

**STANDARD TERMS & GENERAL CONDITIONS**

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## **1. Scope**

- 1.1 These general terms and conditions (“**these Conditions**”) shall be applicable to all and any business undertaken, including any advice, information or service provided by PGS USA Holding, LLC or PGS USA, LLC (the “**Company**”) directly and/or through any related corporations (together with the Company, the “**Group**”) to any person, firm, corporation or other entity for which the goods are stored and has entered into an agreement as a party thereto (the “**Customer**”). These Conditions shall be deemed to be incorporated in and form part of any contract made between the Company and the Customer.
- 1.2 The Company reserves the right to modify, amend, supplement or change these Conditions at any time without prior notice. The most current and controlling version of these Conditions is published electronically at ([www.pglobalservices.com](http://www.pglobalservices.com)). By accepting the services of the Company, all Customers are deemed to have read and understood, and accept, these Conditions in effect at the time of such services rendered by the Company.

## **2. Applicability**

- 2.1 These Conditions apply to all services (rendered by the Group pursuant to an agreement or otherwise).
- 2.2 The use of the Customer’s own forms or standard terms is no derogation of these Conditions.
- 2.3 The Company is not a common carrier and only deals with goods subject to these Conditions. Should the Company act as a carrier, Parties shall enter into a specific agreement.

## **3. Price**

- 3.1 Unless otherwise agreed in writing, all prices are stated in the currency as stated in the agreement and thereafter invoiced and exclude packing, customs fees, V.A.T., and any other taxes and other surcharges of whatever description, levied by public authorities, in connection with the goods, their importation or exportation, transshipment, or storage.
- 3.2 In the event one or more of the cost components included in the rates is subject to an increase after the date the agreement is concluded (e.g. supplier’s prices, employee wages, social and/or other charges, freights and/or import duties, and/or insurance premiums and other costs, and/or price of equipment or fuel) the Company may increase the agreed rates by a corresponding amount.
- 3.3 Unless agreed otherwise in writing, the Company is entitled to yearly adjustments in rates and tariffs, pursuant to any increase of costs.
- 3.4 In the event the Company carries out additional work or performs any variation to the agreement as requested by the Customer, the costs associated with the variations will be borne by the Customer.

3.5 Unless the contrary is stipulated, any agreement or any quotation given by the Company to the Customer excludes demurrage or detention or delay of vessels, trucks or other transport and damages incurred to containers, which costs shall be borne by the Customer if such delays are caused by or in connection with the Customer's instructions.

#### **4. General Payment Terms**

4.1 The Company's invoices shall be issued upon completion of each service, unless otherwise agreed in writing by the Company. Payment shall be settled by direct transfer within the date specified in the invoice, unless otherwise agreed upon. Sums paid in advance on behalf of the Customer, rights and customs duties shall be settled upon presentation of the related invoice or equivalent documentation. In the case of queries, the Customer shall immediately return the invoice to the Company's offices, indicating the grounds for the query. Should the terms of payment referred to above not be complied with, for any reason whatsoever – not depending on the Company, the Company shall charge late payment interest at the rate of 5% per year from due date up to and including date of receipt of payment by the Company, and/or for any administrative charge and all related legal expenses incurred thereto at such sum as determined by the Company.

4.2 The Customer shall accede to the Company's request at any time for prepayment from the Customer for any costs and expenses which may be incurred in relation to the Services. Such prepayment received from the Customer may be used to set off any sum payable by the Customer to the Company. If Customer refuses to provide such prepayment upon request, the Company shall be entitled to refuse, suspend, interrupt, or terminate the services contracted for, without providing any written warning, notice of default, or judicial interposition. The Company shall at no time be under any obligation to make any payments whatsoever to perform any services on behalf of the Customer until it has received the required prepayments.

4.3 Any challenge to an invoice from the Customer shall not suspend the Customer's payment obligations to the Company under these Conditions or any contract between the Company and the Customer.

#### **5. Lien and privilege**

5.1 If the Company has not been paid any outstanding monies due and owing to it by the Customer for any services rendered under any agreement or otherwise and pursuant to these Conditions, or if the goods remain uncollected by the Customer, despite notice being given, the Company shall further be entitled to exercise its general right of lien over the affected goods in storage by the Company anywhere and on any goods, even on goods that do not correspond to those which have generated the receivables due and not paid.

