

Standard Contract Terms and Conditions for Warehouse

DEFINITIONS - Section 1

As used in this Warehouse Receipt or Contract and Rate Quotation (collectively and/or alternatively "Warehouse receipt") the terms have the following meanings:

- (a) Depositor. The person, firm, corporation or other entity for whom the Goods described herein are stored and to whom this Warehouse Receipt is issued and anyone else claiming an interest in the Goods.
- (b) Warehouse. The place where the Goods of the Depositor are stored pursuant to an agreement between the Warehouse and the Depositor. Warehouse includes officers, directors, employees and agents of the Warehouse while acting within the scope and course of their employment.
- (c) Lot. Unit or units of Goods which are separately identified by the Warehouse.
- (d) Advance. All sums due or claimed to be due to Warehouse from Depositor or others relating to the Goods regardless of the source, whether liquidated or not, including but not limited to loans, disbursements, charges made for or on account of Depositor or Goods, necessary for preservation of Goods or reasonably incurred in their sale pursuant to law.
- (e) Goods. The personal property and/or any portion thereof which is described herein and/or which Warehouse has agreed to receive and/or store pursuant to this Warehouse Receipt.

ACCEPTANCE - Sec. 2

- (a) This contract and rate quotation including accessorial charges endorsed on or attached here to must be accepted within 30 days from the proposal date by signature of Depositor on the reverse side of the contract. In the absence of written acceptance, the act of tendering goods described herein for storage or other services by Warehouse within 30 days from the proposal date shall constitute such acceptance by Depositor.
- (b) In the event that Goods tendered for storage or other services do not conform to the description contained herein, or conforming goods are tendered after 30 days from the proposal date without prior written acceptance by Depositor as provided in paragraph (a) of this section, Warehouse may refuse to accept such goods. If Warehouse accepts such goods, Depositor agrees to rates and charges as may be assigned and invoiced by Warehouse and to all terms of this contract.
- (c) This contract may be cancelled by either party upon 30 days written notice and is cancelled if no storage or other services are performed under this contract for a period of 180 days.

SHIPPING TO WAREHOUSE - Sec.3

Depositor agrees that all goods shipped to Warehouse shall identify Depositor on the bill of lading/or other contract of carriage as the named consignee in care of Warehouse and shall not identify Warehouse as the consignee if, in violation of this agreement, goods are shipped to Warehouse as named consignee, Depositor agrees to immediately notify carrier in writing copy of such notice to the Warehouse, that Warehouse named as consignee is the "in care of party" only and has no beneficial title or interest in such goods, is not a party to or beneficiary of the transportation contract and is not the shipper/consignee of such goods. Depositor further agrees that, if it fails to notify carrier as required by this Section 3 before delivery to Warehouse, Warehouse shall have the right to refuse such goods and shall not be liable or responsible for any cost, expense, loss, injury, misconsignment, or damage of any nature to, or related to such refused goods. Whether Warehouse accepts or refuses goods shipped in violation of this Section 3, Depositor agrees to indemnify and hold harmless Warehouse from any and all claims for transportation, storage, handling and other charges relating to such goods, including undercharges, rail demurrage, truck/intermodal detention and other charges of any nature.

TENDER FOR STORAGE - Sec.4

- (a) All goods for storage shall be delivered at the warehouse properly marked and packaged for handling.
- (b) The Depositor shall furnish at or prior to such delivery, a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other services desired. Otherwise the Goods may be stored in bulk or assorted lots in general storage at the discretion of the warehouse and charges for such storage will be made at the applicable storage rate.
- (c) Receipt and delivery of all or any unit of a lot shall be made without subsequent sorting except by special arrangement and subject to a charge.
- (d) Warehouse shall store and deliver Goods only in the packages in which they are originally received otherwise agreed to in writing.
- (e) Unless Depositor Shall have given, at or prior to delivery of the Goods, written instructions to the contrary, Warehouse in its discretion, may commingle and store in bulk different lots of fungible Goods, whether or not owned by the same Depositor.
- (f) Warehouse shall not be responsible for segregating Goods by production code date unless specifically agreed to in writing.

