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Customs Broker Agreement

by Practical Law Commercial Transactions

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An agreement allowing an importer to engage a customs broker to help it clear imported goods through US Customs and Border Protection (CBP), usually ancillary to a transportation or freight forwarding agreement. This resource includes key obligations of the customs broker and the importer, including execution of a customs power of attorney and compliance with customs laws. This Standard Document has integrated notes with important explanations and drafting tips.

READ THIS BEFORE USING DOCUMENT

Importation of goods into the US requires the importer to navigate and comply with many laws and regulations. International trade regulations and the tariffs and duties applicable to various goods from various countries are subject to frequent changes. Failure to comply in any respect may delay the release of goods from the custody of [US Customs and Border Protection](#) (CBP) or prevent the importation of the goods entirely. There are also potential civil and criminal penalties for noncompliance. For more information about importation and compliance, see [Practice Note, Importing Goods into the US: Overview](#).

A customs broker can help an importer comply by:

- Assisting the importer in classifying imported goods and determining the appropriate [tariffs](#) and duties.
- Preparing documentation required to release imported goods.
- Submitting required documentation and payments on the importer's behalf.
- Acting as liaison between the importer and regulatory authorities.

Although the customs broker is engaged to assist the importer, the importer is obligated to use reasonable care in filing entries with CBP under [19 U.S.C. § 1484](#) and is ultimately liable for any errors or other noncompliance. The importer cannot rely entirely on the customs broker for compliance.

Customs brokerage services are often an adjunct to transportation or freight forwarding services by the same vendor or an affiliate of the vendor. For more information about those services, see Standard Documents:

- [Transportation Agreement \(Pro-Shipper\)](#).
- [Transportation Agreement \(Pro-Carrier\)](#).
- [Freight Forwarding Agreement](#).

This Standard Document is an agreement between:

- A buyer or other entity seeking to import goods into the US (the importer).
- A customs broker the importer engages as its agent to act on its behalf to ensure compliance with US customs laws and regulations by:

- filing required documents;
- paying duties on imports; and
- acting as a liaison with CBP and other government agencies, as necessary.

Many customs brokers use a standardized agreement that generally favors the customs broker by including:

- Limitations on how long after a loss event the importer may make a claim against the customs broker based on the losses.
- A disclaimer of most liability based on the customs broker's selection of third parties in connection with the services.
- A lien on the importer's property in the custom broker's possession or control to secure payment of fees.
- Other provisions that limit the customs broker's liability and responsibility to a specified amount, including in connection with any associated transportation and freight forwarding services.

This Standard Document is more favorable to the importer while still providing the broker with reasonable protections. If the customs broker insists on using the standardized form agreement, the importer may be able to negotiate to include some of the provisions of this agreement.

Customs Broker Agreement

This Customs Broker Agreement ("Agreement") is made as of [DATE] (the "Effective Date") by and between [BROKER NAME], having a place of business at [BROKER ADDRESS] ("Broker"), and [CLIENT NAME], a [STATE] [ENTITY TYPE], having a place of business at [CLIENT ADDRESS] ("Client").

WHEREAS, Broker is duly licensed by US Customs & Border Protection to conduct business as a Customs Broker; and

WHEREAS, Client is engaged in business which includes importing[and exporting] goods between points in the United States on the one hand and points in other countries on the other hand;

NOW THEREFORE, in consideration of the respective covenants and agreements of the parties herein contained and for other good and valuable consideration, the mutual receipt and legal sufficiency of which the parties hereby acknowledge, the parties agree as follows:

RECITALS

Recitals are not legally required and generally do not have any direct legal consequences. They are used to provide information about the basic background and purpose of the agreement as well as the parties' intent.

The parties should draft recitals in a way that avoids ambiguity. For example, the recitals should not include language that adds legally binding obligations or contradicts the wording contained in an operative provision of the contract.

The recitals in this Standard Document provide a basic description, but they can be revised to include more specific information (such as the specific types of services contemplated by the agreement). For more information on drafting recitals, see [Practice Note, Drafting or Reviewing a Commercial Contract: Recitals](#).

1. Definitions.

1.1 "CBP" means US Customs & Border Protection.

US CUSTOMS AND BORDER PROTECTION

US Customs & Border Protection (CBP) is an operational component of the [Department of Homeland Security](#) (DHS) charged with, among other things, responsibility for enforcing trade laws and regulations that govern importation of goods into the US. It enforces not only CBP regulations but the requirements of several other government agencies. For more information, see [Practice Note, Core Elements of an Import Compliance Program](#).

