Standard Contract Terms and Conditions for Merchandise Warehouses

(Approved and promulgated by American Warehouse Association, October 1968; revised and promulgated by International Warehouse Logistics Association, January 1998 and November 2008)

ACCEPTANCE – Sec. 1

(a) This contract and rate quotation including accessorial charges endorsed on or attached hereto 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. Depositor has had the opportunity to review and inspect the warehouse facility ("Facility").

(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, warehouseman may refuse to accept such goods. If warehouseman accepts such goods, depositor agrees to rates and charges as may be assigned and invoiced by warehouseman and to all terms of this contract.

(c) This contract may be canceled by either party upon 30 days written notice and is canceled if no storage or other services are performed under this contract for a period of 180 days.

SHIPPING – Sec. 2

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 Contract, Goods are shipped to Warehouse as named consignee on the bill of lading or other contract of carriage, Depositor agrees to immediately notify carrier in writing, with copy of such notice to Warehouse, that Warehouse named as consignee is the "in care of party" only and has no beneficial title or interest in the Goods. Furthermore, Warehouse shall have the right to refuse such Goods and shall not be liable for any loss, misconsignment, or damage of any nature to, or related to, such Goods. Whether Warehouse accepts or refuses Goods shipped in violation of this Section 2, Depositor agrees to indemnify and hold Warehouse harmless from 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 whatsoever.

TENDER FOR STORAGE – Sec. 3

All Goods shall be delivered at the Facility properly marked and packaged for storage and handling. 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.

STORAGE PERIOD AND CHARGES – Sec. 4

(a) Unless otherwise agreed in writing, all charges for storage are per package or other agreed unit per month

(b) The storage month begins on the date that Warehouse accepts care, custody and control of the Goods, regardless of unloading date or date of issues of warehouse receipt.

(c) A full month's storage charge will apply on all goods received on any date within a calendar 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 calendar month.

TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS – Sec. 5

(a) Instructions to transfer Goods on the books of the Warehouse are not effective until delivered to and accepted by Warehouse, and all charges up to the time transfer is made are chargeable to the Depositor. If a transfer involves rehandling 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.

(b) The Warehouse reserves the right to move, at its expense, 14 days after notice is sent by certified mail or overnight delivery to the Depositor, any Goods in storage from the Facility in which they may be stored to any other of the Warehouse's Facilities. 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 Facility identified on the front of this contract.

(c) The Warehouse may, upon written notice of not less than 30 days to the Depositor and any other person known by the Warehouse to claim an interest in the Goods, require the removal of any Goods. Such notice shall be given to the last known place of business of the person to be notified. If Goods are not removed before the end of the notice period, the Warehouse may sell them in accordance with applicable law.

(d) If Warehouse in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of Warehouse's lien before the end of the 30-day notice period referred to in Section 5(c), the Warehouse may specify in the notification any reasonable shorter time for removal of the Goods and if the Goods are not removed, may sell them at public sale held one week after a single advertisement or posting as provided by law.

(e) 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 property or to the Facility or to persons, the Warehouse may sell the Goods at public or private sale without advertisement on reasonable notification to all persons 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 Facility and shall incur no liability by reason of such removal.

HANDLING – Sec. 6

(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 in writing, 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 any demurrage or detention, any delays in unloading inbound cars, trailers or other containers, or any delays in obtaining and loading cars, trailers or other containers for outbound shipment unless Warehouse has failed to exercise reasonable care.

DELIVERY REQUIREMENTS – Sec. 7

(a) No Goods shall be delivered or transferred except upon receipt by the Warehouse of Depositor's complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, E-Mail or similar communication, provided Warehouse has no liability when relying on the information contained in the communication as received. Goods may be delivered upon instruction by telephone in accordance with Depositor's prior written authorization, but the Warehouse shall not be responsible for loss or error occasioned thereby.

(b) 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 or civil commotions, or any reason beyond the Warehouse's control, or because of loss of or damage to 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.

EXTRA SERVICES (SPECIAL SERVICES) – Sec. 8

(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 stock 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, overnight delivery, 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.

BONDED STORAGE – Sec. 9

(a) A charge in addition to regular rates will be made for merchandise in bond.

