

# WATCHPOINT LOGISTICS, INC. WAREHOUSE TERMS AND CONDITIONS OF CONTRACT

## 1. DEFINITIONS

“Warehouse” means Watchpoint Logistics, Inc. “Depositor” means the shipper, consignee, or owner of the Goods or the shipper’s, consignee’s, or owner’s contractors or agents, including motor carriers, drayage companies, forwarders, brokers, or any entity that places or maintains a chassis/trailer pool at any of Warehouse’s facilities. “Equipment” means any chassis, container, trailer, or tractor. “Goods” means the merchandise, cargo, or freight that Depositor tenders for Services, as stated on the front or first page of this warehouse receipt. “Services” means all services Warehouse performs or arranges for Depositor, which among others may include storage, distribution, cross-docking, packing, crating, staging, inventory and order management, fulfillment, reporting, invoicing, and maintaining information. “Facility” means any warehouse facility owned or operated by Warehouse or that of a third party that Warehouse may use for Services. “Contract” means this Warehouse Receipt Terms and Conditions of Contract.

## 2. ACCEPTANCE

- (a) Depositor may signify its acceptance of this Contract and of any accessorial charges by wet or electronic signature, by e-mail, or by the tendering of Goods for Services.
- (b) If Goods that Depositor tenders for Services do not conform to the description stated on the front or first page of this warehouse receipt, then Warehouse may refuse to accept such Goods. If Warehouse accepts such Goods, then Depositor agrees to the rates and charges that Warehouse will invoice for all such non-conforming Goods and to all terms of this Contract.
- (c) Any merchandise, cargo, or freight that Warehouse accepts from Depositor shall constitute Goods under this Contract.
- (d) Either party may terminate this Contract upon 30 days’ written notice to the other party.

## 3. SHIPPING

Depositor shall not designate Warehouse to be the consignee for any Goods under any bill of lading, waybill, or any other transportation contract, receipt, or delivery document. If, in breach of this Contract, Goods arrive at Warehouse and Warehouse is the named consignee, then Depositor shall immediately notify the carrier in writing, with copy of such notice to Warehouse, that Warehouse is only a warehouse that has no beneficial title or interest in such Goods and Depositor further agrees to indemnify Warehouse from and against any claims for unpaid transportation charges, including undercharges, demurrage, detention, or any other charges that arise out of or are in any way connected to the Goods. Depositor further agrees that if it fails to notify the carrier as the preceding sentence requires, then Warehouse shall have the right to refuse such Goods and it shall not be liable for any loss, injury, or damage that arises out of or is in any way connected to such Goods.

## 4. TENDER FOR STORAGE

Goods that Depositor or its agents deliver to the Facility shall be properly marked and packaged for storage, handling, or other Services. 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 Depositor desires.

## 5. STORAGE PERIOD AND CHARGES

- (a) Unless Warehouse and Depositor otherwise agree in a writing signed by both parties, all charges for storage are per package or other agreed unit, per month.
- (b) The storage month begins on the date Warehouse accepts care, custody, and control of Goods, regardless of their unloading date or the date of issue of the corresponding warehouse receipt.
- (c) Subject to section 5(d), a full month’s 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

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on all Goods received between the 16th 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 on the first day of storage for the initial month and after that, on the first day of each of the following calendar months.

(d) Warehouse and Depositor may agree in a writing signed by both parties that 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 shall be due on the first day of the storage month.

### **6. TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS**

(a) Instructions to transfer Goods in storage are not effective until delivery to and acceptance by Warehouse. Depositor understands and agrees that all charges up to the time of transfer are chargeable to Depositor. If a transfer involves rehandling the Goods, then such rehandling will be subject to a charge. If there is a transfer of Goods in storage from one party to another through issuance of a new warehouse receipt, then the date of transfer shall be the new storage date.

(b) Upon 3 days' written notice to Depositor, Warehouse reserves the right to move, at its expense, any Goods in storage at one Facility to any other Facility. Warehouse 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 a Facility.

(c) At any time and for any reason, and upon giving five days' written notice to Depositor and to any other person Warehouse knows to claim an interest in the Goods, Warehouse may require the removal of the Goods, or any portion of them, and the immediate payment of all amounts then due. If Depositor fails to remove the Goods before the end of the notice period, then 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 five-day notice period of section 6(c), then Warehouse may specify in the notification any reasonable shorter time for removal of the Goods and, if Depositor fails to remove the Goods, then Warehouse may sell them in accordance with applicable law.

(e) If as a result of a quality or condition of the Goods of which Warehouse had no notice at the time of deposit the Goods are a hazard to other property or to the Facility or to persons, then 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 Warehouse after a reasonable effort is unable to sell the Goods, then 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, Warehouse may remove the Goods from the Facility and shall incur no liability by reason of such removal.

