



EQUALITY PROCESS, INC. GENERAL TERMS AND CONDITIONS OF SERVICE

1. **Terms and Conditions of Service.** Unless otherwise specifically agreed in writing the "Company" (defined below) undertakes services in accordance with these Terms and Conditions of Service (hereinafter called "Terms and Conditions") and accordingly all offers or tenders of service are made subject to these Terms and Conditions. All resulting contracts, agreements or other arrangements will in all respects be governed by these Terms and Conditions except only to the extent that the law of the place where such arrangements or contracts are made or carried out shall preclude any of these Terms and Conditions and in such case such local law shall prevail wherever, but only to the extent that, it is at variance with these Terms and Conditions.
2. **Definitions.** (a) "Company" shall mean **EQuality Process, Inc.**, its subsidiaries, successors or assigns, related companies, agents and/or representatives. (b) "Customer" shall mean the person for which the Company is rendering service, as well as its agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives; (c) "Documentation" shall mean all information received directly or indirectly from the Customer, whether in paper or electronic form; (d) Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating common carrier;" (e) "Third Parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTI's, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise."
3. **Company as Independent Contractor.** The Company acts as an "independent contractor" of the Customer for the purpose of performing duties in connection with the inspection and storage of the goods.
4. **Services Provided.** The Company will provide services in accordance with:
 - a) The terms of the Company's Standard Work Order form and/or Standard Specification Sheet if used.
 - b) Any relevant trade custom, usage or practice.
 - c) Such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.
 - d) The customer's specific instructions as confirmed by the Company
5. **Customer Responsibilities.** Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company shall use reasonable care in its selection of Third Parties, or in selecting the means and procedure to be followed in the handling of the shipment; advice by the Company that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any action(s) and/or inaction(s) of such Third Parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while the goods are in the custody or control of a Third Party or the agent of a Third Party; all claims in connection with the act of a Third Party shall be brought solely against such party and/or its agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.
 - a) All inquiries and orders for the supply of services must be accompanied by sufficient information specifications and instructions to enable the Company to evaluate and/or perform the services required.

- b) Documents reflecting engagements contracted between the Customer and Third parties, or Third parties' documents, such as copies of contracts of sale, letters of credit, bills of lading, etc., are (if received by the Company) considered to be for information only, without extending or restricting the mission or obligations accepted by the Company.

6. **Standard Services Provided.** The Company's standard services may include all or any of the following:

- a) Quantitative and/or qualitative inspections.
- b) Inspection of goods.
- c) Sampling.
- d) Laboratory analysis or other testing.

7. **Special Services.** Special services where the same exceed the scope of standard services as referred to in numbered paragraph 6 of these Terms and Conditions will only be undertaken by the Company by particular arrangement and which may be subject to other specific and overriding Terms and Conditions.

Such special services are illustratively but not exhaustively:

- a) Qualitative and/or quantitative guarantees.
- b) RoHS testing.
- c) Decapsulation.
- d) X-Ray analysis.
- e) Advisory services.
- f) Warehousing.

8. **Inspection Reports and Certificates of Conformance.** The Company will:

- a) Issue inspection reports and certificates of conformance which reflect statements of opinion made with due care, but the Company is under no obligation to refer to or report upon any facts or circumstances which are outside of the scope of the work to be performed.
- b) Reports or certificates issued following testing or analysis of components contain the Company's specific opinion on those components only but do not express any opinion upon the lot from which the components were drawn. If any opinion on the lot is requested special arrangements must be made in advance with the Company for the inspection of the lot.

9. **Responsibilities of the Customer.** The Customer will:

- a) Ensure that instructions to the Company and sufficient information are given in due time to enable the required services to be performed effectively.
- b) Procure all necessary access for the Company's representatives to enable the required services to be performed effectively.
- c) Take all necessary steps to eliminate or remedy any obstruction to or interruptions in the performance of the required services.
- d) Inform the Company in advance of any known hazards or dangers, actual or potential, associated with any order or component including for example, presence or risk of radiation, toxic or noxious or explosive elements or materials, environmental pollution or poisons.
- e) Fully exercise all its rights and discharge all its liabilities under any related contract whether or not a report or certificate has been issued by the Company failing which the Company shall be under no obligation to the Customer.

