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**SCHENKER OF CANADA LIMITED  
TERMS AND CONDITIONS  
DATED APRIL, 2004 (amended March 2007)**

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## **SCHENKER OF CANADA LIMITED (“SCHENKER”) TERMS AND CONDITIONS (“TERMS AND CONDITIONS”)**

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

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

#### **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 Schenker Global Bill of Lading, a Straight Bill of Lading, a Straight Bill of Lading – Short Form, and a Shipper – Provided Short Form Bill of Lading.

**"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 Schenker undertakes any business or provides advice, information or services.

**“Customs Broker”** means situations where Schenker provides Services as outlined in Annex A of Part IV.



"**Customs Duties**" means any duties, taxes and levies on imported Goods under the *Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act, the Special Import Measures Act* or any other law relating to customs, including any penalties, interest or fines imposed under any of the aforementioned acts or any other law relating to customs.

"**Dangerous Goods**" means Goods as statutorily defined in the appropriate Canadian Federal or Provincial legislation or regulations .

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

"**Disbursements**" means any payment made by Schenker, 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 Schenker on behalf of the Customer.

"**Freight Forwarder**" means where Schenker 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.

"**Instructions**" 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 Schenker.

"**Part**" means the Part (I to V) of these Terms and Conditions.

"**Party**" includes persons, parties, corporations, firms and associations.

"**Receipt**" means a Warehouse Receipt.

"**Related Party**" includes Schenker's parent, any subsidiary of Schenker or its parent, or any Party associated with or related to Schenker, including any corporation that uses the word "Schenker" in its name.



"**Schenker**" means Schenker of Canada Limited except where stated under the definition of "Related Party", "... any corporation that uses the word "Schenker" in its name", where in this latter instance, the reference to "Schenker" means any corporation that uses the word "Schenker" in its name.

"**Special Arrangements**" means arrangements made in accordance with express Instructions, in writing, that are both received and accepted by Schenker.

"**Transport Units**" 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 Schenker 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 Schenker 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 Schenker's Terms and Conditions.

## **4. Headings**

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

## 5. Schenker's Lien

In relation to all Goods and documents relating to the Goods which come into Schenker's possession or control, Schenker shall have a particular lien and general right of detention upon each of the Goods and documents for all amounts owing to Schenker, whether those amounts were incurred to Schenker before, during or after the Goods or documents came into Schenker's possession or control, or relate to other Goods or documents. If any amount due to Schenker is not paid within one calendar month 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 Schenker, with such sale being at the expense of such Party that owes the amount to Schenker. The net proceeds of such sale may be applied in or towards satisfaction of the indebtedness to Schenker, and Schenker 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 Schenker except if the Customer makes Special Arrangements with Schenker. All insurance effected by Schenker 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. Schenker 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 Schenker to the Customer, Schenker 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) Schenker 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 Schenker 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 Schenker of Claims**

Any claim by the holder of the Receipt, the Depositor, Customer or Owner against Schenker, shall be made in writing or by fax and notified to Schenker 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:

- (i) in case of loss and/or damage to Goods within 7 days of such loss or damage,
- (ii) in case of delay in delivery or non-delivery within 7 days of the date when the Goods should have been delivered,
- (iii) in any other case, 7 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 Schenker without delay.

## **8. Time Bar for Bringing Legal Action against Schenker**

Schenker shall in any event be discharged of all liability unless a legal action is brought within 9 months from the date of any event or occurrence alleged to give rise to a cause of action against Schenker, 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 Schenker's Liability and Others Associated with Schenker**

- (a) Schenker 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 cost of purchase of replacement Goods that exceed the declared value of the Goods or the depreciated value of the Goods.

- (b) Except where Schenker acts as Carrier and Part V of the Terms and Conditions apply, the total liability of Schenker 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 (“Schenker’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, Schenker’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.
- (c) Except under Special Arrangements, advice and information that is not related to Instructions accepted by Schenker, is provided gratuitously. Any services provided gratuitously by Schenker, are provided by Schenker without liability.
- (d) Schenker 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 Schenker, including by an act or omission of a Related Party.
- (e) All exclusions or limitations of liability apply whether the claim against Schenker is based upon a claim in warranty, statute, contract, tort (including negligence and strict liability), bailment, or any other cause of action.
- (f) Whenever the liability of Schenker is excluded or limited under the Terms and Conditions, such exclusion or limitation, including time limits for the bringing of actions, shall apply to claims against Schenker’s directors, officers, employees, agents or representatives.

