

COLE INTERNATIONAL INC. TERMS AND CONDITIONS

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COLE INTERNATIONAL INC. ("COLE") TERMS AND CONDITIONS ("TERMS AND CONDITIONS" or "AGREEMENT")

The Customer's attention is drawn to the terms and conditions below that limit Cole's liability as well as those that require the Customer to indemnify Cole in certain circumstances and emphasize the fact that Cole does not include insurance for Goods as part of its services unless Special Arrangements are made by the Customer with Cole in this regard. The French version of the Cole's Terms and Conditions are applicable in relation to any situation where the Customer of Cole is located in the Province of Quebec or Cole's warehouse facility is located in the Province of Quebec. In all other situations, the English version of Cole's Terms and Conditions are applicable, including in those situations where there is a difference in substance from the French version.

PART I. COLE GENERAL TERMS AND CONDITIONS THAT APPLY TO ALL BUSINESS DONE OR SERVICES PERFORMED BY COLE

1. Definitions

"Agency Agreement and Power of Attorney" means the Agency Agreement and Power of Attorney shown in Annex B of Part IV.

"BL" means a Bill of Lading or Waybill covering the carriage of Goods, and includes a FIATA Multimodal Transport Bill of Lading, a Straight Bill of Lading, a Straight Bill of Lading – Short Form, and a Shipper – Provided Short Form Bill of Lading, and whether it be in hard copy or transmitted electronically.

"Canada Customs" means the Canada Border Services Agency, any other Department or Agency, and any other successor Department or Agency of the Government of Canada or any Province thereof having jurisdiction over imports and exports.

"Carrier" means a Party, who whether on its own behalf or through an agent, signs a BL indicating it is the actual Carrier of the Goods.

"Customer" means any Party at whose request or on whose behalf Cole undertakes any business or provides advice, information or services.

"Customs Broker" means situations where Cole provides Services as outlined in Annex A of Part IV.

"Customs Duties" means any duties, taxes and levies on imported or exported Goods under the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act, the Special Import Measures Act or any other laws, regulations or rules of Canada or any other country or jurisdiction, relating to customs, including any penalties, interest or fines imposed under any of the aforementioned laws, regulations or rules.

"Dangerous Good(s)" means Good(s) as statutorily defined in the appropriate Canadian Federal or Provincial legislation or regulations as dangerous Goods.

"Depositor" means the Party that actually deposits the Goods with Cole for warehouse storage.

"Disbursement(s)" means any payment made by Cole, on behalf of the Customer, for or in relation to any product or service rendered in connection with the facilitation of the import and export of Goods, including,

but not limited to, Customs Duties, taxes, freight, storage, penalties, interest and fines and any other payments, including payments for Goods on COD shipments made by Cole on behalf of the Customer.

“Freight Forwarder” means where Cole arranges for the carriage, transportation, storage, packing or handling of Goods or any other services in relation thereto, and without limiting the generality of the foregoing, any other actions or services contemplated by Sub-Clause 4(f), Clause 5 or Sub-Clause 8(a) of Part III.

“Good(s)” means the object(s) of the services provided hereunder and shall include any packing containers or equipment.

"Instruction(s)" means a statement of the Customer's specific requirements.

"Owner" means the owner of the Goods (including any packaging, containers or equipment) in relation to which any business is done or services are performed by Cole.

“Part” means the Part (I to V) of these Terms and Conditions.

“Party(ies)” includes persons, parties, corporations, firms and associations.

“Receipt” means a warehouse receipt.

“Related Party(ies)” means any Cole International Inc.’s parent or subsidiary or any Party associated with or related to Cole International Inc. and using the word “Cole” in its name.

"Cole" means Cole International Inc. “Related Party(ies)”.

"Special Arrangement(s)" means arrangements made in accordance with express Instructions, in writing, that are both received and accepted by Cole.

"Transport Unit(s)" means containers, trailers, flats, tilts, railroad cars, tanks, igloos, or any other unit load device specifically constructed for the carriage or transportation of Goods by land, sea or air.

2. Application

Part I of the Terms and Conditions apply to all business done or services performed by Cole for any Party, including that as described in Parts I to V inclusive of the Terms and Conditions, and whether or not such business done or services performed by Cole is described in Parts II to V of the Terms and Conditions.

3. Definitions

The definitions used in this Part I apply to Parts I to V inclusive of Cole's Terms and Conditions.

4. Headings

Headings of Clauses or groups of Clauses are for convenience of reference only.

5. Cole's Lien

In relation to all Goods and documents relating to the Goods which come into Cole's possession or control, Cole shall have a particular lien and general lien and general right of detention upon each of the Goods and documents for all amounts owing to Cole, whether those amounts were incurred to Cole before, during or after the Goods or documents came into Cole's possession or control, or relate to other Goods or documents or shipments. If any amount due to Cole is not paid within 21 days after notice has been given to the Party from whom the amount is due that such Goods are being detained, the Goods and the documents that relate to the Goods may be sold at public or private sale without advertising or in such other manner as deemed appropriate by Cole, with such sale being at the expense of such Party that owes the amount to Cole. The net proceeds of such sale may be applied in or towards satisfaction of the indebtedness to Cole, and Cole will not be liable for any deficiencies or reduction in value received on the sale of the Goods and the Party responsible for the amount owing shall not be relieved from any liability, other than to the extent of the net proceeds realized from the sale, due to the sale of the Goods.

6. Insurance

- a) Rates do not include Insurance. No insurance will be effected by Cole except if the Customer makes Special Arrangements with Cole. All insurance effected by Cole on behalf of the Customer under Special Arrangements is subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Cole shall not be under any obligation to effect a separate insurance on any Goods but may declare the Goods on any open or general policy. Notwithstanding that the premium on the policy may not be the same as that charged by Cole to the Customer, Cole shall in no circumstances incur liability as insurer and if for any reason the insurers dispute liability, the Customer shall have recourse against the insurers only.
- b) Cole shall receive the benefit of any insurance policy that may have been effected on the Goods by the holder of the Receipt, the Depositor, the Customer, or the Owner of the Goods, including any payment received by the holder of the Receipt, the Depositor, Customer, or Owner of the Goods under any insurance policy, except in situations where for Cole to receive such benefit would invalidate the insurance coverage of the holder of the Receipt, the Depositor, Customer, or the Owner of the Goods.

7. Notice to Cole of Claims

Any claim by the holder of the Receipt, the Depositor, Customer or Owner against Cole, shall be made in writing or by fax and notified to Cole as soon as events which may give rise to a claim are known to the holder of the Receipt, Depositor, Customer or Owner of the Goods, and in any event:

- a) in case of loss and/or damage to Goods within 3 days of such loss or damage,
- b) in case of delay in delivery or non-delivery within 3 days of the date when the Goods should have been delivered,
- c) in any other case, 3 days of the event giving rise to the claim.

Any claim not made and notified within the times provided for by Sub-Clauses (i)-(iii) above shall be deemed to be waived and absolutely barred except where the holder of the Receipt, Depositor, Customer or Owner can

show that it was impossible for it to comply with these time limits, in which case any claim shall be barred if notice of such claim is not given to Cole without delay.

8. Time Bar for Bringing Legal Action against Cole

Cole shall in any event be discharged of all liability unless a legal action is brought within 6 months from the date of any event or occurrence alleged to give rise to a cause of action against Cole, whether or not such event or occurrence is known to the holder of the Receipt, the Depositor, the Customer or the Owner.