1.2 "Customs Duties" means any duties or taxes levied on imported goods under any US laws or regulations relating to imports and duties, including the Tariff Act of 1930, as amended (19 U.S.C. §§ 1202 – 1683g), excluding any penalties, interest, or fines imposed under any of the aforesaid laws or regulations.

1.3 "Disbursements" means Customs Duties, taxes, freight charges, storage charges, penalties, interests and fines, and any other payments, including payments for goods on cash on delivery (COD) shipments, made by Broker on behalf of Client.

1.4 "Protest" means a challenge to a CBP decision made under 19 U.S.C. § 1514, whether made on CBP Form 19 or otherwise.

PROTEST

An importer may challenge a CBP decision using an administrative procedure set out in [19 U.S.C. § 1514](#). CBP provides a standardized form, Form 19, but it is not required if the challenge meets certain statutory criteria. For more information about protests, see [Practice Note, Importing Goods into the US: Overview: Challenging CBP Decisions](#).

1.5 "Services" means the services set out in Section 3 hereof.

2. Appointment as Customs Broker.

2.1 Client hereby constitutes and appoints the Broker as its agent to transact business on Client's behalf with respect to: (a) matters relating to CBP and laws and regulations administered by CBP; and (b) matters relating to the accounting for, payment and refund of Customs Duties, in respect of imported goods.

2.2 Client agrees to execute any requisite CBP form powers of attorney as may be required to appoint Broker as Client's customs broker, in a form reasonably acceptable to Client.

CUSTOMS POWER OF ATTORNEY

A customs power of attorney gives the customs broker legal authority to act as the importer's agent related to customs business, including:

- Preparing and filing documents with CBP.
- Classifying and providing values for imported goods.
- Paying tariffs, duties, and other charges that CBP collects on imports.

The power of attorney recites the specific activities the customs broker is authorized to conduct on the importer's behalf, which should be consistent with the services set out in this agreement. CBP regulations contain a sample general power of attorney ([19 C.F.R. § 141.32](#)), but the CBP form is unlimited and may authorize the customs broker to do more than the importer needs or wants it to do.

For a sample limited customs power of attorney, see [Standard Document, Customs Power of Attorney](#).

2.3 [Client hereby authorizes Broker to appoint sub-agents when and as required[, provided that Broker shall notify Client in writing of any such sub-agents[and shall not appoint any sub-agent without Client's prior written approval]].]

SUB-AGENTS

This optional provision gives the broker permission to subcontract portions of the brokerage services to third parties. A customs broker may need to use sub-agents to handle:

- Ports or regions where it does not have a presence.
- Places where it is not licensed.

- Specific product categories.

If the importer agrees to include this provision, it should include either or both of the bracketed clauses requiring the customs broker to:

- Notify the importer that it is appointing sub-agents.
- Seek the importer's approval before appointing any sub-agent.

3. Services. Broker will provide the following customs brokerage services to Client, when requested by Client:

3.1 Preparing or assisting Client in preparing documents required by CBP for Client's importation of goods into the US.

3.2 Filing documents with CBP on behalf of the Client as required to clear Client's goods through CBP and making any necessary changes thereto, including preparation and filing of any required corrections, including but not limited to Post Summary Corrections.

POST SUMMARY CORRECTIONS

Post Summary Correction (PSC) is a mechanism the CBP has implemented for making corrections electronically to entry summary data. A full explanation of the PSC process can be found at <https://www.cbp.gov/trade/programs-administration/entry-summary/post-summary-correction>.

3.3 Services relating to entry and clearance through CBP of Client's imported goods, making payment of requisite Customs Duties by or on behalf of the Client, and obtaining release of the goods from CBP.

3.4 Services relating to tariff classification and value of Client's goods to minimize Customs Duties payable in accordance with applicable laws and regulations, as well as submitting binding ruling requests or Protests as necessary.

3.5 Services relating to Customs Duties refunds and duty drawbacks.

3.6 Any other services necessary and incidental to the provision of the foregoing Services.

SERVICES

This list of services the customs broker provides is drafted to be broad enough to encompass all aspects of the customs clearance process. To avoid gaps and conflicts, the list should parallel the enumerated powers set out in the limited customs power of attorney (see [Section 2.2](#)).

This provision favors the importer in requiring the customs broker to perform additional services, such as binding ruling requests and protests, that the customs broker may not agree to include.

4. Fees and Disbursements. The fees for Services provided by Broker to Client pursuant to this Agreement shall be in accordance with Schedule A attached hereto, as such Schedule may be amended [by Broker/upon mutual agreement] in writing from time to time. Client shall reimburse Broker for all disbursements that are pre-authorized by Client in writing and incurred by Broker on behalf of Client pursuant to this Agreement.

