

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

All services performed by UPS Trade Management Services, Inc. ("UPS/TMS") are provided on the following terms and conditions.

WHEREAS, UPS/TMS, among other activities, provides consulting services as defined herein ("Services"), Client requires UPS/TMS' consulting services and desires to hire UPS/TMS on the terms and conditions set forth in this Agreement, and UPS/TMS agrees to provide the consulting services on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree to the following:

1. **Services To Be Performed By the Company.** The Company agrees to provide and complete the Services that are listed in the Schedule of Work. Any changes to this Agreement or to the Schedule of Work must be in writing signed by duly authorized representatives of Client and UPS/TMS that expressly reference this Agreement and/or the Schedule of Work. Neither the Agreement nor the Schedule of Work may be changed, waived, modified, discharged, or otherwise terminated by the terms and conditions of any purchase order or other terms and conditions which may be issued by Client for the Services. UPS/TMS is solely responsible for choosing the manner and methods of performing the Services and the performance of such Services by its employees, agents, and/or independent contractors.

2. **Warranty.** UPS/TMS warrants that the material, analysis, data, programs, and Services provided pursuant to this Agreement will be performed by qualified personnel. In the event UPS/TMS subcontracts the performance of any of the Services, the Company further warrants that all subcontractors shall be paid in full for their services and shall be bound by the terms of this Agreement. Client agrees that UPS/TMS has not and does not make any other warranties or representations whatsoever, express or implied, with respect to any Services performed hereunder. UPS/TMS expressly disclaims all other warranties, including without limitation, those of accuracy, condition, merchantability, and fitness for a particular purpose. Client accepts this disclaimer of warranty and shall not take any action contrary to such disclaimer.

3. **Disclaimer of Legal Advice.** In the course of providing such Services, the Company may give advice or an opinion regarding the impact of certain transportation and/or customs or other government agency laws or regulations on the business of the Client. However, Client is hereby put on notice that the Company is not a law firm, it does not engage in the practice of law, and it does not render any legal advice. Therefore, Client is hereby advised to seek its own legal counsel regarding any legal issues relating to its business, including issues relating to Services to be performed under this Agreement.

4. **Rules and Regulations.** Client warrants its existing and continuing compliance with all applicable federal, state, and local laws and regulations, including, but not limited to, laws of United States Customs and Border Protection and warrants that it has any necessary licenses and permits for performance under this Agreement.

5. **Compensation.** Client agrees to fully pay UPS/TMS any and all invoices and/or expense reimbursement requests within fifteen (15) days of the date of any such invoice and/or reimbursement request. Any payment which is past due shall be subject to an additional charge at the rate of 1.5% per month of the outstanding balance due or the highest rate of interest permitted by applicable law. In the event that any payment due the Company is collected at law or through, or under advice from, an attorney-at-law, or through a collection agency, Client agrees to pay all costs of collection, including without limitation, all court costs and reasonable attorney's fees.

6. **Confidentiality.** Each party acknowledges that material and information which has or will come into its possession or knowledge in connection with this Agreement or in the performance of Services may consist of confidential and proprietary information of the other party, the disclosure of which to third parties would be damaging. Confidential information shall include any information relating to the identity of the party's customers, the nature of their relationship with their customers, the nature of the other party's business, or the rates charged by it to third parties. Therefore, the parties agree not to make use of this information other than for the performance of this Agreement, to release it only to employees requiring such information and only after ensuring that such employees are aware of the terms of this Clause, and not to release or disclose it to any other party other than as required by law. The parties further agree not to use any work completed under this Agreement for advertising, portfolio, or other promotional purposes without the written consent of the other party. Confidential information shall not include any information: (a) that was, is, or becomes public information through no fault of the other party; (b) that is in the possession of the other party before the commencement of this Agreement where that party can provide written proof thereof; (c) information that is developed by the Company independently of the Client; (d) information that must be disclosed pursuant to or as required by law or by a court or other tribunal of competent jurisdiction; (e) is disclosed to the other party by a third party with a right to disclose such information; or (f) is disclosed by a party to a third party with the express written consent of the other party. This obligation of confidentiality shall survive termination of this Agreement for a period of three (3) years.

7. **Intellectual Property.** Client and UPS/TMS acknowledge that the other has certain intellectual property rights that may be revealed or provided to the other party in accordance with this Agreement. Each party acknowledges that this Agreement does not grant any right or title of ownership in their respective intellectual property rights to the other unless specifically provided in this Agreement. Any intellectual property shall remain the originator's property unless otherwise provide herein.

8. **Independent Contractors.** It is the express intention of the parties that the Company is an independent contractor and not an employee, agent, joint venturer, or partner of Client. Nothing in this Agreement shall be interpreted or construed to create or establish the relationship of employer and employee between Client and the Company or any employee or agent of the Company. Since the Company is an independent contractor to Client, the Company shall retain the right to perform services for other parties during the term of this Agreement. Neither party shall have the power, nor shall either party represent that it has the power, to bind the other party to or to assume or create any obligations, express, or implied, on behalf of the other party. Client will not provide fringe benefits, including, but not limited to, life, disability, and health insurance, paid vacation, worker's compensation, or any other employee benefits, for the benefit of UPS/TMS' employees, agents, or independent contractors.