9. Limits on Cole's Liability and Others Associated with Cole

- a) Cole shall not be liable for consequential damages, including without limiting the generality of the foregoing, claims for loss of use, business interruption, loss of profits or revenue, interest, fixed or variable costs, loss of good will, work stoppage, impairment of other Goods, loss by reason of shut down or non-operation, increased expenses of operation, or loss due to exchange rate fluctuations, increased levies or taxes by authorities. Cole shall also not be liable for punitive or exemplary damages or aggravated damages.
- b) Except where Cole acts as Carrier and Part V of the Terms and Conditions apply, the total liability of Cole to the holder of the Receipt, the Depositor, Customer, or Owner arising out of any particular event that gives rise to any loss or damage, shall not exceed \$75000 Canadian ("Cole's Total Cap of Its Liability"). In the event of delay of, damage to or loss or destruction of Goods where either the declared or depreciated value of the Goods that are delayed, damaged, lost or destroyed is less than \$75000 Canadian, Cole's Total Cap of Its Liability in relation to the holder of the Receipt, the Depositor, Customer or Owner, shall be reduced from \$75000 Canadian to the lesser of the declared value or the depreciated value of the Goods that are delayed, damaged, lost or destroyed. Loss or damage caused by continuous or repeated exposure to, or occurrence of, the same, or substantially the same, general conditions, acts, or omissions, shall collectively be deemed to constitute a single event and in relation to which the total liability of Cole shall not exceed \$75000 Canadian.
- c) Except under Special Arrangements, advice and information that is not related to Instructions accepted by Cole, is provided gratuitously. Any services provided gratuitously by Cole, are provided by Cole without liability, whether negligently provided or not.
- d) Cole shall be relieved of liability for any loss or damage if such loss or damage was caused by an act or omission of the holder of the Receipt, Depositor Customer, Owner, or Party other than Cole, including by an act or omission of a Related Party.
- e) Claims against Cole based upon a claim in bailment or the laws of bailment are specifically excluded.
- f) All exclusions or limitations of liability apply whether the claim against Cole is based upon a claim in warranty, statute, contract, tort (including negligence and strict liability), bailment, or any other cause of action.
- g) Whenever the liability of Cole is excluded or limited under the Terms and Conditions, such exclusion or limitation, as well as time limits for the bringing of actions and provisions pertaining to notice of actions or benefits of any insurance policy effected by the Customer or Owner, shall apply to claims made against a Related Party, as well as those made against directors, officers, employees, agents or representatives of Cole or a Related Party.

- h) Part of the consideration for the rates offered by Cole and any Related Party, is the limitations and exclusion of liability as stated in this Agreement. The Customer agrees and acknowledges that the rates are dependent upon this limitation.

10. Customer Has No Right of Set-Off

The Customer shall pay to Cole immediately all amounts owing when due in accordance with the Cole invoice sent to the Customer, without reduction or deferment on account of any claim, counterclaim or set off the Customer has or may have in relation to Cole.

11. Cole's Right to Terminate Provision of Its Services

Without in any way negating or diminishing Cole's Lien under Clause 5 hereof, Cole shall have the right to immediately terminate without notice any and all services it is providing to the Customer in the event of any of the following occurring:

- a) The Customer failing to pay any invoice received from Cole within 30 days of receipt of such invoice by the Customer, and whether such invoice is transmitted to the Customer in hard copy or electronically;
- b) Insolvency of the Customer;
- c) Initiation of any proceedings in bankruptcy by or against the Customer, whether such proceedings be under the Bankruptcy and Insolvency Act of Canada or similar legislation of any other jurisdiction;
- d) Initiation of any proceedings by or against the Customer under the Companies' Creditors Arrangement Act of Canada, similar legislation of other jurisdictions, or legislation of other jurisdictions whereby the Customer is doing or would do some form of business re-organization, including but not limited to situations where the Customer is insolvent; or
- e) Any assignment by the Customer for the benefit of creditors.

12. National or International Sanction List for Denied Parties

The Customer is not involved with any Party listed on any national or international sanction list for denied parties. It warrants to Cole that it is not so involved. Breach of this warranty shall entitle Cole to all damages suffered by Cole including fines and penalties and expenses issued by authorities, and shall entitle Cole to terminate its services to the Customer without liability of any nature or recourse by the Customer.

13. Severability

Each of the clauses of the Terms and Conditions is and shall be deemed to be separate and severable, and if any provision or part of the Terms and Conditions is held for any reason to be unenforceable, the remainder of the Terms and Conditions or part thereof shall remain in full force and effect.

14. Jurisdiction and Law

- a) When Cole acts as a Warehouseman, the terms and conditions of the contract with Cole and any claims against Cole arising from it acting as a Warehouseman, shall be exclusively governed by and dealt with through the laws and courts of the Province of Canada in which the warehouse facility of Cole used for the storage of the Goods is located.

- b) When Cole acts as a Carrier, the terms and conditions of the contract with Cole and any claims against Cole arising from it acting as a Carrier, shall be exclusively governed by and dealt with through the law and courts as stated on any BL Cole signs as Carrier. To the extent any BL that Cole signs as Carrier does not deal with the issues of the jurisdiction for the bringing of claims against Cole and applicable law, the terms and conditions of the contract with Cole and any claims against Cole shall be governed by Sub-Clause (c).
- c) The terms and conditions of the contract with Cole not falling within Sub-Clause (a) or (b), shall be exclusively governed by and dealt with through the law and courts of the Province of Canada in which the office of Cole through whom the Customer has dealt with directly pertaining to any particular transaction(s) that is (are) the subject matter of a claim or action, is located. In the event the Customer has dealt with directly more than one office of Cole pertaining to any particular transaction(s) that is (are) the subject matter of a claim or action, the laws and courts of the Province of Canada in which the office of Cole is located that dealt to the greatest degree with the particular transaction(s) that is (are) the subject matter of the claim or action, shall govern the terms and conditions of the contract with Cole and shall deal with the claim or action.
- d) All contracts entered into between a foreign Customer and Cole are deemed to be made in Canada and governed exclusively by the laws of Canada or the province as per Sub-Clauses (a), (b) or (c) above.

15. Time of the Essence

Time shall be strictly of the essence in the Agreement.

16. Entire Agreement

This Agreement constitutes the entire agreement between Cole and the Customer with respect to the subject matter hereof.

17. Waiver Negated

The waiver or acquiescence by either party of any breach of this Agreement shall not constitute a waiver of any subsequent or other breach of this Agreement.

18. Province of Quebec

The parties hereto acknowledge that they have requested and are satisfied that the present Agreement be drawn up in English. Les parties reconnaissent qu'elles ont exigé que cette convention soit rédigée en anglais et s'en déclarent satisfaites.

19. Electronic Communications

The parties agree that where they have used electronic communications to transact in whole or in part any business such communications will be given legal effect in accordance with the provisions (so far as they may be applicable) of the Uniform Electronic Commerce Act as approved by the Uniform Law Conference of Canada.

20. Disclaimer

The information or services provided by Cole are based solely on the information provided by your firm, your vendors, agents, affiliates or carriers at the time the service or information is provided. Should additional information become available, the information we provided may be subject to change.

The information provided by Cole does not take the place of Canadian, USA or Foreign customs regulations or laws, but should be used and read in conjunction with such regulations. Canadian, USA and Foreign customs laws and regulations change frequently. The information provided through the provision of our services is based on the Customs laws and regulations of Canada and in effect at the time the service or information is provided.

In rendering advice or opinions, Cole have considered the applicable provisions of the Customs Act, Customs Tariff, or other statutes and the respecting regulations, restrictions, judicial or administrative interpretations that may affect your firm. However, the information contained provided through our services does not take into account or anticipate any changes in law or practice by way of judicial, governmental or legislative action, new restrictions or new interpretations that may be received following the date the information is provided.

Cole's findings and conclusions are limited by the completeness and accuracy of the information provided by your firm, your vendors, agents, affiliates or carriers to Cole during the provision of our services. Cole does not accept responsibility for any loss or damages, if any, suffered by any party as a result of new or missing information that could have affected decisions made, actions taken or the final results based on the information or services Cole has provided.

21. Force Majeure

Cole shall not be liable for any failure or delay in performance of its obligations under these terms and conditions arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; pandemics or epidemics; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or telephone communication service; accidents; labor disputes; acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation. Cole retains the right to modify any of our fees, charges or rates to account for changes or modifications required to our services or operations, as a result these issues.