STORAGE PERIOD AND CHARGES - Sec. 5

- (a) All charges for storage are per package or other agreed unit per month.
- (b) Storage charges become applicable upon the date that the Warehouse accepts care, custody and control of the goods, regardless of unloading date or date of issue of warehouse receipt.
- (c) Except as provided in paragraph (d) of this section, a full months storage charge will apply on all goods received between the first and the 15th, inclusive, of a calendar month, one-half month's storage charge will apply on all goods received between the 16th and the last day, inclusive, of a storage month, and a full month's storage charge will apply to all goods in storage on the first day of the next and succeeding calendar months. All storage charges are due and payable on the first day of storage for the initial month and thereafter on the first day of the storage month.
- (d) When mutually agreed by the Warehouse and the Depositor, a storage month shall extend from a date in one calendar month to, but not including, the same date of the next and all succeeding months. All storage charges are due and payable on the first day of the storage month.

TRANSFER OF TITLE – Sec. 6

- (a) Instructions to transfer goods on the books of the Warehouse are not effective until delivered to and accepted by the Warehouse, and all charges up to the time transfer is made are chargeable to the Depositor of record. If a transfer involves, re-handling the goods such will be subject to a charge. When goods in storage are transferred from one party to another through issuance of a new warehouse receipt, a new storage date is established on the date of transfer. The warehouse reserves the right not to deliver or transfer Goods to or for the account of others except upon receipt of written instructions properly signed by Depositor.
- (b) The Warehouse reserves the right to move, at its expense, 14 days after notice is sent by certified or registered mail to the Depositor of record or to the last known holder of the negotiable warehouse receipt, any goods in storage from the warehouse in which they may be stored to any other affiliated Warehouse, but if such Depositor or holder takes delivery of his goods in lieu of transfer, no storage charge shall be made for the current storage month. Warehouse will store the goods at, and may without notice move the goods within and between, any one or more of the warehouse buildings which comprise the warehouse complex identified on the front of this warehouse receipt.

TERMINATION OF STORAGE, REMOVAL OF GOODS - Sec.7

- (a) The Warehouse may upon written notice to the Depositor of record and any other person known by the Warehouse to claim an interest in the goods required the removal of any goods by the end of the next succeeding storage month. Such notice shall be given to the last known place of business or abode of the person to be notified. If goods are not removed before the end of the next succeeding storage month the Warehouse may sell them in accordance with applicable law.
- (b) If Warehouse in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of the Warehouse's lien before the end of the next succeeding storage month, the Warehouse may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at a public sale held one week after a single advertisement or posting as provided by law.
- (c) If as a result of a quality or condition of the goods of which the Warehouse had no notice at the time of deposit the goods are a hazard to other properties or to the warehouse or to persons, the Warehouse may sell the goods at public or private sale without advertisement on reasonable notification to all person known to claim an interest in the goods. If the Warehouse after a reasonable effort is unable to sell the goods, it may dispose of them in any lawful manner and shall incur no liability by reason of such disposition. Pending such disposition, sale or return of the goods, the Warehouse may remove the goods from the Warehouse and shall incur no liability by reason of such removal.

HANDLING - Sec. 8

- (a) The handling charge covers the ordinary labor involved in receiving goods at warehouse door, placing goods in storage, and returning goods to warehouse door. Handling charges are due and payable on receipt of goods.
- (b) Unless otherwise agreed, labor for unloading and loading goods will be subject to a charge. Additional expenses incurred by the Warehouse in receiving and handling damaged goods, and additional expense in unloading from or loading into cars or other vehicles not at warehouse door will be charged to the Depositor.
- (c) Labor and materials used in loading rail cars or other vehicles are chargeable to the Depositor.
- (d) When goods are ordered out in quantities less than in which received the Warehouse may make an additional charge for each order or each item of an order.
- (e) The Warehouse shall not be liable for demurrage or detention, delays in unloading inbound cars, trailers or other containers, or delays in obtaining and loading cars, trailers or other containers for outbound shipment unless Warehouse has failed to exercise reasonable care.

