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Rule Number: 200      Rule Title: NVOCC SERVICE ARRANGEMENTS (NSA)

1. Applicability. This Rule applies to all NVOCC Service Arrangements (as hereinafter defined, "NSA") entered into by Carrier in accordance with 46 C.F.R. § 531 and, to the extent stated herein, is subject to the terms and conditions of NVOCC's Bill of Lading or Sea waybill in effect at the time of receipt of cargo for shipment ("Carrier's Bill of Lading") and Carrier's tariffs of general applicability as published in accordance with Federal Maritime Commission ("FMC") regulations.

This rule provides the prominent notice of Carrier's decision to utilize NSAs for certain shipments wherein it has offered an NSA and Shipper has duly accepted such NSA in writing prior to cargo movement. (C)

Except as otherwise expressly agreed in the NSA, all compensation, assessorials, surcharges, arbitraries and other charges (including freight, demurrage and detention) as set forth in Carrier's applicable tariff(s) shall be due and payable in accordance therewith.

Except as otherwise expressly provided in the NSA, the NSA Shipper accepts the terms and conditions of Carrier's bills of lading, waybills and tariffs, as applicable. The term Shipper shall be the same as the term "Merchant" as defined in Carrier's bill of lading and includes both shipper and consignee.

2. Definitions. In the NSA, except where the context otherwise requires, words and expressions shall have the same meanings as defined in 46 C.F.R. § 531.3 or Carrier's bill of lading, or hereby assigned to them as follows: (C)

"Affiliate" means two or more entities, which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with, or otherwise related to each other through common stock ownership or common directors or officers.

"FMC" means the Federal Maritime Commission.

"Duration" means the term that this NSA is effective which shall be from the Effective Date set forth in the NSA to the Expiration Date set forth in the NSA.

"NSA Shipper" means the party set forth the NSA (or its Affiliate) that is a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, or a shippers' association.

"NSA" means an NVOCC Service Arrangement as defined in 46 C.F.R. part 531.

"Carrier" means the company named as Carrier in the NSA and on the face of Carrier's Bill of Lading issued for the transportation of Goods hereunder.

"Goods" is defined in the Bill of Lading.

"Package" is as defined in the Carriage of Goods by Sea Act, 46 U.S.C. 1300, et seq. and decisions pursuant thereto.

3. Minimum Quantity Commitment (MQC). (C)  
For purposes of determining and interpreting the Minimum Quantity Commitment, the following formula shall be used to determine forty-foot-equivalent units ("FEUs"):

- 20 - foot container shall equal 0.5 FEU
- 40 - foot (8'6") container shall equal 1.00 FEU
- 40 - foot (9'6") container shall equal 1.00 FEU
- 45 - foot container shall equal 1.00 FEU

4. Rates, Payment and Credit - Carrier shall charge and the NSA Shipper shall pay for all transportation and related services with respect to the Goods tendered under this NSA at the rates set forth in Appendix A to the NSA and such additional charges as are required by Carrier's governing tariff or tariffs.

4.1 Unless prior credit or payment arrangements have been agreed to in writing by Carrier, all transportation and related charges hereunder shall be paid prior to Carrier transporting the Commodities.

4.2 NSA Shipper shall remit all payments to Carrier via (i) good funds, (ii) Automated Clearing House (ACH) or (iii) wire transfer in lieu of check, whereby such form of payment shall be determined at Carrier's sole discretion and shall be paid no later than one (1) day prior to the Vessel's arrival at the Port of Discharge named on the face of the Bill of Lading or Sea waybill covering such shipment as follows:

Bank Name: \_\_\_\_\_  
 Bank Address: \_\_\_\_\_  
 Account Name: \_\_\_\_\_  
 ABA Number: \_\_\_\_\_  
 Account Number: \_\_\_\_\_

NSA Shipper shall provide Carrier remittance details along with the actual payment. If NSA Shipper has established credit prior to shipping, NSA Shipper agrees to pay all transportation and related charges hereunder within thirty (30) calendar days from the date of Carrier's invoice. Failure to pay invoices in a timely manner may result in NSA Shipper being placed on a prepaid cash basis.