5.2 Should the Company have grounds to doubt that its rights are covered by the value of the goods assigned to it, it shall be authorized to set a deadline for the Customer to settle all amounts due to the Company. Should the Customer fail to comply accordingly, the Company reserves the right to sell or otherwise dispose the goods in any manner with no intervention of judicial authorities.

5.3 The proceeds from such sale shall then be applied towards satisfaction of all the outstanding monies, followed by the costs of conducting such sale, and any balance thereafter shall be paid to the Customer.

## **6. Obligations and responsibilities of the Customer**

6.1 The Customer shall in due course provide the Company with clear and precise written instructions on any services – specifying nature of goods, number, quantity, quality and content of parcels, their gross weight, size and any other information instrumental to the execution of the assignment – as well as the documents required for the acceptance of goods. Verbal or telephone communications or arrangements shall only be binding on the Company if immediately followed by a written confirmation. Should the Customer fail to provide written instructions or should said instructions be unclear and/or impracticable, the Company shall proceed according to its own best judgement, in the Customer's best interest.

6.2 Unless otherwise agreed upon in writing, the Customer shall provide the Company, in advance, with the funds needed to execute the assignment and to fulfil all related obligations which the Company shall undertake in its own name and on behalf of the Customer. Should the Company have to sustain the necessary expenses in advance, or should it not promptly receive the funds due, it shall be entitled to the reimbursement of any losses generated by exchange rate fluctuations, in addition to standard fees, the commission due for payments made in advance and interest.

6.3 The Customer warrants and is bound by, the accuracy of all descriptions, particulars and/or information furnished to the Company in respect of the goods. The Customer will be liable to and shall indemnify the Company and/or any third parties for any injury, loss or damage whatsoever arising from the incorrect and/or misleading and/or incomplete packaging, description, particulars, indication or information in respect of the goods including inaccuracies or omissions in the leading marks, numbers, quantity, weight, gauge, measurement, properties, contents, nature, origin, quality or value of the goods as well as for any damage arising from defects in the goods and/or packing, which have not been notified to the Company before the parties enter into an agreement.

6.4 The Customer is liable for any damage incurred by the Company owing to activities of the Customer's employees or representatives. Any person present on the Company's premises or on any premises where the Company carries out its operations shall comply with the safety norms in force as issued by relevant authorities or by the Company and act according to them in order to ensure order and safety.

6.5 The Customer is obliged to immediately notify the Company in writing of transfer or passing of ownership of goods or transfer or passing of the right to take delivery of the goods, as the case may be. Furthermore, the Customer is obliged to immediately notify the Company in writing of any dispute may arise with third parties in regard of the ownership of goods.

6.6 Should the goods be subject to any inspection, processing, sampling or handling during its storage at the warehouses, tanks, yards, silos and any other facilities at which such goods are stored by the Company ("**Storage Facilities**"), the Customer shall notify the Company by means written notice at least forty-eight (48) hours in advance, such

activities shall be taken at the presence of a representative of the Company during normal business days and working hours.