PART II. ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN COLE ACTS AS WAREHOUSMAN

1. Cole's Contract as Warehouseman

Parts I and II of the Terms and Conditions shall constitute the contract between the Owner, Customer, or the Depositor, and Cole acting as Warehouseman. Cole only acts as a Warehouseman when it receives Goods into its possession for purposes of storage in a facility actually owned or controlled by Cole itself or in any other situation where Cole itself issues a Receipt. Cole acting as Warehouseman includes any situation where Cole is involved in any way with movement of Goods to, within, between, or from warehouse facilities that it owns or controls. Cole does not act as a Warehouseman in any other circumstances. For greater clarity, Cole does not act as Warehouseman when third Parties, including Related Parties, receive Goods into their possession except in those situations where Cole itself has issued the Receipt. Cole assumes and shall have absolutely no responsibility or liability for the actions or inactions of third Parties, including Related Parties.

2. Basis of Charges as Warehouseman

- a) The class of storage in which the Goods covered by this Receipt are to be stored, the amount or amounts due thereon for disbursements or services by Cole prior to issue of this Receipt, and the rate per month per unit to be charged for storage of such Goods, are set out on the face of the Receipt issued by Cole;
- b) A fraction of a month shall be reckoned as a full storage month. Provided that if reasonable notice has been given before the expiry of the storage month that Goods are to be delivered out of the warehouse at or before expiry of the current storage month, then if any delay in so delivering such Goods extends beyond the expiry of the last day of the current storage month (the "expiry date") and such delay is not due to the Customer, Owner, Depositor or holder of the Receipt or the agent of any of them, Cole shall limit the storage charges for the period beyond the expiry date to one thirtieth of the monthly charge for each day that the Goods remain in the warehouse beyond the expiry date.
- c) Charges for services required by the Customer, Owner, holder of the Receipt or Depositor, charges necessitated by the nature of the Goods and that are incurred after issue of the Receipt, and handling charges upon delivery of the Goods out of storage, will be charged by Cole in addition to the monthly storage charges.
- d) Charges incurred preliminary to issue of the Receipt as set out on the face the Receipt, are due upon issue of the Receipt. Charges incurred subsequently will be billed monthly and due forthwith, save for charges incurred in the thirty days immediately preceding delivery of any Goods out of storage which are due at or before delivery of the Goods.
- e) Any charge made with respect to the Goods covered by the Receipt shall conform to Cole's tariff in effect at the time the service is performed. This tariff may be reviewed at the office of Cole during regular office hours. Quotations for services not included in such tariff will be given on request. No increase in regularly recurring charges will be made on Goods in storage until thirty days after a notice of such increase charge has been mailed to the Customer, Owner, Depositor or the last known holder of the Receipt, unless otherwise agreed to by the holder of the Receipt.

3. Delivery and Transfer Requirements

- a) Unless Cole in its absolute discretion agrees otherwise, no Goods covered by the Receipt shall be delivered or transferred except upon surrender of the Receipt to Cole. If required by Cole in its absolute discretion, no Goods covered by the Receipt shall be delivered or transferred unless Cole also receives written Instructions acceptable to Cole from the appropriate Party allowing such delivery or transfer of the Goods. In the event that the Receipt is lost or destroyed, unless in the absolute discretion of Cole, Cole decides otherwise, Goods covered by the Receipt shall not be delivered or transferred until Cole is furnished with a bond of indemnity acceptable to Cole or an order of a court having jurisdiction over the Goods.
- b) If the Receipt is endorsed "Non-negotiable" and a request is made orally or in writing by the holder of the Receipt or his representative for delivery of all or part of the Goods covered by the Receipt, Cole shall not be held responsible for any loss or damage arising from any error in the giving or receiving of such Instructions by or from the holder of the Receipt or his representative.
- c) Unless all unpaid charges incurred with respect to the Goods to be delivered or transferred are paid in full, Cole may refuse transfer or delivery of the Goods.

4. Physical Transfer of Goods

Unless decided otherwise by Cole in its absolute discretion, no physical transfer of the Goods covered by the Receipt involving a change in the class of storage, the storage rate or the insurance rate shall be made except upon receipt of written Instructions signed by the holder of the Receipt or other Party acceptable to Cole, and if appropriate, upon surrender of the Receipt for the purpose of endorsing thereon the change in class, rate of storage, or insurance rate.

5. Access and Inspection

The holder of the Receipt, or any person having the written authority of the holder of the Receipt, may, subject to insurance regulations or other reasonable limitations imposed by Cole, have access to the Goods covered by the Receipt for inspection of the Goods only when accompanied by a representative of Cole for that purpose, whose time shall be charged according to Cole's tariff in force at the time such access to the Goods is given.

6. Removal of Goods

- a) Cole may, upon written notice to holder of the Receipt, require the removal of the Goods by the end of the next succeeding storage month. Such notice may be given by delivery addressed to the last known place of business of the holder of the Receipt, or if there is no known last place of business, the residence of the holder of the Receipt.
- b) Where Goods are of a perishable nature, may deteriorate greatly in value, may potentially damage other stored property, Cole may upon giving the holder of the Receipt written or oral notice, or if the holder of the Receipt is not known, oral or written notice to the Depositor, requiring the holder of the Receipt or the Depositor to satisfy the lien upon the Goods and to remove them from the warehouse; and upon failure of the holder of the Receipt or the Depositor to satisfy Cole's Lien and remove the Goods within the time specified in the notice given, Cole may sell the Goods at public or private sale without advertising or in such other manner deemed appropriate by Cole, apply the proceeds of sale

of the Goods to any amount owing to Cole by the holder of the Receipt, the Depositor, Customer, or Owner of the Goods, whether for warehousing charges or otherwise, and the holder of the Receipt, Depositor, Customer, or Owner of the Goods, shall be liable to Cole for the balance owing to Cole after it applies the proceeds to such balance owing.

- c) Where in the opinion of Cole the nature or the condition of the Goods stored creates a condition hazardous to the safe keeping and storage of other commodities in the warehouse or to any property or person, Cole may immediately remove such stored Goods from the warehouse and shall subsequently give such notice to the holder of the Receipt, or if the holder of the Receipt is not known, the Depositor, of such removal and the location of the Goods. In such case the holder of the Receipt, Depositor, Customer, or Owner, shall in addition to all other amounts owing to Cole, be liable for all storage and other charges related to delivery of the Goods to the changed location and all charges associated with storing the Goods at the changed location; and any and all liability on the part of Cole for the safe keeping of such Goods shall cease.

7. General

- a) All incoming shipments should be delivered to Cole freight prepaid. Cole reserves the right to refuse to accept delivery of Goods that are not delivered freight prepaid or that are shipped freight collect.
- b) If the Depositor or recipient of the Goods or the transportation company that delivers or receives the Goods does not furnish a checker, Cole's load or unload count shall be conclusively deemed to be correct.

8. Responsibility of Cole and Additional Limits on Cole's Liability

- a) The responsibility of Cole is to show reasonable care in relation to the Goods stored with Cole but its liability for breach of such duty or arising out of it acting as warehouseman is limited as stated in Parts I and II of the Terms and Conditions
- b) The quality, condition, contents and value of Goods stored are not known to Cole except as declared and described on the face of the Receipt by the Depositor.
- c) Cole shall not be responsible for loss or damage to the Goods covered by this Receipt resulting from any of the following perils no matter how those perils arose but based upon the assumption these perils did not arise due to the breach of duty of Cole to exercise reasonable care as warehouseman:
- d) Fire or explosion; epidemic or other severe health crisis; flood, wind, storm, earthquake, or other acts of God; war, insurrection, riot, civil or military authority; strikes, picketing, or any other labour trouble; nuclear energy or power; shrinkage in weight, loss in quantity or other change due to the inherent or perishable nature of the commodity; insufficient cooperage, boxing, crating or packaging; wear and tear; any cause not originating in the warehouse; any cause beyond the control of Cole; leakage or failure to detect the same; concealed damage; breakage; theft or pilferage; vermin, rodents, insects or other pests; sprinkler leakage or water;
- e) Cole's charges incurred with respect to Goods lost or damaged as a result of any such peril mentioned under Sub-Clause (c), shall constitute a charge on the remaining Goods covered by this Receipt and against the holder of the Receipt or the Depositor, Customer, or Owner of the Goods.