## **10. 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.

## 11. Jurisdiction and Law

- (a) When Schenker acts as a Warehouseman, the terms and conditions of the contract with Schenker and any claims against Schenker 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 Schenker used for the storage of the Goods is located.
- (b) When Schenker acts as a Carrier, the terms and conditions of the contract with Schenker and any claims against Schenker 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 Schenker signs as Carrier. To the extent any BL that Schenker signs as Carrier does not deal with the issues of the jurisdiction for the bringing of claims against Schenker and applicable law, the terms and conditions of the contract with Schenker and any claims against Schenker shall be governed by Sub-Clause (c).
- (c) The terms and conditions of the contract with Schenker 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 Schenker 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 Schenker 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 Schenker 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 and shall deal with the claim or action.



## **PART II. ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN SCHENKER ACTS AS WAREHOUSMAN**

### **1. Schenker'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 Schenker acting as Warehouseman. Schenker only acts as a Warehouseman when it receives Goods into its possession for purposes of storage in a facility actually owned or controlled by Schenker itself or in any other situation where Schenker itself issues a Warehouse Receipt ("Receipt"). Schenker acting as Warehouseman includes any situation where Schenker is involved in any way with movement of Goods to, within, between, or from warehouse facilities that it owns or controls. Schenker does not act as a Warehouseman in any other circumstances. For greater clarity, Schenker does **not** act as Warehouseman when third Parties, including Related Parties, receive Goods into their possession except in those situations where Schenker itself has issued the Receipt. Schenker 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 Schenker 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 Schenker;
- (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, Schenker 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 Schenker 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 Schenker's tariff in effect at the time the service is performed. This tariff may be reviewed at the office of Schenker 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 Schenker in its absolute discretion agrees otherwise, no Goods covered by the Receipt shall be delivered or transferred except upon surrender of the Receipt to Schenker. If required by Schenker in its absolute discretion, no Goods covered by the Receipt shall be delivered or transferred unless Schenker also receives written Instructions acceptable to Schenker 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 Schenker, Schenker decides otherwise, Goods covered by the Receipt shall not be delivered or transferred until Schenker is furnished with a bond of indemnity acceptable to Schenker 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, Schenker 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, Schenker may refuse transfer or delivery of the Goods.

### **4. Physical Transfer of Goods**

Unless decided otherwise by Schenker 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 Schenker, 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 Schenker, have access to the Goods covered by the Receipt for inspection of the Goods only when accompanied by a representative of Schenker for that purpose, whose time shall be charged according to Schenker's tariff in force at the time such access to the Goods is given.

## 6. Removal of Goods

- (a) Schenker 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 shall be given by delivery or by registered letter 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, Schenker 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 Schenker's Lien and remove the Goods within the time specified in the notice given, Schenker may sell the Goods at public or private sale without advertising or in such other manner deemed appropriate by Schenker, apply the proceeds of sale of the Goods to any amount owing to Schenker 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 Schenker for the balance owing to Schenker after it applies the proceeds to such balance owing.
- (c) Where in the opinion of Schenker 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, Schenker 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 Schenker, 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 Schenker for the safe keeping of such Goods shall cease.

## 7. General

- (a) All incoming shipments should be delivered to Schenker freight prepaid. Schenker 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, Schenker's load or unload count shall be conclusively deemed to be correct.