FEES AND DISBURSEMENTS

This provision favors the importer, but the customs broker may insist on including language:

- Allowing it to adjust fees unilaterally if its rates generally change.
- Stating that the customs broker is not obligated to advance any funds on the importer's behalf and instead that the importer must prepay any anticipated or required disbursements.

5. Invoicing and Payment. Broker shall issue invoices [monthly/[OTHER PERIOD]] to Client for all fees and disbursements pertaining to Services rendered to and on behalf of Client. Payment of all [undisputed] invoices shall be payable net 30 days after the date of [Client's receipt of] each invoice. All payments shall be in US dollars and shall be made by check or electronic transfer.

INVOICING AND PAYMENT

This Standard Document contemplates an ongoing relationship between the importer and the customs broker and calls for regular (typically monthly) invoicing and payment. For importers desiring infrequent or one-off customs brokerage services, an ad hoc invoicing procedure, with the customs broker issuing its invoice on completion of the services, may be more suitable.

The importer should include the bracketed term "undisputed" in the second sentence to allow it to withhold payment of disputed charges. The customs broker should try to exclude the term.

For information about payment terms, see [Standard Clause, General Contract Clauses: Payment Terms](#).

6. Client's Duties and Responsibilities. Client shall provide to Broker all information reasonably necessary for Broker to provide the Services, including all information required to complete CBP documentation. [Client shall review all information provided by Client to Broker to ensure to the best of its knowledge that the information is accurate and complete.] Client shall review all documents delivered by Broker to Client and, as soon as practicable, notify Broker of any inaccuracies, errors, or omissions found by Client therein; and advise Broker of any corrections or additions to be made on such documents.

Note: [Client's Duties and Responsibilities](#)

7. Broker's Duties and Responsibilities. Broker shall provide the Services in compliance with all applicable laws, rules, regulations, and other requirements of CBP and other governmental authorities applicable to the Services. Client will have the right to inspect and obtain, [at its expense] at any time, copies of all licenses, approvals, or permits issued by CBP or other governmental entity or agency to Broker or its subcontractors which are applicable to the performance of the Services. Broker shall maintain, at its own expense, all forms of insurance required by law, as well as a comprehensive general liability policy, insuring against all types of liability in such amount as is customary in its industry for the performance of similar services.

8. Representations and Warranties.

8.1 Mutual. Each party represents and warrants to the other party that:

- (a) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder;
- (b) the execution of this Agreement by each of the individuals whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate action on the part of such party; and
- (c) this Agreement has been executed and delivered by such party and constitutes the legal, valid, and binding obligation of such party.

8.2 Broker. Broker represents and warrants that it is fully insured and duly licensed by CBP to conduct business as a customs broker.

REPRESENTATIONS AND WARRANTIES

In addition to standard warranties of authority and intent to be bound, the importer should require the customs broker to represent that it has the appropriate licenses and insurance for performing the services.

For more information about representations and warranties, see [Practice Note, Representations, Warranties, Covenants, Rights, and Conditions](#).

9. Confidentiality. Broker and its sub-agents, if applicable, shall keep confidential all information and documentation provided by Client under this Agreement [and identified in writing as confidential], and release such information only to governmental authorities or the Client's surety as required by

Broker for the purposes of providing the Services or as required by law. Upon Client's request, Broker shall promptly return all documents and other materials received from Client. Client shall be entitled to injunctive relief for any violation of this Section.

CONFIDENTIALITY

This pro-importer form includes a simple unilateral confidentiality provision that set out the customs broker's obligations regarding the importer's information. The first sentence reiterates the customs broker's obligation under CBP regulations to maintain the confidentiality of the client's records, except for disclosures to government officers or agents and the client's surety or as required by subpoena ([19 C.F.R. § 111.24](#)). Most of the information the importer provides to the customs broker must be disclosed or used to perform the services, so this provision primarily protects other related information that the importer may disclose to the customs broker.

The customs broker can reduce ambiguity about whether information is confidential and protected under this provision by including the bracketed language in the first sentence, which requires the importer to identify in writing any information that should be confidential.

Consider adding language to this section if the parties have a need to create and enforce confidentiality provisions to cover their affiliates, employees, contractors, and other representatives.

For more information on drafting and negotiating confidentiality agreements, see [Practice Note, Confidentiality and Nondisclosure Agreements](#).

10. [\[Security\]](#). Broker represents and warrants that it is a certified member of the US Customs Trade Partnership Against Terrorism (CTPAT) program, or if it is not a member, that it shall comply with the [CTPAT Minimum Security Criteria for US Customs Brokers](#).]

