

## **Geodis USA, Inc.**

### **Terms & Conditions of Service**

These Terms and Conditions of Service (the "Service Terms") constitute a legally binding contract between "GEODIS" and "Customer". By appointing GEODIS to provide Services, as defined herein, Customer expressly accepts these Service Terms as of the date the Services were first provided by GEODIS to Customer. In the event GEODIS renders Services and issues a document containing terms governing such Services, the terms set forth in such other document(s) shall govern those Services to the extent they are inconsistent with these Service Terms.

#### **1. Definitions.**

(a) "GEODIS" shall mean the members of the Geodis USA, Inc. group of companies, including its subsidiaries, affiliated and related companies, together with their agents and/or representatives;

(b) "Customer" shall mean the person for which GEODIS is rendering Services, 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 Service Terms to all such agents or representatives;

(c) "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;

(d) "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier";

(e) "Services" shall mean any services provided by GEODIS in its normal course of business, including, but not limited to, customs brokerage, freight forwarding, drayage, transportation management and/or brokerage, trade services consulting, Warehouse Services, and other logistics services.

(f) "Third parties" 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";

(g) "Warehouse Services" shall mean any transloading, warehousing, cross-docking, consolidation, and other similar services, including related ancillary services such as loading/unloading, packing, crating, and handling, that occur in a facility or on a premises owned, leased, or operated by GEODIS.

**2. Role of GEODIS.** GEODIS 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. GEODIS acts as an independent contractor with respect to all other Services provided to Customer.

#### **3. Limitation of Actions.**

(a) Unless subject to a specific statute or international convention, all claims against GEODIS for a potential or actual loss must be made in writing and received by GEODIS within ninety (90) days of the event giving rise to the claim. Failure to give GEODIS timely notice shall constitute a forfeiture by Customer of the right to assert any claim for a potential or actual loss against GEODIS, and shall be a complete defense to any suit or action commenced by Customer.

(b) All suits against GEODIS must be filed and properly served on GEODIS 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);

(iv) For claims arising out of Warehouse Services, within nine (9) months from the date of the loss;

(v) For all other claims of any other type except as set forth in 3(c), within two (2) years from the date of the loss or damage.

(c) Claims for undercharges or overcharges must be filed by Customer within ninety (90) days from the date of the original invoice, or shall be deemed waived. Customer must bring a civil action to recover undercharges or overcharges for transportation or other Services provided by GEODIS to Customer pursuant to these Service Terms within nine (9) months from the date of shipment.

**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, GEODIS 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 GEODIS that a particular person or firm has been selected to render Services with respect to the goods shall not be construed to mean that GEODIS warrants or represents that such person or firm will render such Services, nor does GEODIS assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and GEODIS 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, GEODIS shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by GEODIS.

**5. Quotations Not Binding.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by GEODIS to the Customer are for informational purposes only and are subject to change without notice. No quotation shall be binding upon GEODIS unless GEODIS in writing agrees to undertake the Services at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between GEODIS and the Customer.

**6. Reliance On Information Furnished.**

(a) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with U.S. Customs & Border Protection, other Government Agency and/or third parties, and will immediately advise GEODIS 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 and/or other required data, GEODIS 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 GEODIS 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 GEODIS 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.

**7. Force Majeure.** Neither party shall be liable for damage to goods or delays and/or defaults in its performance due to causes beyond its control, including, but without limiting the generality of the foregoing: acts of God, or of the public enemy; fire or explosion; flood; actions of the elements; war; acts of terrorism; cyber-attacks; embargoes; quarantine; labor disputes; failure of transportation; acts or requests of any governmental authority; or any cause beyond its control (any such event, a "Force Majeure Event"). In the event of a Force Majeure Event, Customer shall compensate GEODIS only for Services provided during the period of the Force Majeure Event.

