

HARTLEY COLD SERVICES LLC

CONTRACT TERMS & CONDITIONS

SECTION 1 – DEFINITIONS

As used in this Warehouse receipt ("WAREHOUSE RECEIPT"), Rate Agreement ("RATE AGREEMENT"), INVOICE and CONTRACT the following terms have the following meanings:

- (a) STORER. 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. **HARTLEY COLD SERVICES LLC**. As used in Sections 9 and 10, WAREHOUSE includes officers, directors, managers, employees and agents of the WAREHOUSE while acting within the scope and course of their duties and assignment.
- (c) GOODS. The personal property and/or any portion thereof which is described herein which WAREHOUSE has agreed to receive, handle and/or store pursuant to this Warehouse Receipt.
- (d) BASIC SERVICES: Basic Services provided include the receipt, movement and placement of customers' products into and around the warehouse for storage, retrieval of customers' products from storage, and, if specified, loading and unloading operations.
- (e) VALUE ADDED SERVICES: Freezing, tempering and temperature reduction, packing and sorting services.
- (f) LOT. Unit or units of GOODS which are separately identified by the WAREHOUSE.

SECTION 2 - TENDER FOR STORAGE

- (a) STORER agrees that all GOODS for storage shall be delivered at the WAREHOUSE properly marked and packed for handling. WAREHOUSE shall store GOODS in the packages in which they were originally received unless otherwise agreed in writing.
- (b) STORER 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 desired. If such manifest is not provided, the GOODS may be stored in bulk or assorted lots in freezer, cooler or general storage at the discretion of the WAREHOUSE and charges for such storage will be made at the applicable storage rate.
- (c) STORER will provide WAREHOUSE with accurate and complete information concerning the GOODS sufficient to allow WAREHOUSE to comply with all laws and regulations concerning the storage, handling and transportation of the GOODS. Without limiting the foregoing, STORER is solely responsible for determining and providing the weight of the GOODS unless such services are expressly stated and quoted in the Agreement.
- (d) STORER warrants that the GOODS tendered for storage are not infested with pests, bacteria or any other contaminants whatsoever and that the Goods do not now and will not in the future present or constitute a danger to Logistics, its affiliates or its employees, to other products or to the warehouse. Storer hereby agrees to hold WAREHOUSE harmless from and indemnify WAREHOUSE against any and all losses, expenses, damages and costs, including reasonable attorneys' fees and losses arising from or attributable to a breach of the aforesaid warranty.
- (e) STORER shall not be responsible for segregating Goods by production code date or otherwise unless specifically agreed to in writing.
- (f) WAREHOUSE shall not be responsible for normal product deterioration that results from extended storage.

SECTION 3 - TERMINATION OF STORAGE

- (a) WAREHOUSE may, upon written notice, as required by law, require the removal of the GOODS, or any portion thereof, from the warehouse upon the payment of all charges attributable to said GOODS within a stated period, not less than 30 days after such notification. If said GOODS are not so removed, WAREHOUSE may sell them as provided by law and shall be entitled to exercise any other rights it has under the law with respect to said GOODS.
- (b) If, in the opinion of WAREHOUSE, GOODS may be about to deteriorate or decline in value to less than the amount of WAREHOUSE'S lien thereon, or may constitute a hazard to other property or to the warehouse or persons, the GOODS may be removed or disposed of by WAREHOUSE as permitted by law. All charges related to said removal shall be paid by STORER.

SECTION 4 – STORAGE LOCATION

- (a) The GOODS shall be stored at WAREHOUSE'S discretion at any one or more rooms at the WAREHOUSE. The identification of any specific location within WAREHOUSE'S rooms does not guarantee that the GOODS shall be stored there.
- (b) Unless otherwise agreed in writing, COMPANY may, at any time, at its expense, and without notice to STORER, remove any GOODS from any room or area of the WAREHOUSE to any other room or area thereof.

SECTION 5 – STORAGE CHARGES

- (a) Storage charges commence upon the date that WAREHOUSE accepts care, custody and control of the GOODS, regardless of unloading date or date warehouse receipt is issued. Unless WAREHOUSE specifies otherwise, charges shall be computed separately for each LOT on one of the following optional bases:
- (b) If storage rates are quoted on a "SPLIT MONTH BASIS" the storage month shall be a calendar month. A full month's storage charge will apply to all GOODS received between the 1st and 15th, inclusive, of a calendar month. One half month's storage charge will apply on all GOODS received between the 16th and last day, inclusive, of a calendar month. A full month's storage charge shall apply on the 1st day of the next calendar month and each month thereafter on all GOODS then remaining in storage.
- (c) If storage rates are quoted on an "ANNIVERSARY BASIS" the storage month shall extend from date of receipt in one calendar month to, but not including, the same date of the next month. If there is no corresponding date in the next month, the storage month shall end on the last day of said next month. A full month's storage charge shall apply on receipt of GOODS and an additional monthly storage charge shall apply on each successive storage month on all GOODS then remaining in storage.
- (d) Charges shall be applicable as set forth in the RATE AGREEMENT or other document issued by WAREHOUSE to STORER and/or in WAREHOUSE'S tariff.
- (e) Unless WAREHOUSE specifies otherwise all storage charges are due and payable on the 1st day of storage for the initial month and thereafter on the 1st day of each calendar month.
- (f) Rates quoted by weight will, unless otherwise specified, be computed on gross weight.