## 8. Responsibility of Schenker and Additional Limits on Schenker's Liability

- (a) The responsibility of Schenker is to show reasonable care in relation to the Goods stored with Schenker 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 Schenker except as declared and described on the face of the Receipt by the Depositor.
- (c) Schenker 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 Schenker to exercise reasonable care as warehouseman:
  - Fire or explosion; flood, wind, storm, earthquake, or other acts of God, war, insurrection, riot, civil or military authority, strikes, picketing, or any other labour trouble, 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 Schenker; leakage or failure to detect the same; concealed damage; breakage, theft, pilferage, vermin, sprinkler leakage or water;
- (d) Schenker'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.
- (e) Schenker is not responsible for delays in loading or unloading railway cars, nor for demurrage charges or other time penalties arising from any delay.

### **PART III. ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN SCHENKER ACTS AS FREIGHT FORWARDER**

#### **1. Schenker's Contract as Freight Forwarder**

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

#### **2. Non-Applicability of Part III if Schenker Acts as the Actual Carrier**

Schenker may in respect of all or any part or parts of any contract for the movement of Goods, sign a BL that shows Schenker is the actual Carrier. Where this occurs, Parts I and V of Schenker 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 Schenker as the actual Carrier. Prior to and after that part of the transportation of the Goods covered by the BL signed by Schenker as the actual Carrier, Parts I and III shall constitute the contract between Schenker and the Customer.

#### **3. Schenker's General Responsibilities**

- (a) Subject to the limitations contained in Parts I and III of the Terms and Conditions, Schenker shall perform its duties as Freight Forwarder with reasonable care.
- (b) Subject to Sub-Clause 6(a) hereof, Schenker 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 Schenker in the Terms and Conditions, Schenker shall take all reasonable steps to perform any of the Customer's Instructions accepted by Schenker.
- (d) If at any stage in any transaction, Schenker should reasonably consider that there is good reason in the Customer's interests to depart from any of the Customer's Instructions, Schenker 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 Schenker which in the opinion of Schenker make it wholly or in part impossible for Schenker 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, Schenker shall be, after acceptance, at liberty to revise quotations or charges with or without notice in the event of changes outside Schenker'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.
- (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, 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 Schenker 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 Schenker against all duties, taxes, payments, fines, expenses, losses, damages (including physical damage) and liabilities in excess of the liability of Schenker in accordance with the Terms and Conditions, suffered or incurred by Schenker in the performance of its obligations under any contract to which the Terms and Conditions apply.
- (h) The Customer shall warn Schenker 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 or other pests, and the Customer shall indemnify Schenker against any liability, loss, damage, costs or expenses incurred by Schenker 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) The Customer shall indemnify Schenker in respect of any claims of a general average nature which may be made on it and shall provide such security as may be required by Schenker in this connection.

## **5. Schenker's Role as Freight Forwarder**

- (a) Schenker 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, Schenker acts solely as agent on behalf of the Customer in any situation where Schenker contracts with any Related Party. Schenker 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 Schenker signs the BL on behalf of another Party, including a Related Party.
- (b) Without limiting the generality of the foregoing, Schenker at all times shall be deemed to be acting as agent for the Customer in any case where Schenker 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 Schenker.

## 6. Schenker's General Conditions as Freight Forwarder

- (a) Schenker 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 Schenker is entitled to call upon such person to take delivery thereof, Schenker shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of Schenker 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 Schenker or any Party with whom Schenker deals, shall immediately upon demand be paid by the Customer to Schenker.
- (c) Schenker 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 Schenker to have any interest in the Goods, any Goods which have been held by Schenker 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), Schenker shall give appropriate credit to the Customer for any balance arising out of the proceeds of sale of the Goods after deduction of Schenker's costs of sale.
- (d) Except insofar as may be required to comply with the Customer's Instructions, Schenker 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, Schenker 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 Schenker, 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 Schenker only as agent for the Customer.
- (g) The Customer shall pay to Schenker in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set off.
- (h) Despite the acceptance by Schenker 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. Schenker's Special Conditions Relating To Particular Goods**

- (a) The Customer undertakes not to tender for transportation any Goods that are of a dangerous, flammable, radio-active, hazardous or damaging nature except under Special Arrangements in which notice of the nature of the Goods has been given to Schenker. The Customer undertakes to mark the 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. In the case of Goods where the place of receipt is a point within Canada, the Customer further warrants that the Goods, the packaging and marking thereof comply in all respects with the provisions of the *Transportation of Dangerous Goods Act, 1992* of the Parliament of Canada and the Regulations passed thereunder (or any similar successor legislation and regulations).
- (b) If the requirements of Sub-Clause (a) are not complied with by the Customer, the Customer shall indemnify Schenker against all loss, damage or expense arising out of the Goods being tendered for transportation or handled or carried by Schenker.
- (c) Goods, which in the opinion of Schenker 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 Schenker under Sub-Clause (a) above, Schenker shall be under no liability to make any general average contribution in respect of such Goods.