5. Liquidated Damages - If NSA Shipper fails to timely book and deliver the Minimum Quantity Commitment set forth in the NSA, it shall be liable to the NVOCC for liquidated damages in the amount of \$100 per FEU. Unless otherwise expressly agreed in an NSA, a timely booking shall be not less than ten (10) days prior to vessel arrival at the port

of loading and timely delivery will be delivery to a designated ocean common carrier prior to vessel cutoff with complete and accurate documentation. This amount shall be in lieu of actual damages, if any, which would be difficult, if not impossible, to ascertain to a reasonable certainty. Bills of Lading, or Sea waybills as may be issued in lieu thereof, covering shipments of Goods moving under the terms of this NSA shall be annotated by the NSA Shipper or its agent(s) with the NSA Number of the Arrangement. Shipments moving on Bills of Lading not so annotated shall not be counted toward the NSA Shipper's Minimum Quantity Commitment; provided however, that the NSA Shipper shall have reasonable time within which to remedy such omission after the fact. For the purpose of determining whether movement of Goods took place during this NSA, the pertinent date shall be the date of receipt of Goods by Carrier or its agent. The total of any amounts owed pursuant to this sub-clause 4.2 shall be paid directly to Carrier within thirty (30) days following the date of Carrier's invoice. If there is a disagreement as to the volume of Goods transported under this NSA, the parties shall grant each other access to their records relating to this Arrangement.

6. Carrier's Service Commitment: Carrier shall accept Shipper's timely bookings, provide the transportation as required by the Shipper and deliver the shipments to Shipper in accordance with the terms and conditions of Carrier's bill of lading. Failure of Carrier to provide such service shall result in a reduction in the Shipper's minimum quantity commitment for each container on which Carrier has not provided the agreed service.

7. Terms Covering Additional or Special Services. In addition to providing ocean common carrier services in the U.S. and foreign trade, Carrier may provide additional and/or other related logistics services as may be agreed the terms of which, when referred to shall be incorporated herein by such reference to the extent not inconsistent with this NSA and, in the event of a conflict of conditions between this NSA and all documents incorporated by reference. The terms of this NSA and its schedules shall control to the extent of such conflict but no further. Any terms covering additional or special services, if not expressly stated herein or attached hereto, shall be made available upon request as described in this NSA.

8. Amendment and Cancellation.

8.1 The NSA may be amended at any time to any extent and in the manner prescribed by applicable FMC regulations by agreement between the parties.

8.2 Carrier may terminate this NSA upon written notice in accordance with Clause 13 as follows:

- (i) NSA Shipper becomes insolvent, is unable to pay its debts when due, files for bankruptcy or reorganization, is the subject of involuntary bankruptcy, has a receiver appointed, or assigns all or substantially all of its assets to an unaffiliated third party; or
- (ii) NSA Shipper is in breach of its payment obligations pursuant to the terms of the NSA or

any other agreement between Carrier and NSA Shipper.

(iii)NSA Shipper has fulfilled its MQC.

Any such termination of the NSA shall be without prejudice to all rights accrued between the parties prior to the date of termination.

8.3 AMENDMENT VIA ELECTRONIC SIGNATURE / E-MAIL

After the parties have signed this NSA the parties may enter into subsequent amendments in an electronic mail format (e-mail), transmitted via the Internet and executed, modified or amended by the parties with an electronic signature. In the event that this NSA is amended in an electronic mail format and executed with an electronic signature, all terms and conditions contained in the NSA shall have full legal effect, validity and enforceability. The term "electronic signature" means an electronic symbol attached to or logically associated with the NSA and executed or adopted by a person with the intent and authorization to sign this NSA, including the person's name typed on the signature line of the NSA, followed by the signature designation(s), or an exchange of e-mails between the parties to which the parties attach this NSA and such amendment and in which such parties state that they AGREE or ACCEPT its terms and conditions.