DELIVERY - Sec.9

- (a) No goods shall be delivered or transferred except upon receipt by the Warehouse of complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, TWX, E-mail or similar communication, provided Warehouse has no liability when relying on the information contained in the communication as received. However, when no negotiable receipt is outstanding, goods may be delivered upon instruction by telephone in accordance with a prior written authorization, but the Warehouse shall not be responsible for loss or error occasioned thereby.
- (b) When a negotiable receipt has been issued no goods covered by that receipt shall be delivered, or transferred on the books of the Warehouse, unless the receipt, properly endorsed, is surrendered for cancellation or for endorsement of partial delivery thereon. If a negotiable receipt is lost or destroyed, delivery of goods may be made only upon order of a court of competent jurisdiction and the posting of security approved by the court as provided by law.
- (c) Warehouse shall have a reasonable time to make delivery after Goods are ordered out and shall have a minimum of 10 business days after receipt of delivery order in which to locate any misplaced Goods.
- (d) All instruction and requests for delivery of Goods or transfer of title are received subject to satisfaction of all charges, liens and security interests of Warehouse with respect to the Goods whether for accrued charges or advances or otherwise.
- (e) when goods are ordered out a reasonable time shall be given the Warehouse to carry out instructions and if he is unable because of Acts of God, War, Public Enemies, seizure under legal process, strikes, lockouts, riots and civil commotions, or any other reason beyond the warehouse's control or because of loss or destruction of goods for which Warehouse is not liable, or because of any other excuse provided by law, the Warehouse shall not be liable for failure to carry out such instructions and goods remaining in storage will continue to be subject to regular storage charges.
- (f) If Warehouse has exercised reasonable care and is unable, due to causes beyond its control, to effect delivery before expiration of the current storage period, the Goods will be subject to storage charges for each succeeding storage period.
- (g) All instructions and request for the delivery of Goods or transfer of title are received subject to satisfaction all charges, liens and security interest of Warehouse with respect to the goods whether for accrued charges or advances or otherwise.
- (h) Warehouse may require as a conditions precedent to delivery a statement from Depositor holding Warehouse harmless from claims of others asserting a superior right to Depositor to possession of the Goods. Nothing herein shall preclude Warehouse from exercising any other remedy available to it under the law to resolve conflicting claims to possession of the Goods. All costs, including attorney's fees, incurred by Warehouse relating in any way to

warehouse's activities referred to in Section 9(h) shall be charged to depositor and shall, for purposes of Section 15 below, be considered "charges present of future with respect to such Goods" and shall be attached as a lien on the Goods.

EXTRA SERVICE (SPECIAL SERVICES) - Sec. 10

- (a) Warehouse labor required for services other than ordinary handling and storage will be charged to the Depositor.
- (b) Special services requested by Depositor including but not limited to compiling of special stocks statements, reporting marked weights, serial numbers or other data from packages, physical check of goods and handling transit billing will be subject to a charge.
- (c) Dunnage bracing, packing materials or other special supplies may be provided for the Depositor at a charge in addition to the warehouse's cost.
- (d) By prior arrangement goods may be received or delivered during other than usual business hours, subject to a charge.
- (e) Communication expense including postage, teletype, telegram, or telephone will be charged to the Depositor if such concern more than normal inventory reporting or if, at the request of the Depositor, communications are made by other than regular United States Mail.
- (f) In the event of damage or threatened damage to the Goods. Depositor shall pay all reasonable and necessary costs of protecting and preserving the goods. When the costs of protecting and preserving stored property are attributable to more than one Depositor, said costs shall be apportioned among all affected Depositors on a pro rated basis to be determined by the Warehouse.
- (g) Any additional cost incurred by warehouse in unloading cars or trucks containing damaged Goods are chargeable to Depositor.

BONDED STORAGE - Sec. 11

- (a) A charge in addition to regular rate will be made for merchandise in bond.
- (b) Where a Warehouse receipt covers goods in U.S. customs bond, such receipt shall be void upon the termination of the storage period fixed by law.

MINIMUM CHARGES - Sec. 12

- (a) A minimum handling charge per lot and a minimum storage charge per lot per month will be made. When a warehouse receipt covers more than one lot or when a lot is in assortment, a minimum charge per mark, brand or variety will be made.

- (b) A minimum monthly charge to one account for storage and/or handling will be made. This charge will apply also to each account when one customer has several accounts, each requiring separate records and billing.

