



INGRAM *Logistics*

TRANSPORTATION AND CUSTOMS CLEARANCE TERMS

These Transportation and Customs Clearance Terms ("Terms") apply to and govern any services provided by ILS to the Customer (as defined below). ILS is a licensed Non-Vessel-Operating Common Carrier ("NVOCC"), and is in the business of international or domestic (or both) transportation of its customers' cargo. ILS also assists its customers in the facilitation of cargo customs clearance via ILS's business relationship with a licensed customs broker. Customer wants to retain ILS to provide transportation, customs clearance services, or both as set forth below.

Accordingly, the parties hereby agree as follows:

1. Definitions.

- a) "Customer" means the person or entity for which ILS is rendering or procuring service, including its principals, agents and/or representatives, as well as its 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 and conditions of service to all parties included in the preceding definition.
- b) "CBP" or "Customs" means U.S. Department of Homeland Security, Customs and Border Protection.
- c) "Documentation" means all information received directly or indirectly from Customer, whether in paper or electronic form.
- d) "ILS" means Ingram Logistics Services LLC, and includes ILS, its subsidiaries, successors or assigns, its parent company, Ingram Barge Company LLC, and any other authorized agents, employees or representatives of any of such entities.
- e) "Ocean Transportation Intermediaries" ("OTI") means an "ocean freight forwarder" and a "non-vessel operating common carrier."
- f) "Services" is defined in the "General Applicability" section below.
- g) "Shipper" will have the meaning given to it in any Bill of Lading issued by ILS.
- h) "Third Parties" includes, but is not limited to, the following: carriers, truck men, cart men, lightermen, forwarders, OTIs, customs brokers, motor freight brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise.

- 2. General Applicability.** These Terms apply to and govern any transportation services provided by ILS to Customer or to any cargo customs clearance provided by or arranged through ILS on behalf of Customer (individually and collectively the "Services"). Any entity that places an order for any Services will be deemed to accept these Terms, as will any entity that tenders any cargo to ILS (or its other contractors or agents) for transportation or that holds the shipping receipt (or bill of lading if one is issued) issued by ILS for such cargo. These Terms apply to and supplement any verbal agreement, e-mail, facsimile confirmation, booking note, detailed order, a document specifically styled as a "Services Order," or other agreement (any of the foregoing are the "Order") between ILS and Customer calling for ILS's provision of Services (the Order in conjunction with these Terms, will be the "Agreement"). To the extent there is any conflict between the Order and these Terms these Terms will supersede and govern unless each conflicting provision in the Order includes the exact following phrase: "The parties specifically intend for the following term to supersede any conflicting term(s) in the Terms."
- 3. ILS as Agent.** ILS acts as the "agent" of the Customer when performing or arranging for the performance of duties in connection with: the entry and release of goods, importer security filing services, 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; as to all other services provided to Customer, ILS is an independent contractor.
- 4. No Liability for the Selection of Services of Third Parties or Routes.** Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, ILS shall use reasonable care in its selection of Third Parties, or in selecting the means, route and procedure to be followed in the handling, loading, transportation, clearance, unloading and delivery of shipments. Advice by ILS that a particular person or firm has been selected to render services with respect to the goods shall not constitute an undertaking or warranty that such person or firm will render such services. ILS does not assume responsibility or liability for the acts or omissions of any Third Parties and will not be liable for delay or loss occurring while a shipment is in the custody or control of any Third Party. All claims based on the acts or omissions of Third Parties will be brought solely against those parties or their agents; ILS shall reasonably cooperate with the Customer in the pursuit of such claims, but Customer shall reimburse any charges or costs incurred by ILS arising from its reasonable cooperation.
- 5. Third-Party Customs Brokering.** Customer understands that ILS is not currently a licensed customs broker and acts solely as the Customer's agent in procuring the services of a licensed customs broker. Customer agrees that services provided by any customs broker engaged by ILS will be governed by the standard terms and conditions of that customs broker, or, in the absence of any such terms and conditions, by these Terms. Customer shall, as a condition of employing the services of a customs broker engaged by ILS, execute a waiver of confidentiality, in a form satisfactory to the customs broker, allowing the customs broker to share information with ILS.
- 6. Quotations Not Binding.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by ILS to the Customer are for informational purposes only and are subject to

change without notice; no quotation shall be binding upon ILS unless ILS 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 ILS and the Customer.