SECTION 6 – HANDLING CHARGES

- (a) Unless otherwise specified or elected by WAREHOUSE, handling charges cover only the ordinary labor and duties incidental to receiving and delivering unitized GOODS on pallets at the warehouse dock during normal warehouse hours but do not include loading and unloading.
- (b) Unless otherwise specified, a charge in addition to the regular handling charges will be made for any work performed by WAREHOUSE other than specified in Section 6(a) at rates which are in effect according to RATE AGREEMENT.
- (c) 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.
- (d) Delivery by WAREHOUSE of less than all units of any lot shall be made without subsequent sorting except by special arrangement which may be subject to an additional charge.

SECTION 7 – TRANSFER OF TITLE; DELIVERY

- (a) Instructions by STORER to transfer GOODS to the account of another are not effective until the written instructions are delivered to and accepted by WAREHOUSE. A charge will be made for each such transfer and for any rehandling of GOODS deemed by WAREHOUSE to be required thereby. WAREHOUSE reserves the right not to deliver or transfer GOODS to or for the account of another except upon receipt of written instructions properly signed by STORER.
- (b) STORER may authorize WAREHOUSE in writing to accept telephone orders for delivery. In such case, delivery by WAREHOUSE pursuant to telephone order shall be at STORER'S risk.
- (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 a delivery order in which to locate any misplaced GOODS.
- (d) 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.
- (e) All instructions and requests for delivery of GOODS or transfer of title are received subject to satisfaction of all charges, liens and security interests of WAREHOUSE.
- (f) WAREHOUSE may require, as a condition precedent to delivery, a statement from STORER holding WAREHOUSE harmless from claims of others asserting a superior right to STORER 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, charges, including attorney's fees, incurred by WAREHOUSE relating in any way to WAREHOUSE'S activities referred to in SECTION 7(f) shall be charged to STORER and shall be considered "charges with respect to such GOODS" and shall attach as a lien on the GOODS.
- (g) Unless otherwise agreed, the GOODS will be delivered to STORER at WAREHOUSE'S warehouse loading dock. STORER must arrange for transportation and loading.
- (h) On outbound shipments, STORER may furnish a checker to verify load and count; otherwise, WAREHOUSE'S record of load and count shall be conclusive.

SECTION 8 – OTHER SERVICES AND CHARGES

- (a) Other services rendered in the interest of STORER or the GOODS are chargeable to STORER. Such services may include, but are not limited to: furnishing of special warehouse space or material; repairing, re-couping, sampling, weighing, repiling, repacking or inspecting the Goods; compiling statements; making collections; furnishing revenue stamps; reporting or recording marked weights or numbers. If charges for such services are not listed in the RATE AGREEMENT between STORER and WAREHOUSE, then such services will be charged pursuant to WAREHOUSE'S current published tariff.
- (b) Other services rendered in the interest of STORER or the GOODS are chargeable to STORER. If charges for such services are not listed in the RATE AGREEMENT between STORER and WAREHOUSE, then such services will be charged pursuant to WAREHOUSE'S current published tariff.
- (c) All charges are due and payable upon the date of invoice. All charges not paid within 30 days from the due date are subject to an interest charge, from the date said charge became due until paid, at the lesser of 1.5% per month or the maximum amount allowed by law.
- (d) STORER may, subject to insurance regulations and reasonable limitations, inspect the GOODS when accompanied by an employee of WAREHOUSE whose time is chargeable to STORER.
- (e) In the event of damage or threatened damage to the GOODS, STORER 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 STORER, said costs shall be apportioned among all affected STORERS on a proportional distribution by the WAREHOUSE.
- (f) WAREHOUSE shall supply dunnage, bracing and fastenings where it deems it appropriate on outbound shipments and the cost thereof is chargeable to STORER.
- (g) Any additional costs incurred by WAREHOUSE in unloading trucks containing damaged GOODS are chargeable to STORER.
- (h) WAREHOUSE shall not be responsible for demurrage or detention charges, or for any delays in loading or unloading unless such charges or delays were caused solely by WAREHOUSE'S negligence. STORER agrees to indemnify and hold WAREHOUSE harmless from any and all claims for delays, undercharges, truck/intermodal detention and any other similar charges relating to STORER'S GOODS, except to the extent such charges or delays were caused solely by WAREHOUSE'S negligence.
- (i) WAREHOUSE may assess an additional charge when GOODS, designated for cooler or freezer storage, are received at temperatures more than 5 degrees Fahrenheit above the applicable storage room temperature; however WAREHOUSE shall not be responsible for blast freezing GOODS unless STORER specifically requests such services in writing.