(b) Where a warehouse receipt covers Goods in U.S. Customs bond, Warehouse shall have no liability for Goods seized or removed by U.S. Customs

MINIMUM CHARGES – Sec. 10

(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. 11

(a)WAREHOUSE SALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO GOODS TENDERED, STORED OR HANDLED HOWEVER CAUSED UNLESS SUCH LOSS OR DAMAGE RESULTED FROM THE FAILURE BY THE WAREHOUSE TO EXERCISE SUCH ARE IN REGARD TO THEM AS A RESONABLY CAREFUL PERSON 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 WAREHOUSE AGAINST LOSS OR DAMAGE HOWEVER CAUSED
(c) THE DEPOSITOR DECLARES THAT DAMAGES ARE LIMITED TO $2.00 per pound PROVIDED, HOWEVER THAT SUCH LIABILITY MAY AT THE TIME OF ACCEPTANCE OF THIS CONTRACT AS PROVIDED INSECTION 1 BE INCREASED UPON DEPOSITOR'S WRITTEN REQUEST ON PART OR ALL OF THE GOODS HEREUNDER IN WHICH EVENT AN ADDITIONAL MONTLY CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION.
(d) WHERE LOSS OR DAMAGE OCCURS TO TENDERED, STORED OR HANDLED GOODS, FOR WHICH 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 DAMAGE TO THE GOODS.

NOTICE OF CLAIM AND FILING OF SUIT – Sec. 12

(a) Claims by the Depositor and all other persons must be presented in writing to the Warehouse within a reasonable time, and in no event longer than the earlier of: (i) 60 days after delivery of the goods by the Warehouse or (ii) 60 days after the Depositor is notified by the Warehouse that loss or damage to part or all of the Goods has occurred.
(b) No lawsuit or other action may be maintained by the Depositor or others against the Warehouse for loss or damage to the Goods unless timely written claim has been given as provided in paragraph (a) of this section and unless such lawsuit or other action is commenced no later than the earlier of: (i) nine months after date of delivery by Warehouse or (ii) nine months after Depositor is notified that loss or damage to part or all of the Goods has occurred.
(c) When Goods have not been delivered, notice may be given of known loss or damage to the Goods by mailing of a letter via certified mail or overnight delivery to the Depositor. 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.

LIABILITY FOR CONSEQUENTIAL DAMAGES – Sec. 13

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

LIABILITY FOR MISSHIPMENT – Sec. 14

If Warehouse negligently misships Goods, the Warehouse shall pay the reasonable transportation charges incurred to return the misshipped Goods to the Facility. If the consignee fails to return the Goods, Warehouse's maximum liability shall be for the lost or damaged goods as specified in Section 11 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. 15

Warehouse shall be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods only if Depositor establishes such loss occurred because of Warehouse's failure to exercise the care required of Warehouse under Section 11 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 Warehouseman converted the Goods to the Warehouse's own use.

RIGHT TO STORE GOODS – Sec. 16

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 Depositor's right, title or interest in the Goods. Such amounts shall be charges in relation to the Goods and subject to Warehouse's lien.

ACCURATE INFORMATION – Sec. 17

Depositor will provide Warehouse with information concerning the Goods, which is accurate, complete and sufficient to allow Warehouse to comply with all laws and regulations concerning the storage, handling and transporting of the Goods. Depositor will indemnify and hold Warehouse 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.

SEVERABILITY and WAIVER – Sec. 18

(a) If any provision of this Contract, 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 contract 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 this Contract shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of this Contract.
(c) The provisions of this Contract shall be binding upon the heirs, executors, successors and assigns of both Depositor and Warehouse; contain the sole agreement governing Goods tendered to the Warehouse; and, cannot be modified except by a writing signed by Warehouse and Depositor.

LIEN – Sec. 19

Warehouse shall have a general warehouse lien for all lawful charges for storage and preservation of the Goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing coopering, and other charges and expenses in relation to such Goods, and for the balance on any other accounts that may be due. Warehouse further claims a general warehouse lien for all such charges, advances and expenses with respect to any other Goods stored by the Depositor in any other facility owned or operated by the Warehouse. In order to protect its lien, Warehouse reserves the right to require advance payment of all charges prior to shipment of Goods.

DOUCMENTS OF TITLE – Sec. 20

Documents of title, including warehouse receipts, may be issued either in physical or electronic form at the option of the parties

GOVERNING LAW AND JURISDICTION – Sec. 21

This Contract and the legal relationship between the parties hereto shall be governed by and construed in accordance with the substantive laws of the state where the Facility is located, including Article 7 of the Uniform Commercial Code as ratified in the state, notwithstanding its conflict of laws rules. Any lawsuit or other action involving any dispute, claim or controversy relating in any way to this Contract shall be brought only in the appropriate state or federal court in the state where the Facility is located.

The parties acknowledge the Limitation of Liability and Damages in Section 11 and all Terms and Conditions as presented are accepted by:

Name

Title

Date

Company Name

Signature