

# Terms and Conditions of Service

These terms and conditions of service constitute a legally binding contract between the “Company” and the “Customer.” In the event the Company renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall govern those services.

## 1. Scope

- 1.1 Any and all logistics services provided by BoxBox Freight LLC, its subsidiaries, related companies, agents, and or representatives hereinafter collectively referred to as the “Company” to the “Customer” shall be subject to these Terms and Conditions. “Customer” shall mean the person or company for which the Company is rendering service, as well as its agents and or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers, sellers, shipper’s agents, insurers, underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives.
- 1.2 “Documentation” shall mean all information received directly or indirectly from Customer, whether in paper or electronic form; “Ocean Transportation Intermediaries” (“OTI”) shall include an “ocean freight forwarder” and a “non-vessel operating carrier” (NVOCC); “Third parties” shall include, but not limited to, the following: “carriers, truckmen, cartmen, forwarders, OTIs, customs brokers, agents, warehousemen, and others to which the goods are entrusted for transportation, cartage, handling and or delivery and or storage or otherwise.”
- 1.3 Company as agent. The Company acts as the “agent” of the Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export documentation on behalf of the Customer and other dealings with government agencies: as to all other services, Company acts as an independent contractor.

## 2. Third Party Services

- 2.1 Unless the Company carries, stores, or otherwise physically handles the shipment, and loss, damage, expense or delay occurs during such activity, the Company assumes no liability as a carrier and is not to be held responsible for any loss, damage, expense or delay to the goods to be forwarded or imported except as provided in paragraph 8 and subject to the limitations of paragraph 9 below but undertakes only to use reasonable care in the election of carriers, truckers, ground handlers, forwarders, customs brokers, agents, warehousemen, lightermen, and others to whom it may entrust the goods for transportation, cartage, handling and or delivery and or storage or otherwise

- 2.2 When the Company carries, stores or otherwise physically handles the goods, it does so subject to the limitations of paragraph 9 below, unless a separate air waybill, bill of lading, or other contract of carriage is issued by the Company, in which event the terms thereof shall govern.

## 3. Liability Limitations of Third Parties

- 3.1 The Company is authorized to select and engage carriers, truckmen, lightermen, forwarders, customs brokers, agents, warehousemen, and others, as required, to transport, store, deal with and delivery the goods, all of whom shall be considered the agents of the Company, and the goods may be entrusted to such agencies subject to all conditions as to limitations of liability for loss, damage, expense or delay and to all rules, regulations, requirements and conditions, whether printed, written or stamped, appearing in air waybill, bills of lading, CMR, other transport documents, receipts, or tariff’s issued by such carriers, truckmen, lightermen, forwarders, customs brokers, agents, warehousemen, and others.
- 3.2 The Company shall under no circumstances be liable for any loss, damage, expense, or delay to the goods for any reason whatsoever when said goods are in the custody, possession, or control of third parties selected by the Company to forward, enter, clear, transport, or render other services with respect to such goods. All claims in connection with the act of a third party shall be brought solely against such party and or its agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.
- 3.3 No duty to maintain records for customer. Customer acknowledges that pursuant to Section 508 and 509 of the Tariff Act, as amended, (19 USC 1508 and 1509) it has the duty and is solely liable for Statue(s) and or Regulation(s), but no act as a “record keeper” or “recordkeeping agent” for Customer.
- 3.4 Obtaining Binding Rulings, Filing Protest, etc. Unless requested by Customer in writing and agreed to by Company in writing, Company shall be under no obligation to undertake any pre or post customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and or protest, etc.