7. Reliance on Information Furnished.

- a) Customer shall review all documents and declarations prepared and/or filed with CBP, other Government Agency and/or Third Parties, and will immediately advise ILS of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customer's behalf;
- b) In preparing and submitting importer security filings, customs entries, export declarations, applications, documentation or export data (or any combination thereof) to the United States or a third party (or both), ILS (or the customs broker engaged by ILS on behalf of Customer) relies on the correctness and completeness of all Documentation. Customer shall use reasonable care to insure the correctness and completeness of all Documentation and shall defend, indemnify and hold ILS harmless from all claims asserted and any liability, losses or expenses incurred by reason of any incorrect, incomplete, or false statement upon which ILS reasonably relied. Customer has an affirmative, non-delegable duty to disclose in a timely manner all information required to submit an importer security filing, import, export or enter the goods.

8. Declaring Higher Value to Third Parties. Customer understands that Third Parties to whom the goods are entrusted may limit liability for loss or damage. If Customer desires excess valuation coverage for any shipment, it shall submit a written request to ILS to declare value in excess of the third party's liability limitation and shall agree to pay any additional *ad valorem* freight or other charges therefor; however, in the absence of such written request from Customer, or upon the refusal of a Third Party to agree to a higher declared value when requested, ILS may, at its sole discretion, tendered the Customer's cargo to the Third Party subject to the Third Party's standard applicable terms of service.

9. Insurance. Unless requested to do so in writing by Customer in sufficient time prior to shipment from point of origin and confirmed to Customer in writing, ILS is under no obligation to procure insurance on Customer's behalf. ILS does not undertake or warrant that such insurance can or will be placed. Unless the Customer has its own open marine policy and instructs ILS to effect insurance under such policy, any insurance that ILS secures will be with one or more insurance companies or other underwriters as selected by ILS. Any such insurance placed will be governed by the certificate or policy issued and will only be effective when accepted by such insurance companies or underwriters. In all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance. Should an insurer dispute its liability for any reason, Customer will have recourse against the insurer only and ILS will not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rates as that charged or paid to ILS by the Customer or that the shipment was insured under a policy in the name of ILS. If for any reason the goods are held in warehouse, or elsewhere, the same will not be covered by insurance, unless ILS receives specific written instructions from the Customer and ILS confirms its agreement to secure such coverage in writing. And, unless specifically agreed in writing, ILS assumes

no responsibility to effect insurance on any export or import shipment with respect to which ILS is not providing services to Customer.

- 10. Force Majeure.** Without limiting any other specific terms and conditions, and expressly in addition to such terms and conditions, ILS will not be liable for failure to perform its obligations – including any resulting losses, damages, delays, wrongful or missed deliveries or non-performance, in whole or in part – under these Terms if prevented from doing so (i) because of an act of God, including but not limited to strike, fire, flood, earthquake, storm, hurricane, power failure or other natural disaster; (ii) because of explosion, civil disturbance, acts of terrorism, epidemic, pandemic, disease, interference by civil or military authority, accident, incidents or deteriorations to means of transportation, labor disputes, labor shortages or slowdowns; (iii) because of acts by third parties including breaches of contract or omissions by Customer, Shipper, Consignee and/or such parties' agents or representatives, or anyone else who may have an interest in the shipment; (iv) because of any defects, nature or inherent vice of the goods; (v) because the continuation of the services would be in violation of any governmental laws, rules, or regulations or would cause or create any material safety, health, or environmental concerns; or (vi) because of any other causes beyond the reasonable control of ILS and not intentionally caused by ILS (such occurrence to be referred to as "Force Majeure"). Customer acknowledges that it bears the risk of any damages or losses due to Force Majeure and the responsibility to insure against the same. If ILS takes steps outside the ordinary course of business to protect customer's goods due to Force Majeure, Customer shall pay all reasonable charges associated with ILS's efforts.
- 11. COVID-19.** Both parties acknowledge the Services are being provided by ILS during an epidemic/pandemic of COVID 19 which presents a challenging and evolving work environment. The parties agree to take reasonable actions to prevent, mitigate, and overcome the effects of COVID 19, which may include but are not limited to contamination, scarcity of labor, supply chain failures, quarantine, or orders or recommendations of local, state, and federal government ("COVID 19 Effects"), on their respective performance. Excluding any applicable payment, insurance and indemnification obligations, neither party will be responsible or liable to the other for delay or nonperformance if such delay or nonperformance is caused by COVID 19 Effects not preventable through such party's exercise of reasonable diligence, provided the party seeking relief from its performance obligations gives written notice of such condition to the other party within a reasonable period of time after commencement of the specific COVID 19 Effect causing the delay or nonperformance.
- 12. Indemnification/Hold Harmless.** Customer shall indemnify, defend, and hold ILS harmless from all liability or loss, including reasonable attorneys' fees, arising from: (i) fines, duties, penalties or liquidated damages or other loss arising from the importation or exportation of Customer's cargo; (ii) any conduct of the Customer, including, but not limited to, the inaccuracy or untruthfulness of any Documentation; (iii) any breach of the Terms by Customer; (iv) any claims by third parties for freight, demurrage, advances or other claims arising from Services provided to or on behalf of the Customer; or (v) any combination of (i) – (iv). If any claim, suit or proceeding is brought against ILS, it shall give notice in writing to the Customer by mail at its address on file with ILS. The confiscation or

