On ocean exports, upon request, the Agility 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 Agility, upon recovery by the Agility, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney's fees.

14) FORCE MAJEURE:

Agility 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 Agility or its sub-contractors, including but not limited to: (i) acts of God, 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.

15) 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 reminder hereof shall remain in full force and effect. Agility'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.

16) ENTIRE AGREEMENT:

This Agreement represents the entire agreement of the parties with respect to its subject matter, and supersedes all prior proposals, agreements, memoranda or understandings with respect to this Agreement or its subject matter. Any future representation, agreement, understanding or waiver will be binding only if in writing signed by the party sought to be bound.

17) APPLICABLE LAW:

This Agreement shall be construed and enforced according to Ontario law and the federal laws of Canada applicable therein. If any provision in this Agreement violates any applicable law, that provision will be ineffective to the extent of the violation without invalidating any other provision of this Agreement, unless the invalid provision relates to the charges for Services. Both ABC and Client hereby irrevocably submit and attorn to the jurisdiction of the courts of the Province of Ontario.