The following parties are the only ones representing the CARRIER who may sign electronically and the e-mails may only be sent from the following e-mail addresses:

Name & Title	E-mail Address
XXXX	XXXXXXX

The following parties are the only ones representing the SHIPPER who may sign electronically and the e-mails may only be sent from the following e-mail addresses:

Name & Title	E-mail Address
XXXX	XXXXXXX

9. Carrier's Right to Assignment or Sub-Contract. Carrier shall have the right to assign or sub-contract any of its obligations hereunder without the prior written consent of NSA Shipper; provided, however, that in the event of such an assignment or a sub-contract, Carrier shall remain fully liable for the due performance of its obligations under this NSA.

10. Responsibilities.

10.1 Force Majeure - Notwithstanding any other provision of the NSA or the applicable bill of lading or tariffs, to the extent Carrier or the NSA Shipper fails to meet any obligation imposed by the terms of the NSA owing to Force Majeure, performance of the NSA shall, to that extent, be deemed to have been frustrated and no cause of action for breach or liability shall arise as a consequence thereof. For the purpose of the NSA, "Force Majeure" means and includes without reservation or restriction, strikes, lockouts, labor disputes or exceptional circumstances arising from the threat thereof; acts of God, State, or the public enemy, including but not limited to, war, terrorism,

riots, civil disorder or insurrection, embargo or other disruption or interference with trade including without limitation any interference with land (including rail) or water transportation beyond Carrier's control; natural disaster, inclement weather, marine disaster, perils of the sea, including but not limited to, fire or other casualty which materially frustrates the ability of either party to perform under this NSA. The party declaring Force Majeure must give written notice in accordance with Clause 13 within thirty (30) days of the event giving rise to the Force Majeure and NSA Shipper's Minimum Quantity Commitment or requirements, as the case may be, shall be reduced by a percentage calculated by dividing the number of days that the Force Majeure circumstance existed by the number of days the NSA will be in effect, rounded upward to the next volume unit.

10.2 Indemnity - NSA Shipper shall indemnify, defend and hold Carrier harmless from and against any and all liabilities, including but not limited to suits, demands, causes of action, damages adjusted due or claims reasonably settled, penalties, costs and expenses (including reasonable attorneys' fees) arising from or in connection with the negligence, gross negligence or willful misconduct or breach of this NSA, any other agreement between Carrier and NSA Shipper or violation of any applicable law or regulation by NSA Shipper in connection with the NSA or any other agreement between Carrier and NSA Shipper. Except with respect to claims for loss of or damage to Goods which shall be handled in accordance Carrier's bill of lading and the Carriage of Goods by Sea Act, Carrier shall indemnify, defend and hold NSA Shipper harmless from and against any and all liabilities, including but not limited to suits, demands, causes of action, damages adjudged due or claims reasonably settled, penalties, costs and expenses (including reasonable attorneys' fees) arising from or in connection with the negligence, gross negligence or willful misconduct or breach of this NSA or violation of any applicable law or regulation by Carrier in connection with the NSA.

10.3 Consequential Loss - In no event shall any claim for loss of profits or incidental, special, consequential, or liquidated damages of any nature whatsoever be made by NSA Shipper against Carrier in any way arising from or in connection with the NSA or any other agreement between Carrier and NSA Shipper.

10.4 Vessel Operator Responsibility - NSA Shipper acknowledges that Carrier is a non-vessel operating common carrier and that its ability to act as a common carrier by water is dependent on vessel operating ocean common carriers from whom Carrier purchases ocean transportation services. NSA Shipper agrees that Carrier will not be liable to NSA Shipper for any failure to provide space or equipment, if such failure is caused by the ocean common carrier from whom Carrier purchases such ocean transportation services.

## 11. General Provisions.

11.1 Headings - Captions used in the NSA or in this section of the tariff are for convenience of reference only and

shall have no legal effect or meaning in the construction or enforcement of the NSA.

11.2 Drafting - Whenever used in the NSA, the singular shall include the plural and the plural shall include the singular, and the neutral gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning may require.