- f) Cole is not responsible for delays in loading or unloading railway cars, nor for demurrage charges or other time penalties arising from any delay.

9. Special Conditions Relating to Particular Goods

- a) The Customer undertakes not to tender for storage any Dangerous Goods, including but not limiting the generality of the foregoing, any Goods that are of a dangerous, flammable, radio-active, hazardous or damaging nature, except under Special Arrangements. If any such Goods, including Dangerous Goods are accepted by Cole under Special Arrangements, Customer undertakes to mark any such Goods and the outside of any packages or container in which they may be placed, as required by any laws or regulations which may be applicable during the carriage. Customer further warrants that any such Goods, the storage thereof as requested by the Customer, as well as the packaging and marking thereof, comply in all respects with the provisions of the Transportation of Dangerous Goods Act, 1992 (or any similar or successor legislation) of the Parliament of Canada, similar legislation of any province or other applicable jurisdiction, as well as any regulations passed under such legislation.
- b) If Cole agrees to accept under Special Arrangements, Dangerous Goods or any other Goods mentioned or described under Sub-Clause (a), Customer agrees to indemnify and save harmless Cole in relation to any claims made against Cole or costs incurred by Cole which in any way arise out of or are related to such Goods, including all civil claims, fines, penalties, other levies imposed against Cole, and Cole's legal costs and disbursements on a solicitor and his own client basis.
- c) Goods, which in the opinion of Cole or the Party who has custody or possession thereof, are, or at any time hereafter, become dangerous and present a hazard, may at any time or place be unloaded, destroyed or rendered harmless without compensation, and if the Customer has not given notice of their nature to Cole under Sub-Clause (a) above, Cole shall be under no liability to make any general average contribution in respect of such Goods.
- d) Except under Special Arrangements, Cole will not accept or deal with bank notes, bonds, negotiable instruments or securities of any kind, bullion, coin, precious stones, jewelry, valuables, antiques, pictures, human remains, livestock, plants, pharmaceutical products, controlled drugs or substances, or illegal Goods. Should any Customer nevertheless deliver any such Goods to Cole or cause Cole to handle or deal with any such Goods otherwise than under Special Arrangements, Cole shall be under no liability whatsoever for or in connection with such Goods howsoever arising.
- e) Cole may at any time in writing waive its rights and exemptions from liability under Sub-Clause (d) above in respect of any one or more of the categories of Goods mentioned herein or of any part of any category. Such waiver shall not be effective unless it is in writing signed by Cole.
- f) For services requiring special arrangements the Customer must give instructions in writing to Cole a reasonable time before the tender of goods for storage or transport where it
- g) requests Cole to:
 - i. arrange for the departure or arrival of goods before specific dates;
 - ii. arrange for goods to be carried, stored or handled separately from other goods;
 - iii. arrange for the transport of goods that may taint or affect other goods, or may harbour or encourage vermin or pests;
 - iv. make a declaration of value or special interest in delivery to any carrier or terminal;
 - v. direct carriers or delivery agents to hold goods until payment of any amount or until

- surrender of a document;
- vi. arrange for the transport of goods of unusual high value, luxury goods, currency, negotiable Instruments or securities of any kind, precious metals or stones; antiques or art; human remains, livestock or plants, or any other comparable cargos.

Where for any reason it does not accept such instructions, Cole must promptly so advise the Customer by any means of communication used in the ordinary course of business. If it continues to use the Cole's services for the contemplated transport after receiving such advice, the Customer assumes all risks connected with the non-performance of such instructions, whether caused or contributed to by the Company's negligence or not.

PART III. ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN COLE ACTS AS FREIGHT FORWARDER

1. Cole's Contract as Freight Forwarder

Parts I and III of the Terms and Conditions shall constitute the contract between the Customer and Cole acting as Freight Forwarder.

2. Non-Applicability of Part III if Cole Acts as the Actual Carrier

Cole may in respect of all or any part or parts of any contract for the movement of Goods, sign a BL that shows Cole is the actual Carrier. Where this occurs, Parts I and V of Cole Terms and Conditions apply, and not this Part III, to that part of the transportation of the Goods, and only that part of the transportation of the Goods, covered by the BL signed by Cole as the actual Carrier. Prior to and after that part of the transportation of the Goods covered by the BL signed by Cole as the actual Carrier, Parts I and III shall constitute the contract between Cole and the Customer.

3. Cole's General Responsibilities

- a) Subject to the limitations contained in Parts I and III of the Terms and Conditions, Cole shall perform its duties as Freight Forwarder with reasonable care.
- b) Subject to Sub-Clause 6(a) hereof, Cole shall carry out its services within a reasonable time.
- c) Subject to the limitations contained in the Terms and Conditions and the discretion reserved to Cole in the Terms and Conditions, Cole shall take all reasonable steps to perform any of the Customer's Instructions accepted by Cole.
- d) If at any stage in any transaction, Cole should reasonably consider that there is good reason in the Customer's interests to depart from any of the Customer's Instructions, Cole shall be permitted to do so and shall not incur any additional liability in consequence of so doing.
- e) If after a contract has been agreed, events or circumstances come to the attention of Cole which in the opinion of Cole make it wholly or in part impossible for Cole to fulfill its duties, it shall take reasonable steps to inform the Customer of such events or circumstances and seek further Instructions.
- f) Quotations are given on the basis of immediate acceptance and are subject to withdrawal or revision. Unless otherwise agreed in writing, Cole shall be, after acceptance, at liberty to revise quotations or charges with or without notice in the event of changes outside Cole's control, including changes occurring in schedules, points of departure, currency exchange rates, rates of freight, insurance premiums or any charges applicable to the Goods.

4. The Customer's Undertakings

- a) The Customer shall be deemed to be competent and to have reasonable knowledge of matters affecting the conduct of their business, including terms of sale and purchase and all other matters relating thereto.

- b) The Customer shall give sufficient and executable Instructions and assumes full responsibility for the accuracy of all Instructions and information provided by it to Cole;
- c) The Customer warrants that it is either the Owner or the authorized agent of the Owner and also that it is accepting these Conditions not only for itself but also as agent for and on behalf of the Owner.
- d) The Customer warrants that the description and particulars of any Goods furnished by or on behalf of the Customer are full and accurate.
- e) When Goods are accepted or dealt with upon Instructions to collect freight, duties, taxes, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for these amounts if they are not paid by such consignee or other person immediately when due.
- f) It is agreed that Cole does, and shall be deemed to, contract as agent for the Customer pertaining to contracts entered into with any other Party, including any contracts entered into with a Related Party.
- g) The Customer shall indemnify Cole against all duties, taxes, payments, fines, expenses, losses, damages (including physical damage) and liabilities, including without limitation any storage, demurrage, port, or terminal charges, in excess of the liability of Cole in accordance with the Terms and Conditions, suffered or incurred by Cole in the performance of its obligations under any contract to which the Terms and Conditions apply.
- h) The Customer shall warn Cole if any Goods which are the subject of any transaction to which the Terms and Conditions apply are liable to taint or affect other Goods, or are likely to harbour or encourage vermin, rodents, insects or other pests, and the Customer shall indemnify Cole against any liability, loss, damage, costs or expenses incurred by Cole as a consequence of the Customer's failure to do so or for failure to do so in a timely fashion.
- i) The Customer warrants that all Goods have been properly and sufficiently prepared, packed, stowed, labeled and/or marked, and that the preparation, packing, stowage, labeling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.
- j) Where the Goods are carried in or on any Transport Unit, the Customer warrants:
 - i. that the Transport Unit has been properly and competently loaded;
 - ii. that the Goods are suitable for carriage in or on the Transport Unit; and
 - iii. that the Transport Unit is in a suitable condition to carry the Goods loaded therein.
- k) Without limiting the foregoing, the Customer is responsible for timely communication of and warrants the accuracy of the verified gross mass (VGM) of the package(s) and or the Transport Unit and the identity of the duly authorized person so verifying. The Customer shall maintain documentation evidencing measurement of VGM as required by law.