**8. Declaring Higher Value To Third Parties.** Third parties to whom the goods are entrusted may limit liability for loss or damage. GEODIS 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 GEODIS'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, GEODIS 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. With respect to Warehouse Services, Customer agrees that goods are not insured by GEODIS against loss or damage however caused.

**10. Disclaimers; Limitation of Liability.**

(a) Except as specifically set forth herein, GEODIS makes no express or implied warranties in connection with its Services;

(b) With respect to Warehouse Services, GEODIS shall not be liable for any loss of or damage to goods tendered, stored, or handled however caused, unless such loss, damage, or liability resulted from the failure by GEODIS to exercise such care in regard to them as a reasonably careful warehouseman would exercise under like circumstances, and GEODIS is not liable for damages that could not have been avoided by the exercise of such care. In no event shall GEODIS be liable for loss or damage to goods occurring while the goods are in trailers or containers on a facility yard.

(c) With respect to all other Services, GEODIS shall only be liable for its negligent acts that are the direct and proximate cause of any injury to Customer, including loss or damage to Customer's goods. GEODIS shall in no event be liable for the acts of third parties.

(d) In connection with all Services performed by GEODIS, 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 therefor, which request must be confirmed in writing by GEODIS prior to rendering services for the covered transaction(s).

(e) In the absence of additional coverage under (d) above, GEODIS's liability shall be limited to the following:

(i) where the claim arises from activities other than those relating to activities described in (ii), (iii), or (iv) below, \$50 per

shipment or transaction;

(ii) where the claim arises from activities relating to "Customs business," \$50 per entry or the amount of brokerage fees paid to GEODIS for the entry, whichever is less;

(iii) where the claim arises from Warehouse Services, the lesser of (1) \$0.25 per pound of lost or damaged goods, or (2) Customer's actual cost of the lost or damaged goods (i.e., manufactured cost, plus incoming freight charges and taxes, less manufacturer's allowances discounts and credits or similar deductions); or

(iv) where the claim arises from activities relating to domestic surface transportation, \$50 per shipment or \$0.50 per pound of cargo lost or damaged, whichever is less.

IN NO EVENT SHALL GEODIS BE LIABLE OR RESPONSIBLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, STATUTORY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, EVEN IF IT HAS BEEN PUT ON NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR THE ACTS OF THIRD PARTIES. THE FOREGOING IS A SEPARATE, ESSENTIAL TERM OF THIS AGREEMENT AND SHALL BE EFFECTIVE EVEN IN THE EVENT OF THE FAILURE OF ANY REMEDY, EXCLUSIVE OR NOT. EXCEPT WITH RESPECT TO PRODUCT LOSS AND DAMAGE AS SET FORTH IN 10(D)-(E), GEODIS' LIABILITY TO CUSTOMER OR TO ANY THIRD PARTY UNDER OR IN ANY MANNER RELATED TO THE AGREEMENT SHALL NOT IN THE AGGREGATE EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO GEODIS PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTH PERIOD PERCEDING THE EVENT GIVING RISE TO THE CLAIM.

**11. Advancing Money.** All charges must be paid by Customer in advance unless GEODIS 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 GEODIS.

**12. Indemnification/Hold Harmless.** The Customer agrees to indemnify, defend, and hold GEODIS harmless from any claims and/or liability, fines, penalties and/or attorneys' fees arising from the importation or exportation of Customer's merchandise and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agent or representative, which violates any Federal, State and/or other laws, and further agrees to indemnify, defend, and hold GEODIS 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 GEODIS 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 GEODIS, GEODIS shall give notice in writing to the Customer by mail at its address on file with GEODIS.

**13. C.O.D. or Cash Collect Shipments.** GEODIS 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.

**14. Costs of Collection.** In any dispute involving monies owed to GEODIS, GEODIS 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 GEODIS.