## **7. Obligations and responsibilities of the Company**

- 7.1 The Company shall use commercially reasonable efforts, professional competence and diligence, to perform the services.
- 7.2 Unless otherwise agreed in writing, the Company shall be entitled to subcontract any services it reasonably deems necessary or requisite for the fulfilment of the Customer's instructions to third parties.
- 7.3 Should the Customer fail to provide the correct or complete customs code, the Company or its appointed representatives shall be authorised to issue the customs declaration on the basis of the information and documents provided. The Customer accepts and undertakes to exclude any liability of the Company and to hold the Company and its appointed representatives harmless of any claim, fines, penalty, loss, damages, costs and controversy whatsoever which may be raised by control authorities or other related offices.
- 7.4 The Company is under no obligation to ascertain or bring the attention of the Customer to the existence of any impediments to shipment enforced by law or by any relevant authorities, including, but not limited to, importation, exportation or transit restrictions.
- 7.5 The Company shall not be obliged to weigh or measure the goods received if no instructions to that effect are given, provided however that the Company shall have the liberty of weighing and measuring the goods; if the Company then discovers that the weight or measurement differs from the descriptions provided by the Customer, the cost of weighing and/or measuring involved shall be borne by the Customer. If during the weighing of the goods the Company detects any discrepancy, the Company shall promptly inform the Customer about the discrepancy for which the Customer shall be fully and solely responsible and liable for such discrepancy.
- 7.6 The Company is under no obligation to ascertain the existence, entirety and suitability of the packaging for goods to be shipped, and cannot therefore be held liable for any damage to goods provided unpacked or inadequately or improperly packed.
- 7.7 The Company does not guarantee delivery deadlines nor the application of specific priorities in the completion of the services even if said deadlines and/or priorities are mentioned in the shipping documents, nor does it guarantee the accuracy of the information received by carriers on the dates of loading, unloading or delivery of goods, nor on the dates of arrival of the means of transport at destination. The Company shall be authorised to modify delivery deadlines as indicated by the Customer if they are not compatible with the carrier's compliance with safety norms.
- 7.8 The Company is under no obligation to issue the declaration "of interest in delivery" as per art. 22 of the Montreal Convention 22-5-99 (and/or art. 35 COTIF-CIM), nor to declare the value of the goods to the carrier (in compliance with art. 26 CMR, art. 4.5.a) Brussels Convention, art. 423 and art. 952 Maritime Code or any other relevant domestic regulation or international convention), unless explicit request to that effect is received from the Customer in writing.

7.9 The responsibility of the Company, in its capacity as storage supplier, shall be limited solely to the specific cases of gross negligence and/or malice by the Company, its personnel or appointed representatives.

## **8. Limitation of Liability**

8.1 Any liability of the Company towards the Customer in respect of the agreement shall not exceed the agreed amount for the execution of the service in relation to any breach.

8.2 The Company shall not be liable to the Customer or any other party claiming through the Customer whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any loss, cost, expenses, claims, damages, injury or death whatsoever and howsoever caused except as may be caused by deliberate intent, gross negligence or wilful default on the part of the Company.

8.3 The Company is exempt from financial liability in the event of any consequence resulting from the delay or failure of any goods collection at destination; the Customer shall therefore indemnify and hold the Company harmless of any demand for payment which, in that regard, should be issued towards the Company.

8.4 The Company is not liable of any loss or damage which at the time of happening of such loss or damage goods were not in the Company's possession.

## **9. Receipt of goods and documentation**

9.1 Receipt by the Company of the goods will be effected by the Customer handing over the goods to the Company and the Company taking over the goods at the place of storage. If the Customer instructs the Company to take delivery of goods but the goods fail to arrive for any reason whatsoever, the Customer undertakes to pay the Company an indemnity basis for all costs and expenses incurred by the Company in taking any steps in accordance with the Customer's instructions.

9.2 The Customer must ensure that all the necessary and proper details and documents to be provided to the Company for the execution of the services are in the Company's possession within the time frame indicated by the Company so as to ensure compliance with all applicable rules and regulations.

## **10. Insurance**

10.1 The Company is under no obligation to insure the goods assigned to it, unless explicit request to that effect is received from the Customer in writing and the Company has duly accepted to fulfil such request at the Customer's cost. Should the Customer fail to provide precise instructions which are accepted by the Company in accordance with these Conditions, the Customer agrees that the Company is not obliged to ensure the goods are insured.

10.2 Should the Customer submit an instruction for insurance to be arranged by the Company, the Company shall obtain insurance at the standard and particular conditions of policies issued by an insurer of its choice, except that the Customer shall be fully

liable for all costs and expenses relating to such insurance. Should the Customer request for an additional service to Company such as freight, the Customer must insure the goods and provide the Company a copy of such policy.