9. **Indemnification.** Each party agrees to indemnify, defend, and hold harmless the other party from and against any and all claims, actions, suits, liabilities, costs, and expenses (including attorneys fees) brought against either of them for or on account of bodily injury (including death) or property damage, to the extent that such claims, actions, suits, liabilities, costs, and expenses (including reasonable attorneys fees) arise out of or result from the negligent or willful acts or omissions of the indemnifying party, its

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employees, agents, or independent contractors, in the performance of its obligations under this Agreement. Client further agrees to indemnify, defend, and hold harmless UPS/TMS from and against any and all claims, actions, suits, liabilities, costs and expenses (including attorneys fees) brought against UPS/TMS by Client's customers or other third parties and that arise out of or result from UPS/TMS performance of its obligations under this Agreement. As to UPS/TMS, this section does not apply to claims, actions, suits, liabilities, costs, and expenses arising out of or related to Services performed pursuant to this Agreement and covered under the limitations of liability set forth in Clause 10 of this Agreement.

10. Limitation of Liability. a. Notwithstanding Clause 9, above, Client agrees that neither UPS/TMS nor any of its affiliates will be responsible or have any liability whatsoever for any acts, omissions, errors, delays, interruptions, losses, and/or damages in providing or as a result of Services performed pursuant to this Agreement (including, but not limited to, liability for increased duties, penalties, fines, fees, and/or expenses incurred by Client directly or indirectly as a result of Services performed by UPS/TMS). Client agrees that it has sole responsibility for determining the usability of any information or data contained in the Services performed pursuant to this Agreement.

b. However, notwithstanding subparagraph 10.a, Client expressly agrees that in no event shall UPS/TMS' liability in connection with any acts, omissions, errors, delays and/or interruptions relative to the Services exceed the amount of fees charged to Client by the Company under this Agreement in the previous twelve (12) month period for the Services that caused such claim. In no event will UPS/TMS be liable to Client for and Client expressly waives any right to damages arising from loss of merchantability and/or special, incidental, consequential, punitive and/or other extraordinary damages of any kind (including, but not limited to, loss of profits or income or claims of Client's customers or any third party related to Client in any matter), whether or not UPS/TMS had knowledge that such damages might be incurred, arising out of or relating to any provision in this Agreement (including but not limited to this Clause and Clause 9 or the Services performed and whether based on contract, tort, or any other legal theory. No action, regardless of form, arising out of or in connection with this Agreement (other than an action by the Company for any amount due the Company by the Client) may be brought more than one (1) year after the first to occur of (a) termination or expiration of this Agreement, or (b) the event giving rise to such cause of action.

11. Assignment. Neither Client nor UPS/TMS may assign this Agreement or the obligations created thereby without the prior written consent of the other party, which consent will not be unreasonably withheld. Notwithstanding the foregoing, UPS/TMS may assign this Agreement to its parent or a company under common ownership or control with such parent and subcontract with third parties to perform any of its obligations under this Agreement.

12. Binding on Successors. Subject to any restrictions stated in any other provision of this agreement, this Agreement will be binding on and will inure to the benefit of the parties and their respective successors and permitted assigns. None of the provisions of this Agreement are intended to provide any rights or remedies to any person (including without limitation any employees or creditors of either of the parties hereto), other than the parties and their respective successors and permitted assigns.

13. Severability. In the event that any of the provisions of this Agreement should be held invalid or unenforceable by law, such invalidity or unenforceability will not affect the validity or enforceability of any other provision of this Agreement.

14. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes any and all prior oral and/or written understandings and agreements. There are no oral or written agreements or understanding between the parties affecting this Agreement or related to the Services performed by UPS/TMS.

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

16. Governing Law and Attorney's Fees. The parties knowingly, expressly, and willingly, and as a matter of agreed upon risk allocation and service pricing considerations, agree that all disputes under or relating to this Agreement or otherwise shall be decided in accordance with the substantive laws of the State of Georgia, without regard to the conflict of laws provisions thereof. Further, the parties agree that jurisdiction and venue with respect to any suit in connection with this Agreement shall reside exclusively in the state or federal courts of Fulton County, State of Georgia, and by executing this Agreement, Client and UPS/TMS voluntarily consent to jurisdiction in such court. The prevailing party in any suit under this Agreement shall be entitled to recover its reasonable attorneys' fees, costs, and expenses incurred in connection therewith.

17. Early Termination. In addition to termination upon completion of Services, as provided for in Clause 1 of this Agreement, this Agreement may be terminated by either party upon giving thirty (30) days written notice to the other party consistent with the notice requirements set forth at Clause 17 of this Agreement. If the Client terminates the Agreement by giving thirty (30) days notice in accordance with this Clause and the terms of Notice provided in Clause 17 of this Agreement, Client shall still be obligated to pay the Company for such Services that are rendered up to the time of such termination, plus all expenses Company has incurred in performing such services, including travel expenses. The termination of this Agreement shall not affect in any way any right or claim of any party hereto incurred or accruing prior to the date of termination, including without limitation, any right or claim of the Company for compensation payable for services rendered or reimbursable expenses incurred prior to such termination date.

18. Amendments/Waivers. Any changes, waivers, modifications, discharges, or termination of any provision of this Agreement must be made in accordance with the terms set forth in Clause 1 above. The failure of either party to enforce at any time any of the provisions of this Agreement will in no way be construed as a waiver of such provision, or in any way to affect the validity of this Agreement or any part thereof or the right of any party thereafter to enforce each and every provision of this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

19. Titles and Headings. The titles and headings contained in this Agreement do not constitute part of the Agreement. Such titles and headings are for the purposes of convenience only and do not affect the interpretation of this Agreement.