

**UPS TRADE MANAGEMENT SERVICES, INC.**  
**TRADE CONSULTING/MANAGEMENT SERVICES TERMS AND CONDITIONS**

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All trade consulting and management services ("Services") performed by UPS Trade Management Services, Inc. ("UPS TMS") as an independent contractor to Client are provided pursuant to the following Terms and Conditions.

**1. Definitions.** (a) "UPS TMS" shall mean UPS Trade Management Services, Inc., its subsidiaries, successors or assigns, related companies, agents and/or representatives. (b) "Client" shall mean the person for which UPS TMS renders Services, as well as its agents and/or representatives. It is the responsibility of Client to provide notice and copy(s) of these Terms and Conditions to all such agents or representatives.

**2. Client Responsibilities.** Client represents its existing and continuing compliance with all applicable laws and that it has any licenses and permits necessary for the activities covered by these Terms and Conditions. Client acknowledges that UPS TMS will rely on the correctness and completeness of all documentation and information furnished by Client. Client has an affirmative non-delegable duty to disclose any and all information required for the performance of Services and shall use reasonable care, or a higher standard of care as required by law, to insure the correctness and completeness of all such information. Client agrees that it has sole responsibility for determining the usability of any information or data contained in the Services. Client further agrees to indemnify, defend, and hold harmless UPS TMS from and against any and all liabilities, losses, costs, and expenses (including attorneys' fees) ("Losses") arising out of or relating to any claims against UPS TMS related to UPS TMS's performance of Services.

**3. Compensation.** Client agrees to pay UPS TMS all fees, charges and expenses ("Fees") set forth in any price quote or other written document or, in their absence, pursuant to UPS TMS standard pricing within fifteen (15) days from date of the invoice with no offset right. Any payment which is past due shall be subject to an additional charge at the rate of 1.5% per month of the outstanding balance due or the highest rate of interest permitted by applicable law. In the event that any payment due the Company is collected at law or through, or under advice from, an attorney-at-law, or through a collection agency, Client agrees to pay all costs of collection, including without limitation, all court costs and reasonable attorney's fees.

**4. Intellectual Property and Confidentiality.** Client and UPS TMS acknowledge that the other has certain intellectual property rights that may be revealed or provided to the other party. Each party acknowledges that it does not have any right or title of ownership in the intellectual property rights of the other party unless specifically provided in writing. Confidential Information includes any information relating to the identity of a party's customers, customer relationships, business, rates charged or any other information, the disclosure of which to third parties would be damaging ("Confidential Information"). The parties agree not to make use of Confidential Information other than for the performance of Services. Confidential Information shall not include any information: (a) that was, is, or becomes public information through no fault of the other party; (b) that is in the possession of the other party before the applicability of these Terms and Conditions where that party can provide written proof thereof; (c) information that is developed by UPS TMS independently of the Client; (d) information that must be disclosed pursuant to or as required by law or by a court or other tribunal of competent jurisdiction; (e) is disclosed to the other party by a third party with a right to disclose such information; or (f) is disclosed by a party to a third party with the express written consent of the other party. Confidentiality obligations shall continue for a period of three (3) years from date of disclosure or for so long as required under applicable law. Client hereby authorizes and appoints UPS TMS (including its successors or assigns) to share records referenced in 19 C.F.R., Parts 111 and 163, including any documents, data or information pertaining to the business of Client, with its parent, any or all of its affiliates, or any UPS TMS Providers that perform services.

**5. Disclaimers and Limitation of Liability.** Client acknowledges that UPS TMS is not a law firm, it does not engage in the practice of law, and it does not render any legal advice. Client is advised to seek its own legal counsel regarding any legal issues relating to its business, including issues relating to Services. Client agrees that UPS TMS has not and does not make any warranties or representations whatsoever, express or implied, with respect to any Services performed hereunder. UPS TMS expressly disclaims all other warranties, including without limitation, those of accuracy, condition, merchantability, and fitness for a particular purpose. UPS TMS further disclaims all liabilities related to Services. If the foregoing exclusion of liability is determined by a court of competent jurisdiction not to be enforceable, then the parties expressly agree that UPS TMS's liability shall in all events be limited to the lesser of \$5,000 per claim or the fees for services during the twelve (12) month period that precedes the claim. In no event shall UPS TMS 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, regardless of legal theory pled, nor shall UPS TMS be liable for any Losses arising from delay of services.

**6. Non-Solicitation.** Client and UPS TMS agree that any employee of UPS TMS ("Personnel") was introduced to Client by UPS TMS for the performance of Services. The parties also agree that UPS TMS has made an investment in such Personnel which is not easily measured or ascertained. Should Client (or any of its subsidiaries or divisions) hire such Personnel, UPS TMS shall be damaged in an amount that cannot be easily measured. Therefore, Client agrees to pay to UPS TMS as liquidated damages the amount of thirty-five percent (35%) of the annual gross salary of such Personnel (which shall be calculated by multiplying by twelve (12) the monthly salary on the last day of the Personnel's employment) in the event that Client hires such Personnel at any time during the applicability of these Terms and Conditions or within three (3) years after the termination of Services.

**7. Severability.** In the event any portion of these Terms and Conditions is found to be invalid and/or unenforceable the remainder of these Terms and Conditions shall remain in full force and effect.

**8. Governing Law and Claims Limitation.** These Terms and Conditions shall be construed according to the laws of the State of Georgia, without giving consideration to principals of conflict of law. Client and UPS TMS (a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of Georgia; (b) agree that any action relating to Services 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. No action, regardless of form, arising out of or in connection with Services (other than an action by UPS TMS for any amount owed by Client) may be brought more than one (1) year after the event giving rise to such action. Unless subject to a specific statute or international convention, all Claims against UPS TMS must be made in writing and received by UPS TMS within ninety (90) days of the event giving rise to Claim; untimely notice shall be a complete defense to any action commenced by Client.

**9. No Modification or Amendment Unless Written.** These Terms and Conditions may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.