### **7. 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 upon receipt of Goods.

(b) Unless Warehouse and Depositor otherwise agree in a writing signed by both parties, labor for unloading and loading Goods will be subject to a charge. Additional expenses Warehouse incurs in receiving and handling damaged Goods, and additional expenses in unloading from or loading into cars or other vehicles not at warehouse door will be charged to Depositor.

(c) Labor and materials used in loading rail cars or other vehicles are chargeable to Depositor.

(d) When Goods are ordered out in quantities less than in which received, Warehouse may make an additional charge for each order or each item of an order.

(e) 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

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containers for outbound shipment unless Warehouse has failed to exercise reasonable care, in which case its liability shall be subject to section 12 of this Contract.

### **8. DELIVERY REQUIREMENTS**

(a) No Goods shall be delivered or transferred except upon receipt by Warehouse of Depositor's complete written instructions. Written instructions may be by fax, EDI, or e-mail, provided Warehouse has no liability when relying on the information contained in the communication as Warehouse receives it. Warehouse may deliver Goods upon instruction by telephone further to Depositor's prior written authorization, but Warehouse shall not be responsible for loss or error occasioned by such instruction by telephone.

(b) When Goods are ordered out, Warehouse shall have a reasonable time to carry out instructions, and if Warehouse is unable to do so because of acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots or civil commotions, or any other cause beyond Warehouse's reasonable control, or because of loss of or damage to Goods for which Warehouse is not liable, or because of any other excuse under law, 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.

### **9. EXTRA SERVICES**

(a) Warehouse shall additionally charge Depositor for any labor required for services other than ordinary handling and storage.

(b) Warehouse shall additionally charge Depositor for any special services Depositor may request, such as compiling of special stock statements, reporting marked weights, serial numbers, or other data from packages, physically checking the Goods, and handling transit billing.

(c) For an additional charge, Warehouse may provide dunnage, bracing, packing materials, or other special supplies.

(d) By prior arrangement and for an additional charge, Warehouse may receive or deliver Goods outside normal business hours.

(e) Warehouse may additionally charge Depositor for communication expenses, including postage, overnight delivery, or telephone, if such communications concern more than normal inventory reporting or if, at the request of Depositor, communications are by other than First-Class mail.

### **10. BONDED STORAGE**

(a) Warehouse shall additionally charge Depositor for merchandise in bond.

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

### **11. MINIMUM CHARGES**

(a) A minimum handling charge per lot and a minimum storage charge per lot per month will apply. 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 apply.

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

(c) A late fee of 1.5% per month, with a minimum of \$500, will be assessed and due upon any invoice that remains unpaid five (5) or more days after its due date.

### **12. LIABILITY AND LIMITATIONS OF DAMAGES**

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(a) Warehouse shall not be liable for any loss of or damage to Goods that Warehouse has received for Services, however caused, unless such loss or damage was because of Warehouse's failure to exercise care in regard to the Goods that a reasonably careful person would exercise under similar circumstances. Warehouse shall not be liable for damages that could not have been avoided by the exercise of that care.

(b) Warehouse does not insure Goods against loss or damage.

(c) Depositor understands and agrees that Warehouse's liability for the loss of or damage to the Goods shall be limited to \$.50 per pound. As to all other claims arising out of or in any way connected to the Services, Warehouse's liability shall be limited to Depositor's actual loss or \$50, whichever is less. Depositor further understands and agrees that at the time of acceptance of this Contract under section 2, Depositor may, upon its written request, purchase an increased level of Warehouse's liability on part or all of the Goods covered by this Contract or as to any Services, conditioned upon payment to Warehouse of increased rates based on Depositor's increased valuation of the Goods.

(d) If loss of or damage to Goods occurs as to which Warehouse is not liable, then Depositor shall be responsible for the cost of removing and disposing of such Goods and the cost of any environmental cleanup and site remediation resulting from the loss of or damage to the Goods.

### **13. NOTICE OF CLAIM AND TIME-BAR**

(a) Depositor or any other person must provide Warehouse with written notice within a reasonable time, and in no event any later than the earlier of (i) 60 days after the date of delivery by Warehouse or (ii) 60 days after Warehouse notifies Depositor of a loss of or damage to part or all of the Goods, or for claims other than for the loss of or damage to Goods, 60 days after the date of Warehouse's invoice to Depositor for the Services at issue. Failure to provide a timely notice of claim shall extinguish any liability of Warehouse.

(b) In any event, Warehouse shall be discharged from all liability to Depositor or any other person as to any Services that Warehouse has provided unless Depositor or such other person files an action in the mandatory venue under section 23(a) by no later than the earlier of (i) nine months after the date of delivery by Warehouse or (ii) nine months after Warehouse notifies Depositor of a loss of or damage to part or all of the Goods, or for claims other than for the loss of or damage to Goods, nine months after the date of Warehouse's invoice to Depositor for the Services at issue.

(c) When Goods have not been delivered, notice may be given of known loss of or damage to the Goods by mailing of a letter by certified mail or overnight delivery to Depositor. The above notice-of-claim period and time-bar limitations period shall begin on the date of mailing of such notice by Warehouse.

