

一般条項: **Notice** (通知条項)

サンプル①

(a) Delivery of Notices. Each party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice") in writing and addressed to the other party at the address set forth below (or to any other address that the receiving party may designate from time to time in accordance with this Section). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), or certified or registered mail (in each case, return receipt requested, postage prepaid).

If to [日本企業名または米国子会社]: Address: [日本の本社または米国子会社住所]
Attention: [部署名/役職名、例: Legal Department / General Counselなど] Email: [メールアドレス]

If to [相手方企業名]: Address: [相手方の住所] Attention: [部署名/役職名] Email: [メールアドレス]

(b) Service of Process. Notwithstanding the foregoing, any service of process, summons, or complaint shall be made in accordance with the Federal Rules of Civil Procedure and the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, and shall be delivered to the party's address set forth in this Section. The parties do not consent to service of process via email or facsimile.

(c) Effectiveness. A Notice is effective only (i) upon receipt by the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section.

サンプル②

All notices and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at their respective addresses set forth below (or to such other address as a party may designate from time to time in accordance with this Section). Notices shall be deemed to have been duly given (a) when delivered by hand, (b) one (1) business day after being sent by a nationally recognized overnight courier, or (c) five (5) business days after being mailed by certified or registered mail, return receipt requested. Service of process in any legal action shall be governed by the applicable

court rules and international treaties, including the Hague Convention, and shall be delivered to the party's address specified below.

Address for [日本企業または米国子会社]: [Insert Address] Attention: [Insert Department/Title, e.g., Legal Department]

Address for [Counterparty]: [Insert Address] Attention: [Insert Department/Title]

サンプル③ 日本本社、そして米国子会社(被告)において非常に悪い例

All notices and legal communications may be delivered via email to the address provided below. The parties hereby waive any right to formal service of process under the Hague Convention and the Federal Rules of Civil Procedure, and agree that a Notice or service of process shall be deemed effective and complete at the time of transmission by the sender. Failure to receive a copy due to technical issues shall not invalidate the service.

なぜこの条項が「最悪」なのか:4つの致命的リスク

1. 「送信時」に送達完了となる恐怖 (At the time of transmission)

通常、FRCP(連邦民事訴訟規則)では、書類が手元に届いてから反論期間(通常21日)のカウントが始まります。しかし、この条項では「相手が送信ボタンを押した瞬間」にカウントが始まります。

2. 「不達」の責任を被告が負わされる (Technical issues)

「技術的問題で届かなくても送達は有効」という一文が最悪です。相手のメールがスパムフォルダに入った、サーバーダウンで消失した、担当者が退職してアドレスが無効だった、という場合でも、「法的には届いたもの」として裁判が進みます。気づかなければ、知らない間に欠席判決(Default Judgment)が下され、敗訴が確定します。

3. 適正手続(Due Process)の放棄 (Waiver of FRCP)

被告は、通常はFRCPに基づき「対面での手渡し」や「受領確認付き郵送」など、確実性の高い方法で訴状を受け取る権利があります。この条項は、米国憲法が保障する「適切な告知を受ける権利(Due Process)」を契約で自ら捨てていることになります。

4. ヘーグ条約のバイパス(日本本社への影響)

本来、日本本社への送達はヘーグ条約に基づき外務省を通じた厳格な手続きが必要ですが、この条項があると、相手は日本本社に対しても「メール一本」で有効な送達ができたと主張できてしまいます。