- l) The Customer shall indemnify Cole in respect of any claims of a general average nature or by maritime salvors which may be made on it and shall provide such security as may be required by Cole in this connection.

5. Cole's Role as Freight Forwarder

- a) Cole does not make any contract with the Customer for the carriage, transportation, storage, packing or handling of any Goods nor for any other physical service in relation to any Goods and acts solely as agent on behalf of the Customer in securing services by establishing contracts with third Parties so that direct contractual relationships are established between the Customer and such third Parties. For greater clarity, Cole acts solely as agent on behalf of the Customer in any situation where Cole contracts with any Related Party. Cole acts solely as agent on behalf of the Customer in any situation where a BL is signed by or on behalf of another Party, including a Related Party, as Carrier, including in any situation where Cole signs the BL on behalf of another Party, including a Related Party.
- b) Without limiting the generality of the foregoing, Cole at all times shall be deemed to be acting as agent for the Customer in any case where Cole enters into a contract with any other Party for the carriage, transportation, storage, packing or handling of Goods or for any other services in relation thereto. Subject to any applicable laws, such contract is capable of being enforced by the Customer or Owner as principal whether or not the Customer or Owner is named or disclosed as principal by Cole.

6. Cole's General Conditions as Freight Forwarder

- a) Cole is not responsible for departure or arrival dates of Goods.
- b) If delivery of the Goods or any part thereof is not taken by the Customer, consignee or Owner, at the time and place when and where Cole is entitled to call upon such person to take delivery thereof, Cole shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of Cole in respect of the Goods or that part thereof so stored shall wholly cease and the cost of such storage if paid for or payable by Cole or any Party with whom Cole deals, shall immediately upon demand be paid by the Customer to Cole.
- c) Cole shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances)
 - i. on 21 days notice in writing to the Customer, or where the Customer cannot be traced and reasonable efforts have been made to contact any Parties who may reasonably be thought by Cole to have any interest in the Goods, any Goods which have been held by Cole for 90 days and which cannot be delivered as instructed; and
 - ii. without prior notice, Goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to third Parties, other Goods, or to contravene any applicable laws or regulations.
 - iii. In acting under Sub-Clauses (i) and (ii), Cole shall give appropriate credit to the Customer for any balance arising out of the proceeds of sale of the Goods after deduction of Cole's costs of sale and accumulated costs relative to the transaction.

- d) Except insofar as may be required to comply with the Customer's Instructions, Cole shall not be obliged to arrange for the Goods to be carried stored or handled separately from other Goods.
- e) Except in accordance with Special Arrangements with the Customer, Cole shall not be obliged to make any Declaration for the purpose of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.
- f) Except under Special Arrangements or under the terms of a printed document signed by Cole, any Instructions of the Customer relating to the delivery or release of Goods in specified circumstances only, such as (but without prejudice to the generality of this Clause) against payment or against surrender of a particular document, are accepted by Cole only as agent for the Customer.
- g) Despite the acceptance by Cole of Instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall remain responsible for all such freight duties, charges or other expenses in the event they are not paid, no matter what the reason is for such non-payment.

7. Cole's Special Conditions Relating To Particular Goods

- a) The Customer undertakes not to tender for transportation any Dangerous Goods, including but not limiting the generality of the foregoing, any Goods that are of a dangerous, flammable, radio-active, hazardous or damaging nature, except under Special Arrangements. If any such Goods, including Dangerous Goods are accepted by Cole under Special Arrangements, Customer undertakes to mark any such Goods and the outside of any packages or container in which they may be placed, as required by any laws or regulations which may be applicable during the carriage. Customer further warrants that any such Goods, the transportation thereof as requested by the Customer, as well as the packaging and marking thereof, comply in all respects with the provisions of the Transportation of Dangerous Goods Act, 1992 (or any similar or successor legislation) of the Parliament of Canada, similar legislation of any province or other applicable jurisdiction, as well as any regulations passed under such legislation.
- b) If Cole agrees to accept under Special Arrangements, Dangerous Goods or any other Goods mentioned or described under Sub-Clause (a), Customer agrees to indemnify and save harmless Cole in relation to any claims made against Cole or costs incurred by Cole which in any way arise out of or are related to such Goods, including all civil claims, fines, penalties, other levies imposed against Cole, and Cole's legal costs and disbursements on a solicitor and his own client basis.
- c) Goods, which in the opinion of Cole or the Party who has custody or possession thereof, are, or at any time hereafter, become dangerous and present a hazard, may at any time or place be unloaded, destroyed or rendered harmless without compensation, and if the Customer has not given notice of their nature to Cole under Sub-Clause (a) above, Cole shall be under no liability to make any general average contribution in respect of such Goods.
- d) Except under Special Arrangements, Cole will not accept or deal with bank notes, bonds, negotiable instruments or securities of any kind, bullion, coin, precious stones, jewelry, valuables, antiques, pictures, human remains, livestock plants, pharmaceutical products, controlled drugs or substances, or illegal Goods. Should any Customer nevertheless deliver any such Goods to Cole or cause Cole to handle or deal with any such Goods otherwise than under Special Arrangements, Cole shall be under no liability whatsoever for or in connection with such Goods howsoever arising.

- e) Cole may at any time in writing waive its rights and exemptions from liability under Sub-Clause (d) above in respect of any one or more of the categories of Goods mentioned herein or of any part of any category. Such waiver shall not be effective unless it is in writing signed by Cole.
- f) For services requiring special arrangements the Customer must give instructions in writing to Cole a reasonable time before the tender of goods for storage or transport where it
- g) requests Cole to:
 - i. arrange for the departure or arrival of goods before specific dates;
 - ii. arrange for goods to be carried, stored or handled separately from other goods;
 - iii. arrange for the transport of goods that may taint or affect other goods, or may harbour or encourage vermin or pests;
 - iv. make a declaration of value or special interest in delivery to any carrier or terminal;
 - v. direct carriers or delivery agents to hold goods until payment of any amount or until surrender of a document;
 - vi. arrange for the transport of goods of unusual high value, luxury goods, currency, negotiable Instruments or securities of any kind, precious metals or stones; antiques or art; human remains, livestock or plants, or any other comparable cargos.

Where for any reason it does not accept such instructions, Cole must promptly so advise the Customer by any means of communication used in the ordinary course of business. If it continues to use the Cole's services for the contemplated transport after receiving such advice, the Customer assumes all risks connected with the non-performance of such instructions, whether caused or contributed to by the Company's negligence or not.

8. Express Authorization Of Cole As Agent For The Customer

- a) Cole shall be entitled and the Customer hereby expressly authorizes Cole, to enter into contracts on behalf of the Customer, including without limiting the generality of the foregoing, with any Related Party:
 - i. for the carriage or transportation of Goods by any route or means;
 - ii. for the storage, packing, trans-shipment, loading, unloading or handling of the Goods by any Party or at any place, and for any length of time,
 - iii. for the carriage, transportation or storage of Goods in or on Transport Units or with other Goods of whatever nature.
- b) For greater certainty, in relation to any contracts entered into under Sub-Clause 4(f), Clause 5 or Sub-Clause 8(a), or any other contract entered into through Cole's role as Freight Forwarder, it is agreed that Cole does enter such contracts, and shall be deemed to have entered such contracts, as agent for the Customer.
- c) In any situation where Cole contracts with any Party, including any Related Party, the terms and conditions of contract of such other Party, including any Related Party, shall be the terms and conditions of the contract between the Customer and such other Party, including a Related Party, whether contained on the back of a BL or otherwise.