**15. General Lien and Right To Sell Customer's Property.**

(a) GEODIS shall have a continuing lien on any and all property and documents relating thereto of Customer coming into GEODIS's actual or constructive possession, custody or control or en route, which lien shall survive delivery, for all charges, expenses or advances owed to GEODIS 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 GEODIS 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 GEODIS is acting as a mere conduit. If such claim remains unsatisfied for 30 days after demand for its payment is made, GEODIS may sell at public auction or private sale, upon 10 days written notice, registered Mail to Customer, the goods, wares and/or merchandise or so much as may be necessary to satisfy such lien and the costs of recovery, and apply the net proceeds of such sale to the payment of the amount due GEODIS. Any surplus from such sale shall be transmitted to Customer, and Customer shall be liable for any deficiency in the sale.

(b) GEODIS 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 GEODIS'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 GEODIS, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, GEODIS 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.

(d) Notwithstanding anything to the contrary in this Section 15, GEODIS shall have a general warehouse lien for all lawful charges

for storage and preservation of Customer's goods related to the provision of Warehouse Services by GEODIS; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing cooperating, and other charges and expenses in relation to such goods, and for the balance on any other accounts that may be due. Pursuant to Section 7-209(a) of the Uniform Commercial Code, GEODIS further claims a general warehouse lien for all such charges, advances and expenses with respect to any other goods stored by the Customer in any other facility owned or operated by GEODIS.

(e) In order to protect its lien rights, GEODIS reserves the right to require advance payment of all charges prior to shipment or release of Customer's goods.

**16. 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, GEODIS 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.

**17. Obtaining Binding Rulings, Filing Protests, etc.** Unless requested by Customer in writing and agreed to by GEODIS in writing, GEODIS 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.

**18. Preparation and Issuance of Bills of Lading.** Where GEODIS prepares and/or issues a bill of lading, GEODIS 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, GEODIS shall rely upon and use the cargo weight supplied by Customer.

**19. No Duty To Provide Licensing Authority.** Unless requested by Customer in writing and agreed to by GEODIS in writing, GEODIS 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. Hazardous Materials.** Customer shall not tender to GEODIS any goods for shipment or storage that are classified as hazardous materials or dangerous goods by the United States Department of Transportation or such other agency, authority, or organization having jurisdiction ("Haz-Mat") without receiving prior written authorization from GEODIS. Customer shall properly package, mark, label, and identify any such Haz-Mat, and provide all information requested by GEODIS necessary to properly classify such hazardous materials and comply with all applicable laws and regulations in connection therewith. Customer shall indemnify GEODIS and its subcontractors from any claims, liabilities, damages, fines, or suits (including attorney's fees and court costs) arising from Customer's failure to comply with the requirements set forth in this Section 20. GEODIS may, in its discretion, refuse to arrange to transport or accept for storage any goods containing Haz-Mat.

**21. No Modification or Amendment Unless Written.** These Service Terms may only be modified, altered or amended in writing signed by both Customer and GEODIS. Any attempt to unilaterally modify, alter or amend same shall be null and void.

**22. Compensation of GEODIS.** The compensation of GEODIS for the Services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by GEODIS to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by GEODIS from carriers, insurers and others in connection with the shipment. On ocean exports, upon request, GEODIS 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 GEODIS, upon recovery by the GEODIS, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.

**23. 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. GEODIS'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.

**24. Governing Law; Consent to Jurisdiction and Venue.** These Service Terms and the relationship of the parties shall be construed according to the laws of the United States and the Commonwealth of Pennsylvania without giving consideration to principals of conflict of law. Customer and GEODIS:

- (a) irrevocably consent to the jurisdiction of the federal and state courts of the Commonwealth of Pennsylvania;
- (b) agree that any action relating to the Services performed by GEODIS, 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 the Commonwealth of Pennsylvania or any other forum that has jurisdiction over the parties.

*These Service Terms are based on the Terms and Conditions of Service promulgated by the National Customs Brokers and Forwarders Association of America, Inc.*

*GEODIS Version 1.0 – August 2018*