LIABILITY AND LIMITATION OF DAMAGES - Sec. 13

- (a) THE WAREHOUSE SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY TO GOODS STORED HOWEVER CAUSED UNLESS SUCH LOSS OR INJURY RESULTED FROM THE FAILURE BY THE WAREHOUSE TO EXERCISE SUCH CARE IN REGARD TO THEM AS A REASONABLY CAREFUL WAREHOUSE WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND WAREHOUSE IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.
- (b) GOODS ARE NOT INSURED BY THE WAREHOUSE AGAINST LOSS OR INJURY HOWEVER CAUSED AND THE STORAGE RATES DO NOT INCLUDE INSURANCE ON THE GOODS UNLESS WAREHOUSE HAS AGREED, IN WRITING, TO OBTAIN SUCH INSURANCE FOR THE BENEFIT OF DEPOSITOR.
- (c) WAREHOUSE and DEPOSITOR agree that WAREHOUSE'S duty of care referred to in SECTION 13(a) above does not extend to providing a sprinkler system at the warehouse complex or any portion thereof.
- (d) Unless specifically agreed to in writing, Warehouse shall not be required to store goods as in humidity controlled environment or be responsible for tempering goods.
- (e) IN THE EVENT OF LOSS, DAMAGE OR DESTRUCTION TO GOODS FOR WHICH THE WAREHOUSE IS LEGALLY LIABLE DEPOSITOR DECLARES THAT WAREHOUSES **LIABILITY SHALL BE LIMITED TO THE LESSER** OF THE FOLLOWING: (1) THE ACTUAL COST TO DEPOSITOR OF REPLACING, REPRODUCING THE LOST, DAMAGED, AND/OR DESTROYED GOODS (2) THE FAIR MARKET VALUE OF THE LOST, DAMAGED, AND/OR DESTROYED GOODS ON THE DATE DEPOSITOR IS NOTIFIED OF LOSS, DAMAGE AND/OR DESTRUCTION (3) 100 TIMES THE MONTHLY STORAGE CHARGE APPLICABLE TO SUCH LOST, DAMAGE AND/OR DESTROYED GOODS, (4) 50¢ PER POUND FOR SAID LOST DAMAGE, AND /OR DESTROYED GOODS. **PROVIDED, HOWEVER THAT WITHIN REASONABLE TIME AFTER RECEIPT** OF THIS WAREHOUSE RECEIPT, DEPOSITORY MAY, UPON WRITTEN REQUEST **INCREASE** WAREHOUSES LIABILITY ON PART OR ALL OF THE GOODS IN WHICH CASE AN INCREASED CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION; FURTHER PROVIDED THAT NO SUCH

REQUEST SHALL BE VALID UNLESS MADE BEFORE LOSS, DAMAGE OR DESTRUCTION TO ANY PORTION OF THE GOODS HAS OCCURRED.

- (f) THE WAREHOUSES LIABILITY REFERRED TO IN SECTION 13(E) SHALL BE DEPOSITORS EXCLUSIVE REMEDY AGAINST WAREHOUSE FOR ANY CLAIM OR CAUSE OF ACTION WHATSOEVER RELATING TO LOSS, DAMAGE AND/OR DESTRUCTION OF GOODS AND SHALL APPLY TO ALL CLAIMS INCLUDING INVENTORY SHORTAGE AND MYSTERIOUS DISAPPEARANCE CLAIMS UNLESS DEPOSITOR PROVES BY AFFIRMATIVE EVIDENCE THAT WAREHOUSE CONVERTED THE GOODS TO ITS OWN USE. DEPOSITOR WAIVES ANY RIGHTS TO RELY UPON ANY PRESUMPTION OF CONVERSION IMPOSED BY LAW. IN NO EVENT SHALL DEPOSITOR BE ENTITLED TO INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.
- (g) WHERE LOSS OR INJURY OCCURS TO STORED GOODS, FOR WHICH THE WAREHOUSE IS NOT LIABLE, THE DEPOSITOR SHALL BE RESPONSIBLE FOR THE COST OF REMOVING AND DISPOSING OF SUCH GOODS AND THE COST OF ANY ENVIRONMENTAL, CLEAN UP AND SITE REMEDIATION RESULTING FROM THE LOSS OR INJURY TO THE GOODS.
- (h) DEPOSITOR AGREES THAT IT MAY NOT OFFSET DAMAGES CLAIMS AGAINST AMOUNTS OWED TO WAREHOUSE WITHOUT PRIOR WRITTEN AGREEMENT WITH WAREHOUSE.