- (d) Except under Special Arrangements, Schenker 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 or plants. Should any Customer nevertheless deliver any such Goods to Schenker or cause Schenker to handle or deal with any such Goods otherwise than under Special Arrangements, Schenker shall be under no liability whatsoever for or in connection with such Goods howsoever arising.
- (e) Schenker 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 Schenker

#### **8. Express Authorization Of Schenker As Agent For The Customer**

- (a) Schenker shall be entitled and the Customer hereby expressly authorizes Schenker, 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 Schenker's role as Freight Forwarder, it is agreed that Schenker does enter such contracts, and shall be deemed to have entered such contracts, as agent for the Customer.
- (c) In any situation where Schenker 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, Schenker, or others, no declaration of value where optional will be made except under Special Arrangements; nor shall Schenker be under any 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 Schenker in writing.



## **PART IV. ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN SCHENKER ACTS AS CUSTOMS BROKER**

### **1. Schenker's Contract as Customs Broker**

Parts I and IV of the Terms and Conditions shall constitute the contract between the Customer and Schenker 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 Schenker.

### **2. Fees and Disbursements**

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

### **3. Invoicing and Payment**

- (a) Schenker 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, or as otherwise agreed, by the Customer.
- (c) Interest on all late payments shall be paid at the rate set by Schenker, as amended from time to time, and interest shall be charged commencing 14 days after the invoice date.

### **4. Advancement of Funds**

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

- (b) If, at any time, Schenker 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 Schenker.
- (c) If after payment of Disbursements by Schenker concerning the Goods imported by the Customer, any balance of funds remains outstanding to the credit of the Customer, Schenker 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 Schenker upon request by Schenker as mentioned above, Schenker shall have no obligation with respect to rendering Services concerning the Goods for which funds have been requested by Schenker and not advanced by the Customer.

## **5. Duties and Responsibilities of the Customer**

- (a) The Customer shall:
  - (i) provide to Schenker all information necessary for Schenker 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 Schenker of any inaccuracies, errors or omissions found therein and advise Schenker promptly and within the time periods set out in Clause 7 hereof;
  - (iii) reimburse, indemnify and save harmless Schenker with respect to any of the matters set out in Sub-Clause (c) hereof;
  - (iv) indemnify and save harmless Schenker 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 Schenker by the Customer or its agents and relied upon by Schenker.
- (b) The Customer warrants that it is the importer, exporter, or Owner of the Goods for which it has retained Schenker; that it has full power and authority to retain, appoint as attorney and instruct Schenker; and that all information provided to Schenker shall be complete, true and accurate and acknowledges that Schenker shall be relying on such information to provide the services set out herein;

- (c) The Customer shall be solely liable for:
  - (i) any and all Disbursements made by Schenker on behalf of the Customer;
  - (ii) any Customs Duties, fines, penalties, interest or other levies imposed by Canada Customs or other Government Departments with respect to the Goods imported or to be imported into Canada, or exported or to be exported from Canada, by the Customer;
  - (iii) any loss or damage incurred or sustained by Schenker in relation to the provision of services to the Customer herein.

## **6. The Responsibility and Limits of Liability of Schenker as Customs Broker**

- (a) Subject to the limitations stated in Parts I and IV of the Terms and Conditions, Schenker 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 Schenker and shall only be released to Canada Customs as required by law, subject to Instructions from the Customer to Schenker to release the information to third parties.
- (c) Schenker shall take all reasonable steps to provide Services in accordance with the Instructions from the Customer, provided however, that should Schenker reasonably consider that it is in the interest of the Customer to depart from the Customer's Instructions, Schenker shall have the authority to do so and shall be indemnified and saved harmless by the Customer for so doing.
- (d) Schenker 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) Schenker shall promptly account to the Customer for funds received to the extent that these funds are:
  - (i) for 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) Schenker 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 Schenker.