(j) All storage, handling and other services may be subject to minimum charges.

(k) STORER agrees to hold WAREHOUSE harmless from and indemnify against all Losses incurred by WAREHOUSE in connection with the storage, handling and disposition of the GOODS received hereunder, including claims and lawsuits to which WAREHOUSE is made a party relating in any way to its performance under this agreement unless arising directly and exclusively from WAREHOUSE'S gross negligence.

SECTION 9 – LIABILITY AND LIMITATION OF DAMAGES

(a) WAREHOUSE shall not be liable for any loss, damage or destruction to GOODS, however caused, unless such loss, damage or destruction resulted from the WAREHOUSE'S failure to exercise such care in regard to the GOODS as a reasonably careful person would exercise under like circumstances. WAREHOUSE is not liable for damages which could not have been avoided by the exercise of such care.

(b) WAREHOUSE and STORER agree that WAREHOUSE'S duty of care referred to in Section 9(a) above does not require WAREHOUSE to provide a sprinkler system at the warehouse or any portion thereof.

(c) Unless specifically agreed to in writing, WAREHOUSE shall not be required to store GOODS in a humidity controlled environment or be responsible for tempering GOODS.

(d) **IN THE EVENT OF LOSS, DAMAGE OR DESTRUCTION TO GOODS FOR WHICH THE WAREHOUSE IS LEGALLY LIABLE, STORER DECLARES THAT WAREHOUSE'S LIABILITY SHALL BE LIMITED TO THE LESSER OF THE FOLLOWING: (1) THE ACTUAL COST TO STORER OF REPLACING, OR REPRODUCING THE LOST, DAMAGED, AND/OR DESTROYED GOODS TOGETHER WITH TRANSPORTATION COSTS TO WAREHOUSE, (2) THE FAIR MARKET VALUE OF THE LOST, DAMAGED, AND/OR DESTROYED GOODS ON THE DATE STORER IS NOTIFIED OF LOSS, DAMAGE AND/OR DESTRUCTION, (4) \$0.50 PER POUND FOR SAID LOST, DAMAGED, AND/OR DESTROYED GOODS; PROVIDED, HOWEVER THAT WITHIN A REASONABLE TIME AFTER RECEIPT OF THIS WAREHOUSE RECEIPT, STORER MAY, UPON WRITTEN REQUEST INCREASE WAREHOUSE'S 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.**

(e) The WAREHOUSE'S liability referred to in Section 9(d) shall be STORER'S exclusive remedy against WAREHOUSE for any claim or cause of action whatsoever relating to loss, damage or destruction of GOODS and shall apply to all claims including inventory shortage, misshipment and mysterious disappearance claims unless STORER proves by affirmative evidence that WAREHOUSE converted the GOODS to its own use. STORER waives any rights to rely upon any presumption of conversion imposed by law. In no event shall either party be liable for incidental, special, punitive, or consequential damages, loss of profit, revenue or goodwill. For the purposes of this Section 9, "loss, damage or destruction" shall include any claim or cause of action whatsoever relating to the GOODS.

SECTION 10 – NOTICE OF CLAIM AND FILING OF ACTION

(a) WAREHOUSE shall not be liable for any claim of any type whatsoever for loss and/or destruction of and/or damage to and/or charges or invoices for GOODS unless such claim is presented, in writing, within a reasonable time, not exceeding the earlier of (i) 60 days after delivery of GOODS by WAREHOUSE or (ii) 60 days after STORER learns or, in the exercise of reasonable care, should have learned of such loss, destruction, damage or the basis for any other claim against WAREHOUSE.

(b) As a condition precedent to making any claim and/or commencing an arbitration, STORER shall provide WAREHOUSE with a reasonable opportunity to inspect the GOODS which are the basis of STORER'S claim.

(c) **NO ARBITRATION MAY BE COMMENCED BY STORER OR OTHERS AGAINST WAREHOUSE WITH RESPECT TO THE GOODS UNLESS A TIMELY WRITTEN CLAIM HAS BEEN MADE AS PROVIDED IN PARAGRAPH (a) OF THIS SECTION AND UNLESS STORER HAS PROVIDED WAREHOUSE WITH A REASONABLE OPPORTUNITY TO INSPECT THE GOODS AS PROVIDED IN PARAGRAPH (b) OF THIS SECTION AND UNLESS SUCH ARBITRATION IS COMMENCED WITHIN NINE (9) MONTHS AFTER STORER LEARNS OR, IN THE EXERCISE OF REASONABLE CARE, SHOULD HAVE LEARNED OF THE LOSS AND/OR DESTRUCTION OF AND/OR DAMAGE TO THE GOODS OR THE BASIS FOR ANY OTHER CLAIM AGAINST WAREHOUSE.**

SECTION 11 – INSURANCE

Goods are not insured by WAREHOUSE or its affiliates and the storage rates do not include insurance unless WAREHOUSE has agreed, in writing, to obtain such insurance for the benefit of Storer.