SECURITY

The Customs Trade Partnership Against Terrorism (CTPAT) is a program established by CBP after the terrorist attacks of September 11, 2001. It allows importers committing to specified supply chain security practices to receive certain benefits from CBP, including:

- Fewer CBP inspections.
- Shorter wait times for inspections at the borders.

The importer should include this optional provision if it is a CTPAT member, because it must ensure that its supply chain business partners, including its customs brokers, either:

- Are CTPAT members.
- Have processes in place to ensure compliance with the CBP's published minimum security requirements.

An importer that is not a CTPAT member may include this provision as well if it wishes.

In addition to including [Section 10](#) in this in this agreement, the importer should also obtain back-up documents from the broker confirming these representations and warranties.

For more information about CTPAT, see [Practice Note, Customs Trade Partnership Against Terrorism: A Guide for US Importers](#).

11. [Term and Termination](#). This Agreement will begin on the Effective Date and will continue for a period of [one (1)/OTHER NUMBER] year[s]. Thereafter, this Agreement shall automatically renew on a year-to-year basis unless earlier terminated as provided herein. This Agreement may be terminated at any time by either party under the following circumstances: (a) if there is a material breach of any of the terms hereof by the other party, and the breach is not cured within [fourteen (14)/OTHER NUMBER] days after the complaining party gives written notice of breach to the defaulting party; (b) effective immediately, if the other party becomes insolvent, makes an assignment for the benefit of creditors, or is placed in receivership, reorganization, liquidation or bankruptcy (voluntary or involuntary); or (c) for any reason and without penalty upon [sixty (60)/OTHER NUMBER] days' prior written notice. If this Agreement is terminated and there are any outstanding matters pertaining to Client for which Broker has been engaged by Client, this Agreement shall continue in force with respect to such matters until such matters are concluded.

TERM AND TERMINATION

The standard form of agreement used by many customs brokers does not include a fixed term or termination provisions, which means the importer has no protection if the customs broker chooses to discontinue its services for the importer. While both parties are subject to the same uncertainty, the risk to the importer is greater because its supply chain can be severely disrupted if the customs broker decides to terminate without notice.

This Standard Document includes a typical term and termination provision to give the importer some assurances of the customs broker's continued availability, specifically:

- Termination for convenience remains available, but the terminating party must give notice, allowing the importer (if the customs broker terminates) time to find a replacement to provide the services.
- Matters that are open on the date of termination must be concluded under the terms of this agreement.

For more information about term and termination provisions, see [Standard Clause, General Contract Clauses: Term and Termination](#).

12. Assignment; Successors. Neither party may assign or delegate its obligations under this Agreement, either in whole or in part, without the prior written consent of the other party[, which consent shall not be unreasonably withheld, conditioned, or delayed]. Any purported assignment of rights or delegation of performance in violation of this section is void. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

ASSIGNMENT; SUCCESSORS

Anti-assignment clauses are included in agreements to restrict the parties' ability to assign their rights under the agreement, often by requiring the non-assigning party's prior written consent. Include the bracketed language at the end of the first sentence if a party wants to ensure the other party cannot withhold, condition, or delay its consent unreasonably. Assignment clauses also often deal with the parties' ability to delegate their obligations.

The second sentence is included to render any assignment in violation of the section ineffective. Without this sentence, the non-assigning party may have only a breach of contract claim, but the assignment to a third party may remain effective.

For more information on anti-assignment and successors and assigns clauses, see [Standard Clauses, General Contract Clauses: Assignment and Delegation](#) and [General Contract Clauses: Successors and Assigns](#).

13. Indemnification. Broker shall indemnify, defend, and hold Client and its officers, agents, employees, and affiliates harmless from and against all claims, causes of action, damages, fines, third-party claims, penalties, losses, expenses, costs (including reasonable attorney's fees), and liabilities Client incurs which relate to or arise out of any breach of this Agreement by Broker or of any express or implied representation or warranty by Broker, or any negligent or willful acts or omissions of Broker or its subcontractors.

INDEMNIFICATION

This provision favors the importer by requiring the customs broker to indemnify it against claims arising from the customs broker's breach of the agreement or negligence. The customs broker should try to negotiate a reciprocal indemnification from the importer for claims it may face arising from:

- Inaccurate information the importer provides (see [Section 6](#)).
- Other claims, losses, and liabilities relating to the import or export of the importer's goods.

Other indemnities may be included in an accompanying transportation or freight forwarding agreement.

For more information about indemnification, see [Practice Note, Indemnification Clauses in Commercial Contracts](#).