## **7. Errors and Omissions**

Any errors or omissions on Canada Customs documents and/or data transmissions must be reported in writing to Schenker by the Customer as soon possible but in any event within 10 days of receipt of the documents and/or data. Schenker shall not be responsible for any errors or omissions unless the same are reported to Schenker within this 10 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 Schenker has been engaged by the Customer and for which Schenker 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 Schenker sufficient funds to satisfy all outstanding payment liabilities of Schenker to Canada Customs and others (including all fees, Customs Duties, and Disbursements).

## Annex A

### *Schenker Services*

Schenker services pertaining to it acting as Customs Broker include:

- (i) 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;
- (ii) presenting information, by any acceptable means, on behalf of the Customer to Canada Customs that is required to release and/or account for the Customer's Goods including information as may be required for in-bond transportation within Canada;
- (iii) paying requisite Customs Duties and disbursements by or on behalf of the Customer and obtaining release of the Goods from Canada Customs;
- (iv) making arrangements for delivery of the Goods;
- (v) assisting the Customer in preparing and presenting information required by domestic and foreign jurisdictions with respect to Goods exported from Canada by the Customer;
- (vi) providing information and advice concerning the relevant laws and regulations pertaining to the import into Canada and the export from Canada of the Customer's Goods;
- (vii) providing advice on tariff classification, value for duty, and any other relevant federal or provincial customs requirements, regulations or rules;
- (viii) providing advice on federal and provincial tax implications, payment options and any other tax requirements concerning the Customer's imported Goods;
- (ix) preparing and filing federal and provincial sales tax refunds and appeals;
- (x) providing advice concerning Customs Duties refunds, drawbacks, and remissions, as well as appeals of tariff classification or value for duty decisions of Canada Customs.
- (xi) preparing and filing Customs Duties refunds, appeals, drawbacks and remission applications;



- (xii) providing advice and assistance to the Customer on matters pertaining to the seizure, detention, and forfeiture of Goods;
- (xiii) marking of imported Goods;
- (xiv) providing advice regarding trade agreements, including without limiting the generality of the foregoing, advice regarding NAFTA;
- (xv) providing advice and assistance on all other matters necessary and incidental to the foregoing services.



**Annex B**

***Agency Agreement and Power of Attorney***

KNOW ALL MEN BY THESE PRESENTS that:

I/We (Name of Customer and Business Number) \_\_\_\_\_ of  
(Address) \_\_\_\_\_  
do hereby constitute and appoint (Name of Schenker and Business Number)  
\_\_\_\_\_ (“Schenker”), a Customs Broker licensed under  
the Customs Act, of (Address) \_\_\_\_\_ my/our  
true and lawful attorney to transact business on my (our) behalf in all matters relating to the  
import and export of Goods, including but not restricted to:

- (i) the release of and accounting for Goods, document and data preparation, payment of, and refund of, all government duties, taxes and levies in respect of imported and exported Goods released or to be released, and
- (ii) the transportation, warehousing and distribution of such Goods.

And I/We do hereby engage Schenker to perform such services.

**AND IN CONNECTION THEREWITH:**

- (a) to obtain, sign, seal, endorse and deliver for me/us 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 Schenker’s possession and to use same, including drawbacks and claims of any nature for reimbursement of duties, taxes, levies and the like;
- (b) to receive all such payments and sums of money as are now due or may hereafter become due and payable to me/us relative to the foregoing; and to endorse on my/our behalf and as my/our attorney and to deposit to and for Schenker’s own account all such payments.

To facilitate the carrying out of such services on my/our behalf, I/We hereby authorize Schenker to obtain and review from the Canada Border Services Agency my/our Canada Border Services Agency importer profile.