- d) Where there is a choice of rates according to the extent or degree of the liability assumed by Carriers, Cole, or others, no declaration of value where optional can be made nor will be made by Cole except under Special Arrangements.
- e) Cole shall have no liability to the Customer by reason of having entered into any contract on behalf of the Customer whereby the extent or degree of the liability assumed by a Carrier or other Party, including a Related Party, is in any respect excluded or limited, except where such contract is entered into contrary to written specific Instructions given by the Customer that were accepted by Cole in writing.

9. Customary Remuneration Received from Third Parties

Cole shall be entitled to be paid and retain all brokerages paid by carriers, commissions, documentation allowances, profits on foreign exchange and other remunerations paid by third parties as is customary in the trade.

PART IV. ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN COLE ACTS AS CUSTOMS BROKER

1. Cole's Contract as Customs Broker

Parts I and IV of the Terms and Conditions shall constitute the contract between the Customer and Cole as Customs Broker. In Part IV, "Services" means those services listed in Annex A in Part IV ("Annex A") and that are provided to the Customer by Cole.

2. Fees and Disbursements

- a) The fees for Services shall be in accordance with the fee schedule as agreed upon between the Customer and Cole as amended from time to time.
- b) The Customer shall pay to Cole all fees charged for the Services rendered by Cole to the Customer.
- c) Disbursements incurred by Cole on behalf of the Customer shall be reimbursed to Cole by the Customer.

3. Invoicing and Payment

- a) Cole shall issue invoices to the Customer for all fees and Disbursements pertaining to Services rendered to and on behalf of the Customer.
- b) All such invoices shall be payable upon receipt.
- c) Interest on all late payments shall be paid at the rate set by Cole, as amended from time to time, and interest shall be charged commencing 21 days after the invoice date.
- d) Interest on late payments shall be paid at the rate of prime lending rate plus 5% per annum.
- e) In the event of default of any payment required hereunder, Cole, in addition to any other legal rights and remedies of Cole, shall be subrogated to the rights of Canada Customs and Her Majesty the Queen for the recovery of any Customs Duties outstanding. If the Customer is in default of payment of any monies under this Agreement, Cole will be entitled to retain possession of Customer's goods until payment in full has been received. If such payment is not received within 45 days of the invoice date then Cole will be entitled to cause the goods to be sold at public auction. Cole will be entitled to retain the proceeds of any such sale to set off any amounts due hereunder together with all reasonable costs associated with the storage, transportation and auction of such goods. The balance of proceeds, if any, will be paid to the Customer within a reasonable time after receipt of such proceeds by Cole.

4. Advancement of Funds

- a) Upon request by Cole, the Customer shall provide to Cole, prior to the release of a shipment of the Goods imported by the Customer, sufficient funds to enable Cole to pay on behalf of the Customer all Disbursements that are estimated by Cole to be payable on such shipment.

- b) If, at any time, Cole or Canada Customs determines that additional funds are required with respect to Goods imported by the Customer, the Customer shall upon demand advance such additional funds to Cole.
- c) If after payment of Disbursements by Cole concerning the Goods imported by the Customer, any balance of funds remains outstanding to the credit of the Customer, Cole shall return to the Customer, unless instructed by the Customer to the contrary, any remaining balance of funds.
- d) If the Customer fails to advance funds to Cole upon request by Cole as mentioned above, Cole shall have no obligation with respect to rendering Services concerning the Goods for which funds have been requested by Cole and not advanced by the Customer.

5. Duties and Responsibilities of the Customer

- a) The Customer shall:
 - i. provide to Cole all information necessary for Cole to provide the Services set out herein, including all information required to complete Canada Customs documentation and/or data requirements;
 - ii. promptly review all documentation and/or data and notify Cole of any inaccuracies, errors or omissions found therein and advise Cole promptly and within the time periods set out in Clause 7 hereof;
 - iii. reimburse, indemnify and save harmless Cole with respect to any of the matters set out in Sub-Clause (c) hereof;
 - iv. indemnify and save harmless Cole against any and all actions, claims, suits or demands of any nature whatsoever arising from third party claims which result from inaccuracies, mistakes or omissions in the information and documentation provided to Cole by the Customer or its agents and relied upon by Cole.
- b) The Customer warrants that it is the importer, exporter, or Owner of the Goods for which it has retained Cole; that it has full power and authority to retain, appoint as attorney and instruct Cole; and that all information provided to Cole shall be complete, true and accurate and acknowledges that Cole shall be relying on such information to provide the services set out herein;
- c) The Customer shall be solely liable and responsible for:
 - i. the accuracy and completeness of all information provided by the Customer to Cole;
 - ii. any and all Disbursements made by Cole on behalf of the Customer;
 - iii. any Customs Duties, fines, penalties, interest or other levies imposed by Canada Customs, other Canadian government departments, or the government or governmental agencies or representatives of any other country or jurisdiction, with respect to the Goods imported or to be imported into Canada, or exported or to be exported from Canada, by the Customer;
 - iv. any loss or damage incurred or sustained by Cole in relation to the provision of services to the Customer herein;
 - v. return freight and any other charges on Goods if they are refused export or import by any government or governmental authority.

6. The Responsibility and Limits of Liability of Cole as Customs Broker

- a) Subject to the limitations stated in Parts I and IV of the Terms and Conditions, Cole shall act with reasonable care in providing services to the Customer as Customs Broker.
- b) All information pertaining to the Customer shall be kept confidential by Cole and shall only be released to Canada Customs as required by law, subject to Instructions from the Customer to Cole to release the information to third parties.
- c) Cole shall take all reasonable steps to provide Services in accordance with the Instructions from the Customer, provided however, that should Cole reasonably consider that it is in the interest of the Customer to depart from the Customer's Instructions, Cole shall have the authority to do so and shall be indemnified and saved harmless by the Customer for so doing.
- d) Cole shall provide to the Customer in respect of each transaction or summary accounting made on the Customer's behalf a copy of the accounting documents and/or data pertaining thereto.
- e) Cole shall promptly account to the Customer for funds received to the extent that these funds are:
 - i. the credit of the Customer from the Receiver General for Canada, or
 - ii. from the Customer by way of advances provided in Clause 4 hereof in excess of the Disbursements payable in respect to the Customer's business with Canada Customs or other Government Departments.
- f) Cole shall not be liable for any failure to provide Services where such failure is a result of the operation of the applicable laws of Canada or any other country, any change in the policies of Canada Customs, or any cause beyond the reasonable control of Cole.

7. Errors and Omissions

Any errors or omissions on Canada Customs documents and/or data transmissions must be reported in writing to Cole by the Customer as soon possible but in any event within 45 days of receipt of the documents and/or data. Cole shall not be responsible for any errors or omissions unless the same are reported to Cole within this 45 day period.

8. Termination

In the event that the Agency Agreement and Power of Attorney is terminated and there are any outstanding matters pertaining to the Customer for which Cole has been engaged by the Customer and for which Cole remains liable or in some way responsible, the Agency Agreement and Power of Attorney shall continue in force with respect to such matters until such matters are concluded and the Customer has paid to Cole sufficient funds to satisfy all outstanding payment liabilities of Cole to Canada Customs and others (including all fees, Customs Duties, and Disbursements).

9. Privacy

Client acknowledges that the Customs Broker and any of its affiliates, subsidiaries, divisions and related companies, may have access to confidential materials or data relating to the Client's business, when required in providing services to the Client. Except with actual or implied consent, or as permitted or required by law, the Company, including its affiliates, subsidiaries, divisions and related businesses, will not sell or distribute your personal information outside the Customs Broker.