NOTICE OF CLAIM AND FILING OF SUIT - Sec-14

- a. Claims by the depositor and all others persons must be presented in writing to the warehouse within a reasonable time, and in no event longer than either 60 days after delivery of the goods by the warehouse or 60 days after Depositor of record or the last known holder of a negotiable warehouse receipt is notified by the warehouse that loss or injury to part or all of the goods has occurred, whichever time is shorter.
- b. No action may be maintained by the Depositor or others against the warehouse for loss or injury to the goods stored unless timely written claim has been given as provided in paragraph (a) of this section and unless such action is commenced either within nine months after date of delivery by warehouse or within nine months after depositor of record or the last known holder of a negotiable warehouse receipt is notified that loss or injury to part or all of the goods has occurred, whichever time is shorter.
- c. When goods have not been delivered notice may be given to known loss or injury to the goods by mailing of a registered or certified letter to the Depositor of record or to the last known holder of a negotiable warehouse receipt. Time limitations for presentation of claim in writing and maintaining of action after notice begin on the date of mailing of such notice by warehouse.

- d. As a condition precedent to making any claim and/or filing any suit, Depositor shall provide warehouse with a reasonable opportunity to inspect the goods which are the basis of depositor's claim.

LIEN-Sec. 15

Warehouse shall have a lien against the Goods and on the proceeds thereof for all charges for storage, handling, transportation, (including demurrage and terminal charges), insurance, labor and other charges present or future with respect to the Goods. Advances or loans by Warehouse in relation to the goods and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. Warehouse further claims a lien on the goods for all such charges. Advances and expenses in respect to any other property stored by Depositor in any other warehouse or operated by Warehouse or its subsidiaries wherever located and wherever deposited and without regard to whether or not said other property is still in storage.

LIABILITY FOR CONSEQUENTIAL DAMAGES - Sec.16

Warehouse shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind.

LIABILITY FOR MISSHIPMENT AND MISLABELING - Sec.17

If Warehouse negligently misships and/or mislabels goods, the Warehouse shall pay the reasonable transportation charges incurred to return the misshipped and/or mislabels goods to the Warehouse. If the consignee fails to return goods, Warehouse's maximum liability shall be for the goods as specified in Section 13 above, and Warehouse shall have no liability for damages due to the consignee's acceptance or use of the goods whether such goods be those of the depositor or another.

MYSTERIOUS DISAPPEARANCE - Sec. 18

Warehouse shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods unless Depositor establishes such loss occurred because of the Warehouse's failure to exercise the care required of Warehouse under Section 13 above. Any presumption of conversion imposed by law shall not apply to such loss and a claim by depositor of conversion must be established by affirmative evidence that the Warehouse converted the goods to the Warehouse's own use.

RIGHT TO STORE GOODS-Sec. 19

- (a) Depositor represents and warrants that Depositor is lawfully possessed of the goods and has the right and authority to store them with Warehouse, Depositor agrees to indemnify and hold harmless the Warehouse from all loss, cost and expense (including reasonable attorneys' fees) which Warehouse pays or incurs as a result of any dispute or litigation, whether instituted by Warehouse or others, respecting Depositors right, title or interest in the goods. Such amounts shall be charges in relation to the goods and subject to Warehouse's lien.
- (b) Depositor agrees to notify all parties acquiring any interest in the Goods of the terms and conditions of this Warehouse Receipt and to obtain, as a condition of granting such an interest, the agreement of such parties to be bound by the terms and conditions of the Warehouse Receipt.

ACCURATE INFORMATION - Sec. 20

Depositor will provide Warehouse with information concerning the stored goods which is accurate, harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which Warehouse pays or incurs as a result of Depositor failing to fully discharge this obligation.

NOTICES - Sec. 21

All written notices provided herein may be transmitted by any commercially reasonable means of communication and directed to Warehouse at the address on the front hereof and to Depositor at its last known address. Depositor is presumed to have knowledge of the contents of all notices transmitted in accordance with this Section within five days of transmittal.

SEVERABILITY AND WAVIER - Sec. 22

- (a) If any provision of this receipt, or any application thereof, should be construed or held to be void, invalid or unenforceable, by order, decree or judgment of a court of competent jurisdiction, the remaining provisions of this receipt shall not be affected thereby but shall remain in full force and effect.
- (b) Warehouse's failure to require strict compliance with any provision of the Warehouse Receipt shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of the Warehouse Receipt.

- (c) The provisions of this Warehouse Receipt shall be binding upon the depositor's heirs, executors, successors and assigns; contain the sole agreement governing goods stored with the Warehouse; and, cannot be modified except by a writing signed by Warehouse or one of Warehouse's agents.