11.3 Severability - If, in any legal proceeding, it is determined that any provision of the NSA or this tariff is unenforceable under applicable law, then the unenforceable provision shall automatically be amended to conform to that which is enforceable under the law. In any event, the validity or enforceability of any provision shall not affect any other provision of the NSA, and the NSA shall be construed and enforced as if such provision had not been included.

11.4 Third Party Beneficiaries - Except as specifically provided for elsewhere in the NSA, the NSA shall not be construed to confer any benefit on any third party not a party to it nor shall the NSA provide any rights to such third party to enforce its provisions. NSA Shipper shall keep Carrier informed regarding any incident of which NSA Shipper becomes aware, which gives or may arise to claims or disputes involving third parties.

11.5 Waiver - No benefit or right accruing to either party under the NSA shall be waived unless the waiver is reduced to writing and signed by both Carrier and NSA Shipper. The failure of either party to exercise any of its rights under the NSA, including but not limited to either party's failure to comply with any time limit set out in the NSA, shall in no way constitute a waiver of those rights, nor shall such failure excuse the other party from any of its obligations under the NSA.

11.6 Integration - Upon the request of NSA Shipper, Carrier shall make the Carrier's Bill of Lading available to NSA Shipper. The NSA and all documents attached hereto or made available upon request as described in this Arrangement, all tariff provisions incorporated by reference herein, represent the final and complete agreement of the parties for the NSA.

12. Dispute Resolution. The NSA, as it is maritime in nature, shall be governed and construed in accordance with the general maritime law of the United States of America, the U.S. Federal Arbitration Act (Title 9 of the U.S. Code), the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, the regulations of the FMC and, to the extent such laws are inapplicable, the laws of the State of New York, excluding its conflict and choice of law rules.

Any dispute arising out of or in connection with the NSA or in any way connected with the shipment of Goods thereunder (save for a dispute arising from or in connection with general average) shall be referred to arbitration in New York, NY, which shall be conducted by a panel of three arbitrators whereby such arbitrators shall be chosen as follows: one to be appointed by Carrier, one by NSA Shipper

or its Affiliate as applicable, and the third chosen jointly by the arbitrators so selected. The decision of such arbitrators, or that of any two of them, shall be final, and for the purposes of enforcing any award resulting from such arbitration, the parties consent and agree that the United States District Court in the Southern District of New York has personal jurisdiction over each of them in any action to enforce an arbitration award entered hereunder, concurrently with any other court of competent having jurisdiction. The parties further agree that venue is proper in the aforementioned court. Any and all arbitration proceedings carried out pursuant to this Clause 13 shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc. Awards made pursuant hereto shall include costs, attorney's fees, interest and expenses but shall exclude punitive damages. Any arbitral award issues pursuant hereto may be enforced pursuant to either the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards on June 10, 1958 or the Inter-American Convention on International Commercial Arbitration.

13. Notices.

13.1 Any notice to be given by either party to the other party shall be in writing and may be sent by facsimile, email (providing for electronic confirmation), registered or recorded mail or by personal service.

13.2 The address of the parties for service of such communication shall be as stated in the NSA and in effect at the time of shipment in Carrier's governing tariffs(s) shall be applied to shipments hereunder.

14. CONFIDENTIALITY: Unless authorized by the other party, neither party will disclose the NSA terms and conditions other than to its employees, agents, tariff filers, or auditors, except for the NSA terms, conditions or information that are:

- (a) Required by law or legal process to be disclosed;
- (b) Incorporated herein by reference from a published tariff;
- (c) Disclosed to any person participating with the Carrier in the transportation under the NSA or receiving copies of the bill of lading for NSA shipments;
- (d) Previously disclosed to an unauthorized third party.

Carrier and Shipper agree that in no case will either disclose NSA terms and conditions to any shipper or carrier, except as under (a) or (b) above. (C)

15. Carrier's governing rules tariff is provided to Shippers at [www.dpiusa.com](http://www.dpiusa.com) in compliance with FMC regulations as provided in 46 CFR 531.4. (C)