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

In no event shall Warehouse be liable for any loss of profit or for any special, indirect, or consequential damages, notwithstanding Warehouse's notice of the possibility of any of the above types of damages.

### **15. LIABILITY FOR MISSHIPMENT**

If Warehouse negligently misships Goods, then Warehouse shall pay the reasonable transportation charges of returning the misshipped Goods to the origin Facility. If a consignee fails to return the Goods, then Warehouse's maximum liability shall be subject to the contractual limitation of liability stated in section 12, and Warehouse shall have no liability for damages due to the consignee's acceptance or use of the Goods, regardless of their ownership.

### **16. INVENTORY SHORTAGE**

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Warehouse shall be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods only if Depositor establishes that such loss occurred because of Warehouse's failure to exercise the care required under section 12. 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 Warehouse converted the Goods to Warehouse's own use.

### **17. RIGHT TO STORE GOODS AND RECEIVE SERVICES**

Depositor states that it is lawfully possessed of the Goods and has the right and authority to store them with Warehouse and to receive Services. Depositor agrees to indemnify Warehouse from and against any 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, as to Depositor's right, title, or interest in the Goods. Such amounts shall be subject to Warehouse's liens in section 20.

### **18. ACCURATE INFORMATION**

Depositor shall provide Warehouse with information concerning the Goods that 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 shall indemnify Warehouse from and against any loss, cost, penalty, and expense, including reasonable attorneys' fees, which Warehouse pays or incurs as a result of Depositor's breach of its duties under this section.

### **19. SEVERABILITY, NON-WAIVER, AND ENTIRE AGREEMENT**

(a) If any portion of this Contract shall for any reason be held to be invalid or unenforceable, then the remainder of this Contract shall be unaffected by such holding and shall remain in full force and effect.

(b) Warehouse's waiver of any right under this Contract on one occasion shall not constitute a waiver of such right on any subsequent occasion.

(c) This Contract is the parties' final expression and entire agreement arising out of or in any way relating to the Goods or Services. This Contract states the parties' entire understanding and it supersedes any contemporaneous or prior oral or written understandings or agreements that arise out of or are in any way related to the Goods or Services. This Contract shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each party.

### **20. GENERAL AND SPECIFIC LIENS**

Warehouse shall have a general lien and a specific lien for all lawful charges for all Services and for the preservation of the Goods, and also, for money Warehouse has advanced, interest, insurance, transportation, labor, weighing, cooperating, and other charges and expenses in relation to such Goods, and for the balance on any other accounts that may be due. Warehouse shall further have a general lien for all such charges, advances, and expenses as to any other goods stored by Depositor in the Facility or in any other facility Warehouse owns, operates, or uses to store goods or provide Services. To protect its liens, Warehouse may require advance payment of all charges prior to shipment of Goods. Warehouse may exercise its lien rights under this Contract and according to applicable law. Depositor agrees that Warehouse's liens shall survive delivery.

### **21. HAZARDOUS GOODS**

(a) Prior to tendering hazardous goods, as defined under applicable federal and state law and regulations, Depositor shall, in compliance with the laws and regulations governing the

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transportation and storage of such goods, properly pack, distinctly mark, and label such Goods, and notify Warehouse in writing of their proper description, nature, and the necessary precautions.

(b) As to Goods that are hazardous goods or are otherwise of an inflammable, explosive, or dangerous nature, as to the storage of which Warehouse has not consented with knowledge of their nature and character, Warehouse may, in its sole discretion and without compensation to Depositor, remove and destroy such hazardous goods, or render them innocuous, and Depositor shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such storage or other Services. If any such Goods that Warehouse receives with such knowledge and consent shall become a danger to any facility, personal property, or to any other goods, then Warehouse may, in its sole discretion and without compensation to Depositor, remove and destroy such hazardous goods, or render them innocuous, and Depositor shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such storage or other Services.

(c) Depositor shall indemnify Warehouse from and against any loss, damage, liability, and expense, including attorneys' fees Warehouse has paid or incurred, arising out of or in any way connected with or caused by, in whole or in part, omission of full disclosure required by this section or by applicable treaties, conventions, laws, codes, or regulations.

### **22. MANDATORY LAW, VENUE, AND JURISDICTION**

(a) Subject to Warehouse's option under section 22(b), all claims or disputes arising out of or in any way related to this agreement or any Services shall be determined under the laws of the State of California, without regard to its conflict of laws rules. Without prejudice to a party's right to remove an action to federal court, the exclusive and mandatory venue for any such claims or disputes shall be the federal courts serving or the state courts in San Mateo County, California, to the exclusion of all other courts. The parties agree to irrevocably submit to the personal jurisdiction of the above courts and to waive any jurisdictional, venue, or inconvenient forum objections to those courts.

(b) To recover any damages or sums due arising out of Depositor's non-payment of charges, Warehouse shall have the option to file an action in any court with subject matter jurisdiction and with personal jurisdiction over Depositor.