10. **Right to Delegate/No Liability for the Selection or Services of Third Parties.** The Company shall be entitled at its discretion to delegate the performance of the whole or any part of the services contracted for with the Customer to any agent or subcontractor unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer. The Company shall use reasonable care in its selection of Third Parties, or in selecting the means and procedure to be followed in the handling of the shipment. Advice by the Company that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does the Company assume responsibility or liability for any action(s) and/or inaction(s) of such Third Parties and/or

its agents, and shall not be liable for any delay or loss of any kind, which occurs while the goods are in the custody or control of a Third Party or the agent of a Third Party; all claims in connection with the act of a Third Party shall be brought solely against such party and/or its agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.

11. **Quotations Not Binding.** Quotations as to fees, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless the Company agrees in writing to undertake the inspection or storage of the goods at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer.

12. **Reliance On Information Furnished.** (a) The Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with the Customs Service, other Government Agency and/or Third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on the Customer's behalf; (b) In preparing and submitting Customs entries, export declarations, applications, documentation and/or export data to the United States and/or a Third party, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by the Customer; the Customer shall use reasonable care to insure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of any incorrect or false statement upon which the Company reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.

13. **Declaring Higher Value to Third Parties.** Third parties to whom the goods are entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefore; in the absence of written instructions or the refusal of the Third party to agree to a higher declared value, at Company's discretion, the goods may be tendered to the Third party, subject to the terms of the Third party's limitations of liability and/or terms and conditions of service.

14. **Insurance.** The Company is neither an insurer nor a guarantor and disclaims all liability in such capacity. Customers seeking a guarantee against loss or damage should obtain appropriate insurance. Therefore, unless requested to do so in writing in sufficient time prior to shipment from point of origin and confirmed to the Customer in writing, the Company is under no obligation to procure insurance on the Customer's behalf. The Company does not undertake or warrant that such insurance can or will be placed if requested by the customer to obtain insurance. If the Customer requests the Company to obtain insurance, and the Company agrees in writing, unless the Customer has its own open marine policy and instructs the Company to effect insurance under such policy, insurance is to be effected with one or more insurance companies or other underwriters to be selected by the Company. Any insurance placed shall be governed by the certificate or policy issues and will only be effective when accepted by such insurance companies or underwriters. In all cases, the Customer shall pay all premiums and costs in connection with procuring requested insurance. Should an insurer dispute its liability for any reason, the insured shall have recourse against the insurer only and the Company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rates as that charged or paid to the Company by the Customer or that the shipment was insured under a policy in the name of the Company. If the goods are held in warehouse, or elsewhere, the same will not be covered by insurance, unless the Company receives specific written instructions from the Customer and the Company confirms in writing. Unless specifically agreed in writing, the Company assumes no responsibility to effect insurance on any export or import shipment that it does not handle.

15. **Disclaimers; Limitation of Liability.** (a) Except as specifically set forth herein, the Company makes no express or implied warranties in connection with its services; (b) Subject to (d) below, the Customer agrees that in connection with any and all services performed by the Company, the Company shall only be liable for its negligent acts, which are the direct and proximate cause of any injury to the Customer, including loss or damage to the Customer's goods, and the Company shall in no event be liable for the acts of third parties; (c) In connection with all services performed by the Company, the Customer may obtain additional liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefore,

which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s). (d) In the absence of additional coverage under (c) above, the Company's liability shall be limited to the following: (i) where the claim arises from activities other than those relating to customs brokerage, and except as set forth in paragraph 9(d)(ii), \$50.00 per shipment or transaction, or (ii) where the claim arises from the Company's warehousing, fulfillment, and/or consolidation services occurring in the Company's facilities or premises, including owned or leased property, as agreed upon by the Parties under a separate agreement or (iii) where the claim arises from activities relating to "Customs business," \$50.00 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less; (e) In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages, including any and all loss or damages arising from delay of services.