- 10.3 If the Company has agreed with the Customer that it shall arrange for insurance:
- (a) all insurance effected shall be subject to the usual exceptions and conditions of the policies of the insurance company or underwriters;
  - (b) the Company shall not be responsible as regards the choice of the insurer and its ability to pay;
  - (c) the risks to be covered shall be clearly stated by the Customer's declaration of the current value of the goods. A mere statement by the Customer of the value is not enough;
  - (d) the Customer shall be liable for all insurance premiums calculated on the basis of one full calendar month such that part of a month shall count as one full calendar month unless otherwise agreed in writing by the Company;
  - (e) Any insurance deductibles shall be borne by the Customer.
  - (f) The Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy; and
  - (g) by giving instructions for affecting the insurance, the Customer shall be deemed to have appointed the Company as its agent to make all arrangements with the insurer, including those regarding the conditions of insurance and settlement of claims in respect of any damage. When acting as an agent of the Customer by virtue of this Article, the Company shall be entitled to collect the amount of any claims but shall only be obliged to pay the compensation received by it to the Customer after deducting all monies due and owing to the Company.
- 10.4 The Company shall not be liable for any loss arising from the failure by the insurer to pay in full or in part or because a claim in respect of damage is being disputed as a result of circumstances for which the Company cannot be held liable irrespective of the manner in which the Company was concerned in effecting the insurance.
- 10.5 If the goods in the Company's custody are destroyed by fire or any other causes (regardless of whether the insurance was effected through the intermediary of the Company):
- (a) the date of destruction shall count as the date of delivery and all charges payable to the Company shall be due up to and including such date; and
  - (b) if the Company's assistance for assessment of the damage is desirable or necessary, the Company may render such assistance will be rendered by the Company at its sole and absolute discretion in return for payment by the Customer at a rate fixed by the Company and provided that all other monies due and owing to the Company have been paid in full.

## **11. Goods Documentations**

### **11.1 Warehouse Receipt**

- (a) Within 24 hours of the receipt of the goods at the Storage Facilities, the Company shall issue a warehouse receipt on the basis of the quantity of goods received; however the Company is not responsible or liable to the Customer in respect of:

- i. claims arising out of a dispute by any third party contesting title or rights of ownership to the goods, provided always that (subject to Chapter 12 “Force Majeure”) the Company shall not under any circumstances release any of the goods which are subject to the dispute without the prior written consent of the Customer;
- ii. any difference between the quantity of goods stipulated in any warehouse receipt and that stipulated in documents issued by any shipping line, shipping agent, forwarder, haulier or any third party that may have issued documentation purporting to evidence quantity;
- iii. claims not arising from or caused by any act or omission of the Company. Upon becoming aware of any such claim, dispute or difference, the Company shall immediately (and in any event within twenty-four (24) hours) notify the Customer of the same in writing and use its best commercial efforts to assist the Customer to protect its rights in respect of the goods.

## **12. Force Majeure**

- 12.1 Any event which may partially or totally prevent the Company from fulfilling its obligations (including, but not limited to wars, earthquakes, floods, insurrections, riots, fires, strikes and blockades as well as all force majeure circumstances and/or other related events provided for by relevant international conventions) shall set the Company free from any liability related to the assignments prejudiced by these events throughout their duration.
- 12.2 In these cases, the Company shall be entitled to terminate the agreement even if it has been partially performed, and the Customer shall be granted the same right. In the case of termination, the Customer shall pay the fees chargeable for the services rendered up to the date of termination and reimburse all expenses incurred by the Company in connection therewith (including, but not limited to transport, storage, freight, stocking, parking, insurance and/or delivery costs) even in the case of force majeure.

## **13. Confidentiality and Information Security**

- 13.1 Each party agrees to treat all material information received from the other party or parties as confidential, and shall take appropriate technical and organizational measures to safeguard the confidential information of the other party or parties.

## **14. Miscellaneous**

- 14.1 If and insofar as any provision of these Conditions conflict with any provision in any agreement, the provision in that agreement shall prevail.
- 14.2 No legal proceedings (including any counterclaim) may be brought against the Company unless a notice of breach has been served on the Company within one (1) year of the event giving rise to the breach.



- 14.3 In case any provisions of these Conditions is found to be unenforceable, invalid or partially invalid, the other provisions shall remain unaffected, enforceable, and valid.
- 14.4 Any amendment to these Conditions must be made in writing.
- 14.5 These Conditions are in the English language. In case of any discrepancy between the English text and a translation, the English text shall prevail.

**15. Governing Law and Jurisdiction**

- 15.1 These Conditions are governed by and shall be construed and enforced in accordance with the laws of the country in which the Company has its registered office.
- 15.2 Any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to the exclusive jurisdiction of the Court of the city in which the Company has its registered office.