#### **4. Communication**

- 4.1 The Customer warrants that each and every of the instructions given to the Company is lawful, valid, and performable.
- 4.2 The Customer warrants that the information provided to the Company concerning the goods is sufficient and correct. Where Company prepares and or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages, and or cartons, etc. Company shall rely upon the use of cargo weight supplied by Customer. Customer acknowledges that it is required to review all documents and declarations prepared by or filed with the customs service, other government agency and or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Customers behalf. The company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer. Customer shall use reasonable care to insure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect or false statement by the Customer upon which the Company reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any an all information required to import, export, or enter the goods.
- 4.3 Any instructions provided by the Customer to the Company will be valid only if given in writing, acknowledged by the Company in writing and given in sufficient time in all the circumstances for the Company reasonably to be able to adopt the instructions. Instructions provided by any means other than email,
- 4.4 or instructions given late, even if received by the Company without comment, shall not be binding upon the Company. No attempt by the Company to adopt late instructions will constitute an acceptance by the Company or affect the validity of those instructions. Notwithstanding any prior dealings between the
- 4.5 Company and the Customer or any rule of law or equity or provision of any statute or regulation to the contrary, or any contracts, documents and other matter (including cash, cheques, bank drafts, and other remittances) sent to the Company through the post shall be deemed not to have been received by the Company unless and until they are actually delivered to the Company at its office address or placed in the Company's post office box, if so addressed.

- 4.6 Except under special arrangements previously made in writing, the Customer warrants that the goods are not the dangerous goods as defined under binding documents such as laws, regulations, international conventions, nor are other goods likely to cause damage. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to accept or handle or deal with any such goods otherwise than under special arrangements previously made in writing, the Customer shall be liable for all expenses, losses, damages whatsoever caused, fines and claims in connection with the goods howsoever arising. The Company or other persons in actual control of the goods has the right to decide whether the goods are dangerous without notice to the Customer and shall be entitled to destroy or otherwise dispose of the goods at risk and expenses of the Customer.

#### **5. Quotations Not Binding**

- 5.1 Quotations as to fees, rates of duty, freight charges, insurance fees or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice and shall not under any circumstances be binding upon the Company unless the Company in writing specifically undertakes the handling or transportation of the shipment at a specific date.

#### **6. Declaring Higher Valuation**

- 6.1 Inasmuch as truckers, carriers, warehousemen and others to whom the goods are entrusted (collectively "The Third Parties") usually limit their liability for loss or damage unless a higher value is declared and the charge based on such higher value is accepted by any such Third Party, the Company must receive specific written instructions from the Customer to pay such higher charge based on valuation and any such party, must accept such higher declared value: otherwise the valuation placed by the Customer on the goods shall be considered solely for export, or customs purposes and the goods will be delivered to the Third Party subject to the limitation of liability set forth herein in paragraph 9-10 below with respect to any claim against the Company and subject to the provisions of paragraph 1 above.

#### **7. Cargo Insurance**

- 7.1 The Company will make reasonable efforts to affect marine, theft, and other insurance upon the goods only after specific written instructions have been received by the Company from the Customer in such sufficient time prior to shipment from the point of origin, and at the same time the written instruction from the Customer specifically states the kind and amount of insurance to be placed.



- 7.2 The Company is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance.
- 7.3 Should an insurer dispute its liability for any reason, the insured shall have recourse against the insurer only and the Company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rates as that charged or paid to the Company by the Customer, or that the shipment was insured under a policy in the name of the Company.
- 8. Limitation of Actions.**
- 8.1 Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company within (7) seven days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer.
- 8.2 All suits against the Company must be filed and properly served on Company as follows: within thirty (30) days from the date of the loss, damage, or date of liquidation of the entry(s),
- 9. Limitation of Liability**
- 9.1 The Customer agrees that the Company shall only be liable for any loss, damage, expense, or delay to the goods resulting from the negligence or other fault of the Company; such liability shall be limited to an amount of \$50.00 per shipment or transaction from activities other than those relating to customs brokerage. Where the claim arises from activities relating to "Customs business," \$50.00 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less; In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages even if it has been put on notice of the possibility of such damages.
- 9.2 For the warehousemen acting as the agent of the Company 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 warehouseman to exercise reasonable care and the warehouseman is not liable for damages that could not have been avoided by the exercise of such care. Goods are not insured by the warehouseman against loss or injury, however caused.
- 9.3 If the warehouseman negligently mis-ships goods, the warehouseman shall pay the reasonable transportation charges incurred to return the mis-shipped goods to the warehouse. If the consignee fails to return the goods, the warehouseman's maximum liability shall be for the lost or damaged due to the consignee's acceptance or use of the goods, whether such goods be those of the depositor or another.