16. **Payment/Advancing Money.**

- a) All charges must be paid by the Customer in advance unless the Company agrees in writing to extend credit to the Customer; the granting of credit to the Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company.
- b) If credit is granted to the Customer, the Customer will promptly pay not later than 30 days from the relevant invoice date or within such other period as may be established by the Company in the invoice (the "Due Date") all fees due to the Company failing which interest will become due at a rate of 1.5% per month (or such other rate as may be established in the invoice) from the Due Date up to and including the date payment is actually received.
- c) The Customer shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, counter claim or set off which it may allege against the Company.
- d) The Company may elect to bring an action for the collection of unpaid fees in any court having competent jurisdiction.
- e) The Customer shall pay all of the Company's collection costs, including attorney's fees and related costs.
- f) In the event any unforeseen problems or expenses arise in the course of carrying out the services the Company shall endeavor to inform the Customer and shall be entitled to charge additional fees to cover extra time and cost necessarily incurred to complete the services.
- g) If the Company is unable to perform all or part of the service for any cause whatsoever outside the Company's control including failure by the Customer to comply with any of its obligations the Company shall nevertheless be entitled to payment of:
 1. the amount of all non-refundable expenses incurred by the Company, and
 2. a proportion of the agreed fee equal to the proportion of the services actually carried out.

17. **Suspension or Termination of Services.** The Company shall be entitled to immediately and without liability either suspend or terminate provision of the services in the event of

- a) failure by the Customer to comply with any of its obligations hereunder and such failure is not remedied within 10 days after notice of such failure has been given to the Customer: or
- b) any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by the Customer.

18. **Indemnification/Hold Harmless.** The customer shall guarantee, hold harmless and indemnify the Company and its officers, employee, agents or subcontractors against all claims made by any Third Party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any services to the extent that the aggregate of any such claims relating to any one service exceed the limit mentioned in numbered paragraph 15 of these Terms and Conditions, the Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability arising from the importation, or exportation of the Customer's merchandise and/or any conduct of the Customer, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims, including any claims by any Third party

for freight or other charges, duties, fines, penalties, liquidated damages or other money due arising from services provided to or on behalf of the Customer. The confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of the Customer to the Company to pay all charges or other money due promptly on demand. In the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.

19. **Limitation of Actions.** Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company, within ninety (90) days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by the Customer.

20. **General Lien and Right to Sell Customer's Property.** (a)The Company shall have a general and continuing lien on any and all property of the Customer coming into the Company's actual or constructive possession or control for monies owed to the Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both; (b) the Company shall provide written notice to the Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of the Company's rights and/or the exercise of such lien. (c) Unless, within thirty days of receiving notice of lien, the Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of the Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, the Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to the Customer.

21. **No Duty to Maintain Records for Customer.** The Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC §1508 and §1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other Laws and Regulations of the United States; unless otherwise agreed to in writing, the Company shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as a "record keeper" or "recordkeeping agent" for the Customer.

22. **Obtaining Binding Rulings, Filing Protests, etc.** Unless requested by the Customer in writing and agreed to by the Company in writing, the Company shall be under no obligation to undertake any pre- or post- Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.

23. **Preparation and Issuance of Bills of Lading.** Where the Company prepares and/or issues a bill of lading, the Company shall be under no obligation to specify thereon the number of pieces

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

25. **Governing Law; Consent to Jurisdiction and Venue.** These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of Florida, without giving consideration to principals of conflict of law. Customer and Company (a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of Florida; (b) agree that any action relating to the services performed by Company, shall only be brought in said courts; (c) consent to the exercise of in person am jurisdiction by said courts over it, and (d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.