SECTION 12 – LIEN

WAREHOUSE shall have a general warehouse lien against the GOODS and on the proceeds thereof for all charges for storage, handling, transportation (including detention, 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. STORER further grants WAREHOUSE a lien on the GOODS for all such charges, advances and expenses in respect to any other property stored by STORER in the WAREHOUSE whenever deposited and without regard to whether or not said other property is still in storage. WAREHOUSE reserves the right to require advance payment of all charges prior to releasing GOODS regardless of otherwise applicable payment terms.

SECTION 13 – DATA POLICY

Notwithstanding anything to the contrary in this WAREHOUSE RECEIPT or any other agreement between the parties, WAREHOUSE reserves the right to (i) use any STORER data to provide services to STORER, to improve existing services or create new services, or for WAREHOUSE'S internal purposes and (ii) compile and analyze its collective STORER data and to prepare reports, studies, analyses and other work product resulting from such compilation and analysis on an anonymous basis (collectively, the "Data Derivations"). WAREHOUSE shall have exclusive ownership rights to, and the exclusive right to use such Data Derivations for any purpose; provided, however that WAREHOUSE shall not use STORER'S name in connection with such Data Derivations or otherwise distribute Data Derivations which are identifiable as STORER'S data without obtaining the prior consent of STORER.

SECTION 14 – FORCE MAJEURE

WAREHOUSE shall not be responsible for delays, failures, or omissions resulting from any cause that is beyond its reasonable control and is not due to its own negligence, including, but not limited to, riots, fires, earthquakes, hurricanes, floods, storms, drought, lightning, epidemics, war, disorders, hostilities, interference by civil or military authorities, labor disputes or controversies, transportation embargoes, fuel or energy shortages, power interruptions or failures, equipment malfunction or breakdown, or acts of God.

SECTION 15 – WAIVER

(a) WAREHOUSE'S failure to insist upon strict compliance with any provision of this WAREHOUSE RECEIPT shall not constitute a waiver or estoppel to later demand strict compliance thereof and shall not constitute a waiver or estoppel to insist upon strict compliance with all other provisions of this Warehouse Receipt.

(b) In the event any section of this Warehouse Receipt or part thereof shall be declared invalid, illegal and/or unenforceable, the validity, legality and enforceability of the remaining sections and parts shall not, in any way, be affected or impaired thereby.

SECTION 16 – AUTHORITY

STORER represents and warrants that either (i) is the lawful owner of the GOODS which are not subject to any lien or security interest of others; or (ii) is the authorized agent of the lawful owner and/or any holder of a lien or security interest and has full power and authority to enter into the agreement incorporated into this WAREHOUSE RECEIPT. STORER 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 this WAREHOUSE RECEIPT. STORER will indemnify, defend and hold WAREHOUSE harmless from all liabilities, suits, claims, losses, costs and expenses (including reasonable attorneys' fees) arising from STORER'S failure to comply with this section.

SECTION 17 – MISCELLANEOUS

(a) In the event any section of this WAREHOUSE RECEIPT or part thereof shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining sections and parts shall not, in any way, be affected or impaired thereby.

(b) The interpretation, construction and validity of this WAREHOUSE RECEIPT shall be governed by, and construed in accordance with, the laws of the state in which the warehouse location indicated on the front side of this WAREHOUSE RECEIPT is located.

(c) 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 STORER at its last known address. STORER is presumed to have knowledge of the contents of all notices transmitted in accordance with this Section within five days of transmittal.

(d) This agreement shall constitute the entire agreement between WAREHOUSE and STORER relating to the GOODS and supersedes all existing agreements between them whether written or oral and shall not be changed, amended or modified except by written agreement signed by representatives of WAREHOUSE and STORER. Without limiting the foregoing, WAREHOUSE hereby reserves the right to transfer and/or assign (in whole or in part) the rights, duties and obligations of WAREHOUSE under this agreement to any affiliate of WAREHOUSE without the consent or approval of STORER. In the event of any such transfer and/or assignment (in whole or in part) to any such WAREHOUSE affiliate, WAREHOUSE may continue to collect and receive all or any portion of the amounts payable hereunder by STORER as agent for and on behalf of such affiliate-transferee/assignee and notify STORER thereof in writing.