- 9.4 The warehouseman shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods unless the depositor establishes that such loss occurred because of the warehouseman's failure to exercise the care required of warehouseman under section 9.2 above. Any presumption of conversation imposed by law shall not apply to such loss and a claim by the depositor of the conversion must be established by affirmative evidence that the warehouseman converted the goods to the warehouseman's own use.

**10. Indemnification**

- 10.1 In the event that a carrier, agent, broker, other person or any governmental agency makes a claim or institutes legal action against the Company for freight, duties, fines, penalties, liquidated damages or other money due arising from a shipment of goods of the Customer, the Customer agrees to indemnify and hold the Company harmless for any amount the Company may be required to pay such carrier, agent, other person or governmental agency together with reasonable expenses, including attorney fees, costs and expenses incurred by the Company in connection with defending such claim or legal action and obtaining reimbursement from the Customer.
- 10.2 The confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of the Customer to the Company to pay all charges or money due promptly on demand.

**11. General Lien on Any Property**

- 11.1 The Company shall have a general lien on any and all property (and documents relating thereto) to the Customer, in its possession, custody or control or engage route, for all claims for charges, expenses, or advances incurred by the Company in connection with any shipments of the Customer.
- 11.2 In case any claim remains unsatisfied for thirty (30) days after demand for its payment is made, the Company may sell at public auction or private sale, upon ten (10) days written notice to the Customer, the property, as may be necessary to satisfy such lien, and apply the net proceeds of such sale to the payment of the amount due the Company.

**12. Pricing and Payment**

- 12.1 Rates and charges for the carriage of the shipment shall be based on actual, volumetric, pivot weight or other applicable chargeable weight, whichever is greater.
- 12.2 The Customer shall tender payment to the Company immediately upon booking the shipment unless the Company in its discretion determines to extend credit to the Customer.



12.3 On all amounts overdue to the Company, the Company shall be entitled to interest calculated on a daily basis from the date such accounts are overdue until payment thereof at 0.5% per during the period that such amounts are overdue.

12.4 The Customer shall absorb their own currency losses and own bank charges on remittance.

12.5 In any dispute involving monies owed by Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 15% per annum or the highest rate allowed by law, whichever is less, unless a lower amount is agreed to by Company.

**13. Force Majeure**

13.1 The Company shall not be liable for any delay in the performance or non-performance, in whole or in part, by the occurrence of any contingency beyond the reasonable control of the Company, including, but not limited to fires, floods, weather, labor troubles, strikes, break-downs, riots, embargoes, the regulation, order, or requirement of any government, wars (whether or not an actual declaration thereof is made), hostilities, warlike operations, failure or subdivision thereof, affecting conditions of these Agreement or otherwise, judicial action, accident, explosion, storms or other acts of God.

13.2 Any such delay shall excuse the Company from performance and Company's time for performance shall be extended for the period of delays and for a reasonable period thereafter.

**14. Non-disclosure of Information**

14.1 The Parties agree that all Confidential Information of one party known or obtained by the other shall be kept confidential and shall not be disclosed or permitted to be disclosed to any third party without prior written authorization from the other Party or unless otherwise required by law.

14.2 For purposes of this provision, Confidential Information shall include, but not limited to, technical information including computer software and systems, report formats, pricing, and financial information, and management information systems.

**15. No Modification or Amendment Unless Written.**

15.1 These terms and conditions of service may only be modified, altered, or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.

**16. Governing Law; Consent to Jurisdiction and Venue.**

16.1 These Terms and Conditions shall be governed by and construed in accordance with the laws of California without giving consideration to principals of conflict of law.