detention of the goods by any governmental authority will not affect or diminish the liability of the Customer to ILS to pay all charges or other money due promptly on demand.

13. C.O.D. or Cash Collect Shipments. ILS shall use reasonable care regarding "Cash/Collect" or "Deliver (C.O.D.)" shipments, bank drafts, cashiers' or certified checks, letter(s) of credit and other similar payment documents, and, collection of monies related to Customer, but ILS will have no liability if the bank or consignee or other recipient refuses to pay for the shipment. All payment documents tendered in payment of C.O.D.s will be accepted based solely upon the Customer's assuming all risk relating thereto including, but not limited to, risk of non-payment, insufficient funds and forgery, and ILS will not be liable upon any such instrument. ILS will not be responsible for any delay in remittance that is lost in exchange, during transmission, or in the course of collection.

14. Costs of Collection. In any dispute involving monies owed to ILS, Customer shall repay ILS for all costs of collection, including reasonable attorney's fees and the lesser of (i) a late payment fee of 1.5% per month of the outstanding balance due or (ii) the highest rate permitted by applicable law.

15. General Lien and Right to Sell Customer's Property.

- a) ILS will be deemed to have a general and continuing lien on all cargo of Customer coming into ILS's actual or constructive possession or control for monies owed to ILS relating to the shipment on which the lien is claimed, on any prior shipments, or both;
- b) ILS 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 ongoing storage or other charges;
- c) Customer shall notify all parties having an interest in its shipment(s) of ILS's lien rights, the exercise of such lien rights by ILS, or both; and,
- d) Unless within 30 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 ILS guaranteeing payment of the monies owed plus all storage charges accrued or to be accrued, ILS may sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter will be refunded to Customer. For purposes of such sale by ILS to mitigate its losses, Customer will be deemed to have abandoned any right, title, or interest in the shipment(s) for itself and for any third-party on whose behalf it has arranged such shipment(s).

16. Obtaining Binding Rulings, Filing Protests, etc. Unless requested by Customer in writing and agreed to by ILS in writing, ILS will be under no obligation to undertake any pre- or post- importer security filing services or Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.

17. Preparation and Issuance of Bills of Lading. Unless it has agreed to do so in writing after specific request and payment by Customer or its agent, when ILS prepares or issues (or both) a bill of lading,

ILS will be under no obligation to specify thereon the number of pieces, packages, cartons, etc. Furthermore, ILS shall use the weight supplied by Customer.