I/We confirm that this Agency Agreement and Power of Attorney shall be deemed to constitute all notices and authorizations required by the Minister of Foreign Affairs and the Export and Imports Controls Bureau in the Department of Foreign Affairs and International Trade with respect to all matters relating but not limited to softwood lumber export issues and apparel tariff preference issues. Further I/We also confirm that this Agency Agreement and Power of Attorney is intended to apply and does apply to allow Schenker to act on my/our behalf with respect to documentary compliance with all Federal Government programs involving the import or export of Goods.

I/We acknowledge that any duties, charges or other amounts paid on my/our behalf or to my/our account by Schenker shall be a debt due by me to Schenker and any refund, rebate or remission of such duties, charges or other amounts shall be the property of Schenker and I/We direct and authorize any governmental agencies collecting same to deliver such rebate, refund or remission to Schenker.

I/We hereby certify that, to the best of my/our knowledge, all documents and/or information that will be provided to Schenker by myself/ourselves or on behalf of me/us in connection with this mandate will be true, accurate and complete.

I further grant Schenker 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 my/our 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 Schenker, shall from time to time think fit.

I hereby agree that this Agency Agreement and Power of Attorney and all transactions hereunder shall be governed by Parts I and IV of Schenker's Terms and Conditions that deal with Schenker's role when in it acts as a Customs Broker (the "Terms and Conditions").

I hereby ratify and confirm and agree to ratify and confirm all that Schenker may do by virtue hereof.

This Agency Agreement and Power of Attorney shall be and remain in full force and effect, until due notice of its revocation shall have been given to Schenker, in writing and subject to Clause 8 of Part IV of the Terms and Conditions.



In witness whereof (Name) \_\_\_\_\_ has caused these presents to be signed/sealed with its corporate seal attested to by the signature of its duly authorized officials, at (Name of Municipality) \_\_\_\_\_ in (Name of Province/State and Country) \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Name of Customer)

\_\_\_\_\_  
Signature of Customer

\_\_\_\_\_  
Print Office Held of Signatory if Corporate Customer and have customer place corporate seal if available

\_\_\_\_\_  
Accepted by Schenker of Canada Limited

Per:

\_\_\_\_\_  
Name - Office Held Name - Office Held



## **PART V. ADDITIONAL TERMS AND CONDITIONS THAT APPLY WHEN SCHENKER ACTS AS CARRIER**

### **1. Schenker's Contract as Carrier**

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

### **2. The Only Situations Where Schenker Shall be Considered to be the Carrier of Goods**

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

### **3. Additional Limits Liability of Schenker as Carrier**

- (g) Subject to the limitations stated in Parts I and V of the Terms and Conditions, the responsibility of Schenker is to show reasonable care in relation to its acting as a Carrier.
- (h) The quality, condition, contents and value of Goods stored are not known to Schenker except as declared and described by the Customer or Owner to Schenker.
- (i) Schenker is not responsible for packing containers and equipment used to protect goods in the normal rigors of transportation.
- (j) From time to time Schenker acts as a Carrier by signing as Carrier the FIATA Multimodal Transport Bill of Lading ("FIATA Bill of Lading"). The FIATA Bill of Lading contains on the back thereof terms ("FIATA terms") that limit the liability of Schenker to \$500 U.S. per package or shipping unit except where a higher limit is required under applicable legislation or convention. The FIATA Bill of Lading, including the FIATA terms, is available to the Customer upon request from any Schenker office. The FIATA terms shall govern the relationship of the Customer and Schenker for that, and only that, part of the transportation of the Goods covered by the FIATA Bill of Lading. The terms of the contract between Schenker and the Customer pertaining to all transportation of the Goods prior to and after that covered by the FIATA Bill of Lading, shall be governed by Parts I and III of Schenker's Terms and Conditions (Schenker's contract with the Customer when Schenker acts as Freight Forwarder).