16.2 The Customer and Company irrevocably consents to the jurisdiction of the United States District Court in the State courts of California, city of Long Beach. Both Parties agree that any action relating to the services performed by Company shall only be brought in said courts.



## WAREHOUSE TERMS AND CONDITIONS

### 17. DEFINITIONS:

Except as otherwise designated on the face hereof, the terms "the warehouseman," "the warehouse company" and "company" mean BoxBox Freight Inc., its subsidiaries, related companies, agents, subcontractors and/or representatives. The term "depositor" means the shipper, consignee, owner of the goods or its agents, including, but not limited to, motor carriers, motor freight brokers and draymen and/or any entity that places or maintains a chassis/trailer pool at the warehouseman's facility identified in this warehouse receipt. The term "equipment" means any chassis, container, trailer, or tractor. The term "goods" means the merchandise, cargo or freight tendered for storage by the depositor and identified on the face of this warehouse receipt. The term "yard storage" means the placement of containers or trailers, with or without tractors, empty or loaded with merchandise, secured or unsecured, in the yard of the warehouseman for the benefit of the depositor and/or the depositor's goods.

### 18. ACCEPTANCE

(a) This contract and rate quotation, including accessorial charges endorsed on or attached hereto, is effective upon receipt of goods by warehouse company into its warehouse facility or upon written acceptance by depositor, whichever occurs first.  
(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 inception date without prior written acceptance by the depositor as provided in sub-paragraph (a) of this section, the warehouseman may refuse to accept such goods. If the warehouseman accepts such goods, the depositor agrees to rates and charges as may be assigned and invoiced by the 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 90 days.

### 19. SHIPPING

The depositor shall not designate the warehouseman to be the consignee for any goods under any bill of lading, waybill, air waybill, or any other transportation contract. If, in violation of this agreement, goods are shipped to the warehouseman as named consignee, the depositor agrees to notify carrier in writing prior to such shipment, with copy of such notice to the warehouseman, that warehouseman named as consignee is a warehouseman and has no beneficial title or interest in such goods and the depositor further agrees to indemnify and hold harmless the warehouseman from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention or charges of any nature, in connection with goods so shipped. The depositor further agrees that if it fails to notify carrier as required by the preceding sentence, the warehouseman shall have the right to refuse such goods and shall not be liable or responsible for any loss, injury, or damage of any nature to, or related to, such goods.

### 20. TENDER FOR STORAGE

All goods for storage shall be delivered at the warehouse properly marked and packaged for handling. At the time of such delivery, or prior thereto, the depositor shall furnish to the warehouseman a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other services desired.

### 21. STORAGE PERIOD AND CHARGES

(a) All charges for storage are per package or other agreed unit, per month.  
(b) Storage charges commence upon the date that warehouseman accepts care, custody and control of the goods, regardless of the unloading date or the date of issue of a warehouse receipt.  
(c) Except as provided in sub-paragraph (d) of this section, a full month's storage charge will apply on all goods received between the first and the fifteenth, inclusive, of a calendar month; one-half month's storage charge will apply on all goods received between the sixteenth and the last day, inclusive, of 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.  
(d) When mutually agreed by the warehouseman 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.



## **22. TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS & LIEN BY WAREHOUSEMAN**

(a) Instructions to transfer goods to the warehouseman are not effective until delivered to and accepted by the warehouseman, and all charges up to the time transfer is made are chargeable to the depositor of record. If a transfer involves rehandling the goods, such rehandling 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 warehouseman reserves the right to move, at his expense, fourteen 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 of his warehouses. 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. The warehouseman will store the goods at and may without notice move the goods within and between, any one or more of the warehouse buildings that comprise the warehouse complex identified on the front of this warehouse receipt.

(c) The warehouseman may, upon written notice to the depositor of record and any other person known by the warehouseman to claim an interest in the goods, require 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 residence of the person to be notified. If goods are not removed before the end of the next succeeding storage month, the warehouseman may sell them in accordance with applicable law.