Annex A

Cole Services

Cole may provide the following Services (Brokerage Services and Consulting Services) to the Customer when requested by the Customer and accepted by Cole:

- a) assisting the Customer in the preparation of information required by Canada Customs with respect to the importation of Goods into Canada by the Customer or the exportation of Goods from Canada by the Customer;
- b) presentation of documents whether by physical delivery or electronic transmission on behalf of the Customer to Canada Customs at Canada Customs offices required to clear the Customer's goods through Canada Customs, including documentation as may be required at a frontier point for in-bond transportation within Canada to the ultimate Canada Customs office of entry in Canada;
- c) enter and clear through Canada Customs the goods imported by the Customer and to effect payment of requisite Customs Duties by or on behalf of the Customer and to obtain release of such goods from Canada Customs;
- d) advise the Customer of the status of shipment of goods;
- e) make arrangements for delivery of the goods in accordance with the Customer's instructions;
- f) preparation or assistance to the Customer in preparation of documentation with respect to the export of goods from Canada and the instructions for presentation of such documentation to Canada Customs at the time and office of export;
- g) Information and advice concerning compliance with the relevant laws and regulations pertaining to the Import into and the export from Canada of the Customer's goods;
- h) advice on tariff classification and value for duty of the Customer's goods so as to minimize duties payable in accordance with applicable laws and regulations;
- i) providing advice concerning Customs Duties refunds, drawbacks, and remissions, as well as appeals of tariff classification or value for duty decisions of Canada Customs.
- j) (advice on federal excise duties, excise tax and goods and services tax implications or any duties or taxes of a like kind arising from any amended, replacement or new legislation and payment requirements concerning Customer's imported goods;
- k) advice concerning Customs Duties refunds, drawbacks and remissions, as well as appeals of tariff classification or value for duty decisions of Canada Customs officers;
- l) filing and processing Customs Duties refunds, drawbacks and remission claims as well as appeals of decisions of Canada Customs officials concerning tariff classification or value for duty;
- m) advice and assistance on matters pertaining to seizure, detention and forfeiture of goods; and
- n) advice and assistance on all other matters necessary and incidental to the foregoing services.

Annex B

General Agency Agreement Appointing a Customs Broker with Power to Appoint a Sub-Agent

KNOW ALL MEN BY THESE PRESENTS that _____
(Full Legal Name of Client)

Of _____
(Address of Client) (Business Number of Client)

(hereinafter referred to as the "Client") does hereby constitute and appoint **Cole International Inc.** a Customs Broker licensed under the *Customs Act* (hereinafter referred to as the "Customs Broker") of **Calgary, Alberta, Canada** its true and lawful agent and attorney to transact business on the Client's behalf in all matters relating to the import and export of goods, including but not restricted to:

- (i) customs activities that may be transacted by a customs broker licensed under the *Customs Act* of Canada;
- (ii) advance data filing for admissibility purposes, the release of and accounting for goods, document and data preparation, payment of, and receipt of refunds of, all government duties, taxes, penalties, interest, fines and/or other charges or amounts in respect of imported and exported goods reported or released or to be reported or released or otherwise related to the import or export of goods ("**Government Charges**");
- (iii) the transportation, warehousing and distribution of such goods, and/or the arrangement thereof;
- (iv) excise activities under the *Excise Act* of Canada and any tax or levies payable under the *Excise Tax Act* of Canada; and
- (v) activities under such other legislation as may be promulgated from time to time respecting import and export of goods to and from Canada and any related taxes including all matters relating to the accounting for and payment and refund of customs and excise duties, excise tax, sales tax and goods and services tax or any other like taxes or duties in respect of imported goods released or to be released under such legislation, at the Canada Customs office(s) located in;

_____ and Client hereby engages Customs Broker to perform
(Location of Port)

such services.

AND IN CONNECTION THEREWITH:

- a) obtain, sign, seal, endorse and deliver for Client all bonds, entries, permits, bills of lading, bills of exchange, declarations, claims of any nature, or other means of payment or collateral security which comes into Customs Broker's possession and to use same, including drawbacks and claims of any nature, for reimbursement of any Government Charges;
- b) receive all such payments and sums of money as are now due or may hereafter become due and payable to Client relative to the foregoing; and to endorse on Client's behalf and as Client's agent and attorney and to deposit to and for Customs Broker's own account all such payments; and
- c) obtain from the Canada Border Services Agency ("**CBSA**") and review Client's CBSA importer profile and other data related to Client's import and export transactions.

Client confirms that this Agency Agreement and Power of Attorney (a) constitutes all notices and authorizations required by the Minister of Foreign Affairs and the Trade Controls Bureau in the Department of Foreign Affairs and International Trade (Global Affairs Canada) with respect to all matters for which such notices and authorizations are required for an agent or attorney to act on Client's behalf; and (b) authorizes Customs Broker to act on Client's behalf with respect to documentary compliance with any and all Federal Government departments or programs involving the import or export of goods.

Client further grants Customs Broker, as Client's agent and attorney, full power and authority to appoint any other person to whom a license to transact business as a customs broker has been issued under the Customs Act as a sub-agent to transact the aforesaid business on Client's behalf and to revoke any such appointment and to appoint any other person who holds such a license as a sub-agent in the place of any sub-agent whose appointment has been revoked, as Customs Broker, as Client's agent and attorney, shall from time to time think fit.

Client acknowledges that any Government Charges paid on Client's behalf or to Client's account by Customs Broker, as Client's agent and attorney, or by sub-agent, shall be a debt due by Client to Customs Broker as Client's agent and attorney, or to the sub-agent, and any refund, rebate or remission of any Government Charges shall be the property of Customs Broker, as Client's agent and attorney, or of the sub-agent, and Client directs and authorizes any governmental agencies collecting same to deliver such rebate, refund or remission to Customs Broker, as Client's agent and attorney, or to the sub-agent, as and if directed by Customs Broker.

Client hereby undertakes that, to the best of Client's knowledge, all documents and/or information that will be provided to Customs Broker, as Client's agent and attorney, by Client or on Client's behalf, in connection with this mandate, will be true, accurate and complete.

The Client agrees to:

- (i) on demand, reimburse the Customs Broker for all monies properly expended by the Customs Broker or by any Sub-Agent including the payment of any duty and taxes, or posting of any surety bond deposited as security with any Canada Customs office; and
- (ii) to provide such security for such reimbursement or make such other arrangements for such reimbursement as the parties hereto may otherwise agree.

The Client agrees and covenants for itself, its heirs, executors, administrators, successors and assigns to ratify and confirm all that the Customs Broker and any Sub-Agent shall lawfully do on the Client's behalf by virtue of these presents.

Client hereby agrees that this Agency Agreement and Power of Attorney and all transactions hereunder are governed by the Standard Trading Conditions, as provided to and which have been read and agreed to by the Client.

Non-Solicitation: Client will not solicit for employment, employ, hire, consult with, or otherwise retain, directly or indirectly, the services of any personnel of the Attorney during the term of this Agreement and for a period of one (1) year following expiration or termination of this Agreement, except with the prior written consent of the Customs Broker. Any such actions in violation of these provisions will be considered a Breach of this Agreement and will entitle the Customs Broker to seek either:

- (i) immediate injunctive relief, and/or
- (ii) payment equal to fifty percent (50%) of the personnel's total annual salary from the Client to the Customs Broker as compensation for any violation of this provision.

This Power of Attorney and Agreement shall be and remain in full force and effect until due notice of its revocation shall be given to the Customs Broker, in writing, by registered mail. An executed copy of this Power of Attorney and Agreement may be delivered by facsimile transmission and in such case, the transmitting party will concurrently deliver an originally executed copy of this document to the other party.

In Witness Whereof _____ has caused these presents

(Name of Client)

to be signed at _____ in _____ this _____ day of _____, 20____.