- (k) From time to time Schenker acts as a Carrier by signing as Carrier the Schenker Global Bill of Lading (“Global Bill of Lading”). The Global Bill of Lading contains on the back thereof terms (“Global terms”) that limit the liability of Schenker to \$500 U.S. per package or shipping unit except where a higher limit is required under applicable legislation or convention. The Global Bill of Lading, including the Global terms, is available to the Customer upon request from any Schenker office. The Global terms shall govern the relationship of the Customer and Schenker for that, and only that, part of the transportation of the Goods covered by the Global Bill of Lading. The terms of the contract between Schenker and the Customer pertaining to all transportation of the Goods prior to and after that covered by the Global Bill of Lading, shall be governed by Parts I and III of Schenker’s Terms and Conditions (Schenker’s contract with the Customer when Schenker acts as Freight Forwarder).
  
- (l) From time to time Schenker acts a Carrier by signing as Carrier a BL pertaining to transportation of Goods by air. If the carriage of Goods involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of air Carriers in respect of loss, damage or delay of the Goods to 17 Special Drawing Rights per kilogram (approximately \$20 U.S. per kilogram). In such situations involving transportation of Goods by air outside Canada, Schenker’s liability to the Customer will also be limited or deemed to be limited by terms as stated in the Warsaw Convention or such other terms as limit Schenker’s legal recourse against the actual Carrier used for the international air transportation of the Goods. These terms of the Warsaw Convention that limit liability are available upon request at any Schenker office. In situations where Schenker acts as a Carrier by signing as Carrier a BL in relation to transportation of Goods by air within Canada (“Domestic Air Transportation”), Schenker’s liability to the Customer shall be limited to \$1.10 Canadian per kilo of weight of the Good or Goods lost, damaged or delayed. In all such situations where Schenker acts as a Carrier by signing as Carrier a BL in relation to the transportation of Goods by Air, the terms of the contract between Schenker and the Customer pertaining to all transportation of the Goods prior to and after that covered by the particular BL, shall be governed by Parts I and III of Schenker Terms and Conditions (Schenker’s contract with the Customer when Schenker acts as Freight Forwarder).

- (m) From time to time Schenker acts as a Carrier by signing as Carrier a BL pertaining to ground transportation. Such a BL contains terms on the back thereof that limit the liability of Schenker, including, as may be applicable from time to time, those as stated on the Straight Bill of Lading – Short Form, Straight Bill of Lading, and Shipper-Provided Short Form of Bill of Lading, as referenced in NMF (National Motor Freight Classification) 100-R. Such a BL, including the terms on the back thereof, are available on request from the Schenker office through whom the Customer has made its request for services. With respect to shipment of Goods by ground transportation to and from the United States, laws, rules and regulations applicable in the United States, such as those stated in NMF 100-R and FMC-F-29, may also limit the liability of Schenker in addition to the terms on the front or back of the BL. The terms contained on the back of such a BL or terms that are applicable due to laws, rules or regulations of the appropriate jurisdiction, shall govern the relationship of the Customer and Schenker for that, and only that, part of the transportation of the Goods covered by the particular BL in question. The terms of the contract between Schenker and the Customer pertaining to all transportation of the Goods prior to and after that covered by the particular BL, shall be governed by Parts I and III of the Schenker Terms and Conditions (Schenker's contract with the Customer when Schenker acts as Freight Forwarder).
- (n) In all situations governed by Sub-Clauses (d), (e), (f), and (g) immediately above, the Customer recognizes that Schenker may not be using its own ships, airplanes, or means of ground transportation for the movement of the Goods and may in fact employ the services of Parties that do in fact own or lease such means of transportation, and as a result it is important that Schenker have no greater liability than that of the Parties that actually supply the transportation and with whom Schenker contracts in order to obtain such transportation. In those situations where Schenker does use its own ships, airplanes or means of ground transportation for the movement of the Goods, the Customer recognizes it is important that Schenker not assume any greater liability than that other parties normally assume who also provide such means of transportation.
- (o) In all situations not governed by Sub-Clauses (d), (e), (f), and (g) above, the liability of Schenker when acting as a Carrier shall be limited to the declared value of the Goods or the depreciated value of the Goods, whichever is the lesser. In addition, the liability of Schenker shall not exceed \$2 Canadian per pound of weight (or such other minimum amount as permitted under the applicable law) for the particular Good or Goods that are lost, damaged or delayed.



SCHENKER OF CANADA LIMITED

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