(d) If the warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of the warehouseman's then current and otherwise outstanding warehouse or other charges before the end of the next succeeding storage month, the warehouseman 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 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 warehouseman had no notice at the time of deposit or to which the goods have deteriorated and the goods are a hazard to other property or to the warehouse or to any persons in the warehouseman's sole opinion, the warehouseman 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 warehouseman after a reasonable effort is unable to sell the goods, he 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 warehouseman may remove the goods from the warehouse and shall incur no liability by reason of such removal.

(f) The warehouseman claims a lien for all lawful charges for storage and preservation of the goods and/or equipment; also, for money advanced, interest, insurance, transportation, labor, weighing, cooping and other charges and expenses in relation to such goods, and for the balance on any other accounts that may be due. The warehouseman also claims a lien under maritime law, if applicable, the Company's bill of lading, if issued, and the Company's "Terms & Conditions of Service," if applicable. The warehouseman reserves the right to exercise its lien rights under the terms of any applicable law and/or agreement between the depositor and the warehouseman. **THE GOODS COVERED BY THIS RECEIPT**

**HAVE NOT BEEN INSURED BY THE WAREHOUSEMAN FOR THE BENEFIT OF THE DEPOSITOR AGAINST FIRE OR ANY OTHER CASUALTY. PROCUREMENT OF SUCH INSURANCE IS THE SOLE RESPONSIBILITY OF THE DEPOSITOR, AT THE DEPOSITOR'S SOLE DISCRETION AND EXPENSE.**

## **23. HANDLING**

(a) The handling charge covers the ordinary labor involved in receiving goods at the warehouse door, placing goods in storage, and returning goods to the 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 warehouseman in receiving and handling damaged goods, and additional expenses incurred in unloading from or loading into cars or other vehicles not at the 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 those in which received, the warehouseman may make an additional charge for each order or each item of an order.

(e) The warehouseman 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 the warehouseman has failed to exercise reasonable care.



**24. DELIVERY REQUIREMENTS**

- (a) No goods shall be delivered or transferred except upon receipt by the warehouseman of complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, TWX or similar communications, provided the warehouseman 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 warehouseman 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 warehouseman, 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 by a court of competent jurisdiction and the posting of security approved by the court as provided by law.
- (c) When goods are ordered out, a reasonable time shall be given the warehouseman to carry out instructions, and if he is unable to do so because of acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots and civil commotions, or any reason beyond the warehouseman's control, or because of the loss or destruction of goods for which warehouseman is not liable, or because of any other excuse or justification provided by law, the warehouseman 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.

**25. EXTRA SERVICES/SPECIAL SERVICES**

- (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 checking of goods, and handling transit billing will be subject to a charge.
- (c) Damage, bracing, packing materials or other special supplies may be provided to the depositor at a charge in addition to the warehouseman's cost.
- (d) By prior arrangement, goods may be received or delivered other than during usual business hours, subject to a charge.
- (e) Communication expenses, including postage, teletype, telegram, or telephone will be charged to the depositor if such expenses concern more than normal inventory reporting or if, at the request of the depositor, communications are made by other than regular United States mail.

**26. MINIMUM CHARGES**

- (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.

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**27. LIABILITY AND LIMITATION OF DAMAGES**

- (a) the warehouseman 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 warehouseman to exercise reasonable care and the warehouseman is not liable for damages that could not have been avoided by the exercise of such care.
- (b) goods are not insured by the warehouseman against loss or injury, however caused.
- (c) the depositor declares that aggregate damages are limited to \$.50 per lb. not to exceed \$50,000 for all services provided or arranged, provided, however, that such liability may at the time of acceptance of this contract, as provided in section 1, be increased upon depositor's written request on part or all of the goods hereunder in which event an additional monthly charge will be made based upon such increased valuation.
- (d) where loss or injury occurs to stored goods, for which the warehouseman 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.

