

## **Technology Policy**

The following terms and conditions (the "Agreement") govern the access to and use of the eShipPartner<sup>®</sup> suite of online tools, the electronic data interchange (EDI) services, and any other software and/or services provided by A.N. Deringer, Inc. ("DERINGER") through this website and/or software applications (the "Services") by you ("Subscriber"). By accessing and/or using these Services, Subscriber is agreeing to be bound by these Terms, which constitute a binding legal agreement between Subscriber and DERINGER. By accepting these Terms on behalf of an employer, business, organization or other legal entity, Subscriber represents and warrants that Subscriber has the authority to bind that entity to these Terms.

### **1. Account.**

In order to use the Services, Subscriber must establish, via registration, an account or security key credentials for access to and use of the Services. The right to use the Services is personal to Subscriber and is not transferable to any other person or entity. Subscriber is responsible for all use of Subscriber's Account and or credentials (under any screen name or password) and for ensuring that all use of Subscriber's Account or credentials complies fully with the provisions of this Agreement. Subscriber shall be responsible for protecting the confidentiality of Subscriber's password(s), if any.

### **2. Additional Terms.**

DERINGER shall have the right at any time to change or modify the terms and conditions applicable to Subscriber's use of the Services, or any part thereof, or to impose new conditions, including, but not limited to, adding fees and charges for use. Such changes, modifications, additions or deletions shall be effective immediately upon notice thereof, which may be given by means including, but not limited to, posting on the website, through the Services, or by electronic or conventional mail, or by any other means by which Subscriber obtains notice thereof. Any use of the Services by Subscriber after such notice shall be deemed to constitute acceptance by Subscriber of such changes, modifications or additions.

### **3. Equipment.**

Subscriber shall be responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed for access to and use of the Services and all charges related thereto.

### **4. Subscriber Conduct.**

(A) Subscriber shall use the Services for legal and lawful purposes only. Subscriber shall not post or transmit through the Services any material which violates or infringes in any way upon the rights of others, which is illegal, libelous, or otherwise unlawful, which encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law, or which, without DERINGER's express prior written approval, contains advertising or any solicitation with respect to products or services. Any conduct by a Subscriber that DERINGER determines in DERINGER's discretion restricts or inhibits any other Subscriber from using or enjoying the Services to any extent will not be permitted. Subscriber shall not use the Services to advertise or perform any commercial solicitation, including, but not limited to, the solicitation of users to become subscribers of other on-line information services competitive with the Services. Subscriber shall not take any action which imposes an unreasonable load on the infrastructure of the Services, interfere with the proper workings of the Services, attempt to decipher, decompile, disassemble or reverse engineer any software comprising or making up the Services or delete or alter any material posted by any other person.

(B) The Services contains copyrighted material, trademarks and other proprietary information, including, but not limited to, text, software, photos, video, and graphics, and the entire contents of the Services are copyrighted as a collective work under the United States copyright laws. DERINGER owns a copyright in the selection, coordination, arrangement and enhancement of such content, as well as in the content original to it. Subscriber may not modify, publish, transmit, participate in the transfer or sale, create derivative works, or in any way exploit, any of the content, in whole or in part. Subscriber may download copyrighted material for Subscriber's personal use only. Except as otherwise expressly permitted under copyright law, no copying,

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(C) Subscriber shall not upload, post or otherwise make available on the Services (i) any material protected by copyright, trademark or other proprietary right without the express permission of the owner of the copyright, trademark or other proprietary right and the burden of determining that any material is not protected by copyright rests with Subscriber, (ii) any material which is defamatory, abusive, libelous, unlawful, obscene, threatening, harassing, fraudulent or harmful, (iii) a virus or any other harmful component or (iv) contact any other subscriber through unsolicited communications of any kind. Subscriber shall be solely liable for any damage resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from such a submission. By submitting material to any public area of the Services, Subscriber automatically warrants that the owner of such material has expressly granted to DERINGER the royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate and distribute such material (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or hereafter developed for the full term of any copyright that may exist in such material. Subscriber also permits any other subscriber to the Services to access, view, store or reproduce the material for that subscriber's personal use. Subscriber hereby grants DERINGER the right to edit, copy, publish and distribute any material made available on the Services by Subscriber. Subscriber agrees not to use the Services to impersonate another person and all materials uploaded, posted or otherwise made available on the Services by Subscriber shall correctly identify the sender.

(D) Due to the confidential and proprietary nature of the Confidential Information, Subscriber agrees that it shall not access any motor carrier Confidential Information published on eShipPartner<sup>®</sup> without first obtaining the motor carrier's written consent.

(E) Subscriber shall not transmit any Confidential Information on behalf of a motor carrier without first obtaining written consent from such motor carrier to access and transmit such information.

(F) The foregoing provisions of Section 4 are for the benefit of DERINGER, its subsidiaries, affiliates and its third party content providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf.