- 18. Amendments.** These Terms may only be modified, altered or amended in writing signed by both Customer and ILS; any attempt to unilaterally modify, alter or amend same will be deemed null and void.
- 19. Compensation of ILS; Credit Terms.** Unless ILS agrees in writing to extend credit to Customer, Customer shall pay all charges in advance; the granting of credit to a Customer in connection with a particular transaction will not be a waiver of this provision by ILS. The compensation of ILS for its Services will be billed to Customer in the aggregate with the rates and charges of all carriers and other agencies selected by ILS to transport and deal with the goods; such compensation is exclusive of any brokerage, commissions, dividends, or other revenue received by ILS from carriers, insurers and other in connection with the shipment and Customer is not entitled to any rebate or offset in the event that Carrier receives such additional revenue streams. Upon request, ILS may in its sole discretion provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges.
- 20. Compliance with Law.** Customer represents and warrants that it is and will remain in compliance with all applicable Laws, including (without limitation or exclusion): anti-corruption, export control and trade sanctions laws such as the U.S. Foreign Corrupt Practices Act (“FCPA”) and the U.K. Bribery Act; the U.S. Export Administration Regulations (“EAR”) administered by the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”); the International Traffic in Arms Regulations (“ITAR”) administered by the U.S. State Department’s Directorate of Defense Trade Controls (“DDTC”); the U.S. Anti-Boycott regulations, and the various U.S. economic sanctions programs administered by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”); and, that the information the Customer provides to ILS in connection with Customer’s compliance with all such applicable laws is true and complete. Customer shall also comply with all applicable laws of any country or other jurisdiction to, from, through, over or in which any goods may be carried, including all applicable laws relating to the marking, packing, carriage, storage, clearance or delivery of the goods.
- 21. Modification.** If any provision of these Terms, or the application of any such provision to any person or circumstance is held invalid, illegal, or unenforceable for any reason whatsoever, the remaining provisions of these Terms and the application of such provision to other persons or circumstances are not affected thereby and to the fullest extent possible the court finding such provision invalid, illegal, or unenforceable must modify and construe the provision so as to render it valid and enforceable as against all persons or entities and to give the maximum possible protection to the party or parties affected within the bounds of validity, legality, and enforceability.
- 22. Governing Law; Jurisdiction and Venue.** These Terms and the relationship of the parties shall be construed according to the laws of the State of Tennessee, without regard to its conflict of law principles. Customer and ILS hereby (a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of Tennessee; (b) agree that any action relating to the Services

performed by ILS, can 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 of such court may be instituted in any jurisdiction.

23. Conflict. If any of Customer's Documentation includes: (i) additional proposed terms, (ii) language stating that Customer's terms supersede and govern for any reason, or (iii) any combination of (i) and (ii), any such additional terms described in (i) – (iii) will be deemed material alterations of these Terms. ILS does not assent to any such alterations to these Terms absent an express statement to that effect in writing sent to Customer, and this "Conflict" Section will be deemed sufficient notice of ILS's objection to such additional terms under applicable law. These Terms (and, when applicable, the applicable terms of any bill of lading or other shipper document issued by ILS to Customer) are the entirety of the terms offered by ILS to Customer; Customer's acceptance of ILS's terms is not (and will not be deemed) conditioned on ILS's acceptance of any material alterations to the Terms proposed by Customer—any such alterations will be deemed errant, void, and unenforceable against ILS without further notice. If there is any conflict between these Terms and the terms in a bill of lading issued to Customer by ILS, then the ILS bill of lading terms will be deemed to supersede and govern, with any non-conflicting sections in these Terms applying to supplement ILS's bill of lading terms.

24. Integration; Acceptance. These Terms, along with any associated bill of lading issued by ILS, sets forth the entire understanding between the parties hereto as to the subject matter. Regardless of whether Customer signs these Terms or provides any other written or verbal confirmation or acceptance of these Terms, Customer's causing any cargo to be tendered for any Services will be deemed Customer's unqualified agreement to all of these Terms.

25. Disclaimers; Limitation of Liability.

- a) Except as specifically set forth herein, ILS makes no express or implied warranties in connection with its Services, and to the extent any such warranties may arise by operation of law, they are disclaimed;
- b) To the extent ILS acts as a carrier, its liability for loss or damage to Customer's goods shall be covered by the U.S. Carriage of Goods by Sea Act and by the terms of its bill of lading (if issued) or other contract of carriage or affreightment. Otherwise, ILS will be liable, if at all, only for the negligent performance of its own Services, and not for the negligent performance of, or breach of contract by, third parties whom ILS may engage to handle or transport Customer's goods or perform related services for Customer. The sole and exclusive remedy for any such liability shall be a refund of the compensation paid by Customer in exchange for any Services that were negligently performed by ILS; and,
- c) In no event will ILS 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, including any and all loss or damages arising from delay of Services.

26. Limitation of Actions.

- a)** Unless subject to a specific statute or international convention, notice of claims against ILS for a potential or actual loss, must be made in writing and received by ILS, within ninety (90) days of the event giving rise to claim; the failure to give ILS timely notice will be a complete defense to any suit or action commenced by Customer and Customer will be deemed to have waived any right to suit.

- b)** Subject to 26(a), Customer shall file suit and properly serve legal process against ILS as follows:
 - i. For claims arising out of ocean transportation, within one (1) year from the date of the loss;

 - ii. For those claims arising from 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 all other claims of any other type, within two (2) years from the date of the loss.

Customer's failure to file against ILS within the time periods stated above will be a complete defense and Customer will be deemed to have waived any right(s) to file such suit(s) or action(s).