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## **28. ARBITRATION**

(a) The warehouseman and depositor, on behalf of itself and its heirs, assigns, and/or subrogees, agree that any dispute arising under this Warehouse Receipt shall be submitted to the American Arbitration Association, under its Commercial Arbitration rules then in force, or the Transportation ADR Council, Inc. The parties agree to be bound by the arbitration decision and judgment upon such decision may be entered in any federal or state court of competent jurisdiction in the state of California. Any arbitration shall be held in the state of California, city of Los Angeles, and no other place.

(b) The depositor expressly agrees that the time for commencement of such arbitration proceedings by the depositor against the warehouseman shall be limited to 9 months after date of delivery by the warehouseman or within 9 months after the 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—all proceedings commenced thereafter being time-barred, however founded.

## **29. NOTICE OF CLAIM AND COMMENCEMENT OF ARBITRATION**

(a) Claims by the depositor and all other persons must be presented in writing to the warehouseman within a reasonable time, and in no event longer than either 60 days after delivery of the goods by the warehouseman or 60 days after the depositor of record or the last known holder of a negotiable warehouse receipt is notified by the warehouseman that loss or injury to part or all of the goods has occurred, whichever time is shorter.

(b) Neither the depositor nor any other person may commence an arbitration against the warehouseman for loss or injury to the goods stored unless timely written claim has been given as provided in sub-paragraph (a) of this section.

(c) When goods have not been delivered, notice may be given of 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 commencing an arbitration after notice begin on the date of mailing of such notice by the warehouseman.

## **30. NO LIABILITY FOR CONSEQUENTIAL DAMAGES**

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

## **31. LIABILITY FOR MIS-SHIPMENT**

If the warehouseman negligently misships goods, the warehouseman shall pay the reasonable transportation charges incurred to return the mis-shipped goods to the warehouse. If the consignee fails to return the goods, the warehouseman's maximum liability shall be for the lost or damaged goods, as specified in Section 11 above, and the warehouseman 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.

## **32. MYSTERIOUS DISAPPEARANCE**

The warehouseman shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods unless the depositor establishes that such loss occurred because of the warehouseman's failure to exercise the care required of warehouseman under Section 11 above. Any presumption of conversion imposed by law shall not apply to such loss and a claim by the depositor of conversion must be established by affirmative evidence that the warehouseman converted the goods to the warehouseman's own use.

## **33. RIGHT TO STORE GOODS**

The depositor represents and warrants that the depositor is lawfully possessed of the goods and has the right and authority to store them with the warehouseman. The depositor agrees to indemnify and hold harmless the warehouseman from all loss, cost, and expense, including reasonable attorneys' fees that warehouseman pays or incurs as a result of any dispute or litigation, whether instituted by the warehouseman 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 the warehouseman's lien.

## **34. ACCURATE INFORMATION**

The depositor will provide the warehouseman with information concerning the stored goods that is accurate, complete, and sufficient to allow the warehouseman to comply with all laws and regulations concerning the storage, handling, and transporting of the goods. The depositor will indemnify and hold the warehouseman harmless from all loss, cost, penalty, and expense, including reasonable attorneys' fees that the warehouseman pays or incurs as a result of depositor failing to fully discharge this obligation.





### **35. SEVERABILITY and WAIVER**

(a) If any provision of this Warehouse 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) The warehouseman'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 this Warehouse Receipt.

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

### **36. YARD STORAGE**

The liability of the warehouseman for any yard storage of containers or trailers, whether loaded or empty, secured or unsecured, shall be subject to Sections 11, 12, and 13 of this Warehouse Receipt.

### **37. CONSTRUCTION OF TERMS AND VENUE**

The terms and conditions of this Warehouse Receipt shall be construed and interpreted under the laws of the State of California, except when a law of the United States, convention, treaty, or other law is otherwise compulsorily applicable. Proper venue is in the state of California, city of Long Beach, and no other place.