## **5. Disclaimer of Warranty; Limitation of Liability.**

(A) SUBSCRIBER EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT SUBSCRIBER'S SOLE RISK AND THAT SUBSCRIBERS SHOULD PERIODICALLY AUDIT ALL CUSTOMS AND OTHER TRADE DATA THAT IS FILED WITH ANY GOVERNMENT AGENCY USING THE SERVICES TO ENSURE IT IS COMPLETE AND ACCURATE. NEITHER DERINGER, ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTENT PROVIDERS OR LICENSORS WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES, OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICE, CUSTOMS ENTRY OR OTHER FILING WITH ANY GOVERNMENT AGENCY OR MERCHANDISE PROVIDED THROUGH THE SERVICES.

(B) THE SERVICES IS PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT.

(C) THIS DISCLAIMER OF LIABILITY APPLIES TO ANY DAMAGES, INJURY, PENALTY OR LIQUIDATED DAMAGES CAUSED BY OR DUE TO ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR

TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION. SUBSCRIBER SPECIFICALLY ACKNOWLEDGES THAT DERINGER IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER SUBSCRIBERS OR THIRD-PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH SUBSCRIBER.

(D) IN NO EVENT WILL DERINGER, OR ANY PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING OR DISTRIBUTING THE SERVICES OR THE SERVICES SOFTWARE, BE LIABLE FOR ANY DAMAGES, PENALTIES INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR LIQUIDATED DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES. SUBSCRIBER HEREBY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONTENT ON THE SERVICES.

(E) IN ADDITION TO THE TERMS SET FORTH ABOVE NEITHER DERINGER NOR ITS AFFILIATES, INFORMATION PROVIDERS OR CONTENT PARTNERS SHALL BE LIABLE REGARDLESS OF THE CAUSE OR DURATION, FOR ANY ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN, OR UNTIMELINESS OR UNAUTHENTICITY OF, THE INFORMATION CONTAINED WITHIN THE SERVICES, OR FOR ANY DELAY OR INTERRUPTION IN THE TRANSMISSION THEREOF TO THE USER, OR FOR ANY CLAIMS, PENALTIES, LIQUIDATED DAMAGES OR LOSSES ARISING THEREFROM OR OCCASIONED THEREBY. NONE OF THE FOREGOING PARTIES SHALL BE LIABLE FOR ANY THIRD-PARTY CLAIMS OR LOSSES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, PUNITIVE OR CONSEQUENTIAL DAMAGES. NEITHER, DERINGER, NOR ITS AFFILIATES, INFORMATION PROVIDERS OR CONTENT PARTNERS WARRANT OR GUARANTEE THE TIMELINESS, SEQUENCE, ACCURACY OR COMPLETENESS OF THIS INFORMATION. ADDITIONALLY, THERE ARE NO WARRANTIES AS TO THE RESULTS OBTAINED FROM THE USE OF THE INFORMATION.

#### **6. Monitoring.**

DERINGER shall have the right, but not the obligation, to monitor the content of the Services, to determine compliance with this Agreement and any operating rules established by DERINGER and to satisfy any law, regulation or authorized government request. DERINGER shall have the right in its sole discretion to edit, refuse to post or remove any material submitted to or posted on the Services. Without limiting the foregoing, DERINGER shall have the right to remove any material that DERINGER, in its sole discretion, finds to be in violation of the provisions hereof or otherwise objectionable.

#### **7. Indemnification.**

Subscriber agrees to defend, indemnify and hold harmless DERINGER, its affiliates and their respective directors, officers, employees and agents from and against all claims and expenses, penalties or liquidated damages including attorneys' fees, arising out of the use of the Services by Subscriber or Subscriber's Account.

#### **8. Termination.**

Either DERINGER or Subscriber may terminate this Agreement at any time. Without limiting the foregoing, DERINGER shall have the right to immediately terminate Subscriber's Account in the event of any conduct by Subscriber which DERINGER, in its sole discretion, considers to be unacceptable, or in the event of any breach by Subscriber of this Agreement. The provisions of Sections 5(B), 5(C), 5(D), and 6-12 shall survive termination of this Agreement.

#### **9. Trademarks.**

DERINGER and the eShipPartner<sup>®</sup> suite of tools and each of their logos are trademarks of A.N. DERINGER, INC. All rights reserved. All other trademarks appearing on the Services are the property of their respective owners.

#### **10. Third Party Content.**

DERINGER is a distributor of content supplied by third parties and Subscribers. It is the responsibility of Subscriber to audit and evaluate the accuracy, completeness or usefulness of any information, opinion, advice or other content available through the Services. Please seek the advice of professionals, as appropriate, regarding the evaluation of any specific information, opinion, advice or other content.

#### **11. Miscellaneous.**

This Agreement and any operating rules for the Services established by DERINGER constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede all previous written or oral agreements between the parties with respect to such subject matter. This Agreement shall be construed in accordance with the laws of the State of Vermont, without regard to its conflict of laws rules. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import.

#### **12. Privacy.**

Our customer facing tools are meant to be a service to you. In order to provide you with the best products, excellent information and quality customer service we record a variety of data from your visit to our site. We record your computer's domain name, information indicating which site pages you viewed, the address of the site you came from before visiting our site, and any search terms you used to find our site. We also record your email address if you chose to communicate with us via email. And, should we offer an online survey, we will record any information you provide us in that survey.