(Name of Municipality)

(Name of Province/State)

(Day)

(Month)

(Year)

SIGNED, SEALED IN THE PRESENCE OF:

FOR THE CLIENT: (Signature indicates you have read and understood Cole International Inc. Trading Conditions as constituted on Page 2 of this transmission)

Signature of Witness

Signature

(Seal)

Print Name

Title

Signature

Print Name

Title

All business is accepted and subject to Cole International Inc.'s Terms and Conditions, which define and limit the obligations and liabilities of Cole. By engaging the services of Cole, the client agrees to be bound by these Terms and Conditions, and understands they are subject to change without notice. To review Cole International Inc. Terms and Conditions, please visit <https://coleintl.com/terms-conditions.php>

PART V. ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN COLE ACTS AS CARRIER

1. Cole's Contract as Carrier

Parts I and V of the Terms and Conditions shall constitute the contract between Owner or Customer and Cole in any situation where Cole acts as the Carrier for the Goods.

2. The Only Situations Where Cole Shall be Considered to be the Carrier of Goods

Cole shall only be held, considered or deemed to be the Carrier of Goods in those situations where Cole signs the BL indicating it is the actual Carrier of the Goods. For greater clarity, Cole shall not be held, considered or deemed to be the Carrier of the Goods in any situations where Cole signs the BL on behalf of another Party as Carrier, including on behalf of a Related Party.

3. Specific Limits Liability of Cole as Carrier

- a) Subject to the total cap limitation stated in Part I and the limitations stated in Part V of the Terms and Conditions, the responsibility of Cole is to show reasonable care in relation to its acting as a Carrier.
- b) The quality, condition, contents and value of Goods stored are not known to Cole except as declared and described by the Customer or Owner to Cole.
- c) Cole is not responsible for packing containers and equipment used to protect goods in the normal rigors of transportation. Cole is not responsible for damage to Goods caused by condensation or build up of moisture within any packing containers.
- d) From time to time Cole acts as a Carrier by signing as Carrier the FIATA Multimodal Transport Bill of Lading ("FIATA Bill of Lading") or other BL pertaining to carriage of Goods by ship. The FIATA Bill of Lading or other BL pertaining to carriage of Goods by ship contain on the back thereof (or is otherwise located thereon or contained therewith) terms ("Ship transportation terms and conditions") that limit the liability of Cole to \$500 U.S. per package or shipping unit where the Hague Rules apply or the greater of 666.7 SDR per kilo or 10,000 SDR whichever is greater where the Hague-Visby Rules apply, except where a higher limit is required under applicable legislation or convention. The FIATA Bill of Lading or other form of BL pertaining to the carriage of Goods by ship that is used by Cole, including these terms and conditions that limit the liability of Cole, are available to the Customer upon request from any Cole office. The Ship transportation terms and conditions, including the limits of liability mentioned in this Sub-Clause 3(d), shall govern the relationship of and be part of the contractual terms between the Customer and Cole for that part of the transportation of the Goods covered by the FIATA Bill of Lading or other BL used pertaining to carriage of Goods by ship.
- e) From time to time Cole acts as a Carrier by signing as Carrier a BL pertaining to transportation of Goods by air. If the carriage of Goods by air involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention, Montreal Protocol Number 4 ("MP4"), Montreal Convention 1999 ("MC99"), or IATA Resolution 600b may be applicable. Where an air shipment's origin and destination are in countries which have ratified the Warsaw Convention, Cole's liability for all claims related to that shipment is the lesser of: (a) Customer's actual damage sustained; or (b) \$9.07 U.S. per pound of weight for the particular Good or Goods that have been lost, damaged,

destroyed or delayed. Where an air shipment's origin and destination are in countries which have ratified MP4, Cole's liability for all claims related to that shipment is the lesser of: (a) Customer's actual damage sustained; or (b) 17 Special Drawing Rights ("SDR") per kilogram of weight for the particular Good or Goods that have been lost, damaged, destroyed or delayed. Where an air shipment's origin and destination are in countries which have ratified MC99, and/or IATA Resolution 600b applies and is in effect in relation to such air shipment, Cole's liability for all claims related to that shipment is the lesser of: (a) Customer's actual damage sustained; or (b) 19 Special Drawing Rights ("SDR") per kilogram of weight for the particular Good or Goods that have been lost, damaged, destroyed or delayed. If the carriage of Goods by air is between countries not covered by the Warsaw Convention, MP4, or MC99, and if IATA Resolution 600b does not apply or is not in effect in relation to such shipment, Cole's liability for all claims related to any shipment is limited to the lesser of: (a) Customer's actual damage sustained; or (b) 17 Special Drawing Rights (SDR) per kilogram of weight for the particular Good or Goods that have been lost, damaged, destroyed or delayed. An SDR is a floating number that is set by the International Monetary Fund. The value of an SDR shall be its value on the day the shipment was received by Cole at the point of origin for the shipment. The terms of the Warsaw Convention, MP 4, MC99 and IATA Resolution 600b are available upon request through any Cole office.

- f) In situations where Cole acts as a Carrier by signing as Carrier a BL in relation to transportation of Goods by air within Canada, Cole's liability to the Customer shall be limited to the lesser of: (a) the value of the Goods at the place and time of shipment, including the freight and other charges if paid; or (b) \$1.10 Canadian per kilogram of weight for the particular Good or Goods that have been lost, damaged, destroyed or delayed.
- g) In situations where Cole acts as a Carrier by signing as Carrier a BL in relation to transportation of Goods by air within the United States, Cole's liability to the Customer shall be limited to the lesser of: (a) the value of the Goods at the place and time of shipment, including the freight and other charges if paid; or (b) \$1.10 U.S. per kilogram of weight for the particular Good or Goods that have been lost, damaged, destroyed or delayed.
- h) From time to time Cole acts as a Carrier by signing as Carrier a BL pertaining to ground transportation. In any such situation, the liability of Cole when acting as a Carrier shall be limited to the lesser of: (a) the value of the Goods at the place and time of shipment, including the freight and other charges if paid; or (b) \$4.41 Canadian per kilogram of weight for the particular Good or Goods that have been lost, damaged, destroyed or delayed.
- i) In all situations not governed by or dealt with in Sub-Clauses 3(d) to (h) inclusive above, the liability of Cole when acting as a Carrier shall be limited to the lesser of: (a) the value of the Goods at the place and time of shipment, including the freight and other charges if paid; or (b) \$4.41 Canadian per kilogram of weight for the particular Good or Goods that have been lost, damaged, destroyed or delayed.
- j) Customer acknowledges that it has been afforded an opportunity to make a declaration of value of the Goods in excess of the limits described in Sub-Clauses 3(d) to (i) inclusive above and to pay applicable excess charges but has declined to do so and does not wish and declines to do so in the future in relation to any transportation services provided under the Agreement except in situations where the Customer enters into Special Arrangements.

- k) In all such situations where Cole acts as a Carrier by signing as Carrier a BL in relation to the transportation of Goods, the terms of the contract between Cole and the Customer pertaining to all transportation of the Goods prior to and after that covered by the particular BL, shall be governed by the terms and conditions as stated in Parts I and III of the Terms and Conditions.
- l) If the Carmack Amendment (“Carmack”) to the Interstate Commerce Act, 49 U.S.C. sections 14706 and/or 11706, is compulsorily applicable to any stage of the transportation in connection with domestic and/or international shipments, the parties enter into this Agreement pursuant to 49 U.S.C. §14101(b)(1) and expressly waive, to the extent permitted by law, all rights and remedies under Title 49 U.S.C., Subtitle IV, Part B to the extent that they conflict with this Agreement.
- m) Customer agrees to indemnify and save harmless Cole and any Related Party for any claim that the Customer or the Owner of the Goods may make against Cole or any Related Party which is in excess of the amounts stated in Sub-Clauses 3(d) to (i) inclusive above as well as any claims that are excluded or limited by virtue of Clause 9 of Part I of the Terms and Conditions.