14. Governing Law; Dispute Resolution. All matters arising out of or relating to this Agreement shall be governed by and construed exclusively in accordance with the laws of [STATE], without reference to its conflicts of law principles. Any disputes arising out of or relating to this Agreement shall be exclusively submitted to a court of competent jurisdiction in the [FORUM LOCATION]. The parties hereto consent to such exclusive venue and to the jurisdiction of those courts and waives any claims of improper venue or forum non conveniens with respect thereto.

GOVERNING LAW; DISPUTE RESOLUTION

The governing law clause permits the parties to select the state law that governs the agreement. In general, parties should choose the law of a state that has a relationship to the parties or the transaction (or there should be some other reasonable basis for the choice), otherwise the governing law provision may be unenforceable.

This provision also designates the parties' choice of which state will be the forum for any claims they may bring under the agreement.

For more information about choice of law and choice of venue provisions, see [Standard Clause, Boilerplate Clauses: 19. Governing Law](#) and [Standard Clause, Boilerplate Clauses: 20. Submission to Jurisdiction](#).

15. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written. Notwithstanding the content of any Broker invoice or any other document relating to the subject matter of this Agreement, whether written or electronic, the provisions of this Agreement shall govern, and any conflicting, inconsistent, or additional terms contained in such other documents shall be null and void. Any amendments to or modifications of this Agreement, may only be made by mutual written agreement signed by an authorized representative of each party.

ENTIRE AGREEMENT; AMENDMENTS

This provision ensures that no terms beyond those of the contract itself apply to the transaction and that no changes can be made to the terms of the agreement without both parties' written consent.

For more information about these types of provisions, see [Standard Clauses, General Contract Clauses: Entire Agreement](#) and [General Contract Clauses: Amendments](#).

16. Relationship of the Parties. No partnership, joint venture, employee/employer relationship, or other similar relationship exists between the parties except as expressly set forth herein. Broker shall be responsible for its own costs and expenses incurred in performing the Services, and for payment of any federal and state payroll and self-employment taxes attributable to payments received for its Services.

RELATIONSHIP OF THE PARTIES

Sometimes referred to as a "relationship of the parties" clause, this provision is aimed at insuring that the parties do not inadvertently become partners, which can have significant legal repercussions.

This customs broker agreement contemplates the customs broker being an agent of the importer. Therefore, unlike many other similar clauses, this provision does not include language excluding an agency relationship between the parties.

For more information about relationship of the parties clauses, see [Standard Clause, Boilerplate Clauses: 26. Relationship of the Parties](#).

17. Counterparts. This agreement may be signed in any number of counterparts, each of which is an original and all of which taken together form one single document. Signatures delivered by email in PDF format or facsimile shall be effective and deemed to be original signatures.

COUNTERPARTS

This provision gives the parties flexibility to execute separate copies of the agreement, typically at different places and times, and to consider all other properly executed copies as one and the same. This clause also makes electronic versions of the signed contract as effective as a signed original.

For more information about counterparts clauses, see [Standard Clause, General Contract Clauses: Counterparts](#).

18. Miscellaneous. All notices required or permitted hereunder shall be in writing and shall be deemed to be duly given if personally delivered or if mailed (by certified or registered mail, or by reputable commercial courier) to the party concerned at its address as set forth on the first page of this Agreement (or at such other address as a party may specify by written notice to the other). A waiver by either party of any breach of any term or condition must be in writing and shall not be construed as a waiver of any subsequent breach of the same or any other term or condition. No failure on the part of either party to exercise, and no course of dealing with respect thereto, and no delay in exercising, any right, power, or remedy under this Agreement will operate as a waiver thereof. The rights and remedies set forth herein are not exclusive and are in addition to any other rights and remedies available. If any one or more of the provisions of this Agreement shall for any reason be held to be void, illegal, or unenforceable in any respect, such voidance, illegality, or unenforceability shall not affect any other provisions of this Agreement. The headings of the sections herein are for convenience only and do not constitute a part of this Agreement.

MISCELLANEOUS

This provision sets out in condensed form several miscellaneous boilerplate provisions that are typically found in commercial contracts. For more information about the kinds of terms typically included in this kind of provision, see [Standard Clause, General Contract Clauses: Boilerplate Clauses \(Short Form\)](#).

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

[PARTY NAME]

[PARTY NAME]

By_____

By_____

Name:

Name:

Title:

Title:

SCHEDULE A

FEES AND DISBURSEMENTS

[FEE AND DISBURSEMENT SCHEDULE]

PRODUCTS

PLC US Commercial Transactions, PLC US Law Department

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