



**CWI Logistics, Inc.
STANDARD CONTRACT TERMS AND CONDITIONS**

SECTION 1 – DEFINITIONS

As used in these Standard Contract Terms and Conditions (the "Terms and Conditions") the following capitalized terms have the following meanings:

- a) **CWI.** CWI Logistics, Inc. its successors, assigns and their respective officers, directors and employees while acting within the scope and course of their employment.
- b) **The Agreement.** The Letter, these Terms and Conditions and Exhibits A and B to the Letter.
- c) **Charges.** All amounts of any nature at any time due or claimed to be due to CWI, whether liquidated or unliquidated, including but not limited to loans, disbursements, expenses, advances, storage, handling and transportation charges, charges and expenses incurred in the preservation and sale of the Goods (defined below) pursuant to law, charges incurred for Services as provided herein, interest charges and all other charges and expenses of every nature incurred for the account of Storer or any predecessor in interest and/or with respect to any Goods.
- d) **Goods.** The personal property and any portion thereof described in the Agreement which CWI has agreed to receive, handle and/or store pursuant to the Agreement plus any other items delivered to CWI by Storer and accepted by CWI.
- e) **Storer.** The person, firm, corporation or other entity to whom the Letter is addressed.
- f) **Warehouse.** CWI's warehouse facility or facilities identified in the Letter where it will provide the Services under this Agreement.

SECTION 2 - TENDER FOR STORAGE

- a) All Goods for storage shall be delivered at the Warehouse properly marked and packed for handling as reasonably determined by CWI. CWI shall store and deliver Goods in the packages in which they were originally received unless agreed otherwise in writing.
- b) Storer shall furnish, at or prior to tender of the Goods, a manifest showing marks, brands or sizes to be kept and accounted for separately and the class of storage desired. Storer acknowledges that there may be an additional charge for segregated storage. If such manifest is not provided to CWI as required under this Section 2(b), CWI may commingle and store the Goods in bulk or assorted lots in freezer, cooler or general storage at the discretion of CWI and charges for such storage will be made at then applicable rates as published by CWI.
- c) CWI shall not be responsible for segregating Goods by production code date or otherwise unless specifically agreed to in writing.
- d) Storer warrants that the Goods 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 CWI or its employees to other products or to the Warehouse during normal storage. Storer hereby agrees to hold CWI harmless from and indemnify CWI against any and all losses, expenses, damages and costs, including reasonable attorneys' fees and court costs actually incurred, arising from or attributable to a breach of the warranty set forth in this Section 2(d), unless such contamination was caused by CWI's failure to exercise reasonable care, in which case, CWI's liability will be governed by Section 9 below. Storer further agrees to pay CWI, on demand, all such costs and expenses including, but not limited to, costs of removal of Goods, storage of Goods, cleaning and sanitation, and experts' fees and government official's charges. The provisions of this subsection 2(d) shall survive any termination of the Agreement.

SECTION 3 - TERMINATION OF STORAGE

- a) CWI may, upon written notice to Storer, require the removal of the Goods, or any portion thereof, from the Warehouse after the expiration of thirty (30) days from such notice. All Charges relating to the Goods to be removed shall be paid prior to removal. If such Goods are not so removed and said Charges paid, CWI may sell the Goods as provided by law and shall be entitled to exercise any other rights it has under law with respect to such Goods.
- b) If, in the opinion of CWI, Goods may constitute a hazard to other property or to the Warehouse or to persons, CWI may remove such Goods and sell or dispose of them as permitted by law without liability to Storer or others. All Charges related to such removal, sale and disposition shall be paid by Storer.

SECTION 4 - STORAGE LOCATION

- a) The Goods stored pursuant to the Agreement shall be stored at CWI's Warehouse. The identification of any specific location within CWI's Warehouse does not constitute a representation that the Goods shall be stored there provided that such Goods shall be stored at the temperature at which CWI agreed to store such Goods.
- b) If, in the opinion of CWI, there is a threat of damage to the Goods at the Warehouse, CWI may, without prior notice, move the Goods, or any portion thereof, to any other storage facility, and Storer shall be responsible for all transportation, handling, and other Charges to do so and for all charges of every nature at the facility to which the Goods are moved.
- c) Subject to any contrary written instructions given by Storer, CWI may, at any time, at its expense and without notice to Storer, move any Goods from any room or area of the Warehouse to any other room or area thereof provided that such Goods shall be stored at the temperature at which CWI agreed to store such Goods.

SECTION 5 - STORAGE CHARGES; STORAGE PERIOD

- a) All Charges for Services shall be billed weekly in advance in the manner indicated herein in accordance with the Pricing set forth in the Letter and as the Pricing may be revised or changed in accordance with the Agreement. Payment is due within thirty (30) days after the invoice date. All charges not paid when due are subject to an interest charge from the due date until paid at the lesser of one and one-half percent (1 ½%) per month or the highest rate permitted by law. All Charges are due and payable without any deduction or offset whatsoever. Claims for loss or



destruction of or damage to Goods shall not be deducted from invoices but shall be invoiced and handled separately.

- b) Storer acknowledges that Charges for Services are based on the information provided to CWI by Storer (the "Business Characteristics"). In the event of any material difference between Storer's actual performance under this Agreement and the Business Characteristics, CWI reserves the right to adjust the Charges for Services to reasonably account for such material difference.
- c) An automatic pricing increase will be applied each year on the anniversary of the Effective Date (defined below) at the greater of three percent (3%) or the increase in the Consumer Price Index—Urban Wage Earners & Clerical Workers—All Items—U.S. City Average (1982-1984=100) as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the one-year period immediately prior to the date of the applicable anniversary.
- d) CWI will be entitled to increase the Charges for Services if the applicable prevailing wage or the Consumer Price Index increases by more than two percent (2%) during any 12-month period of the Agreement.
- e) All Goods are stored on a month-to-month basis, unless otherwise agreed in writing.
- f) Storage charges commence upon the date that CWI accepts custody of the Goods, regardless of unloading date or date receipt is acknowledged. Unless stated otherwise in writing, all Goods are stored on (i) a Monthly Basis, (ii) a Split Month Basis or (iii) an Anniversary Basis.
- g) If storage rates are quoted on a Monthly Basis, the storage month shall be a calendar month or portion thereof. A full month's storage charge will apply to all Goods on the day CWI receives the Goods. A full month's storage charge shall apply on the 1st day of the next calendar month and each calendar month thereafter on all Goods then remaining in storage.
- h) 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.
- i) 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.
- j) All storage charges are fully earned on the 1st day of storage for the initial month and thereafter on the 1st day of each storage month.
- k) Rates quoted by weight will, unless otherwise specified, be computed on gross weight, and 2,000 pounds shall constitute a ton.



- l) Rates do not include any taxes, tariffs, duties, assessments or similar charges imposed upon the Goods while in the possession of CWI, all of which shall be the sole responsibility and expense of Storer. Storer shall hold CWI harmless from and indemnify it for any liability arising from such fees, including liability arising from Storer's failure to pay. All costs, including attorneys' fees, incurred by CWI relating in any way to such fees shall be charged to Storer, shall become part of Charges and shall be secured by CWI's general warehouse lien.

SECTION 6 - HANDLING CHARGES

- a) Handling charge covers only the ordinary labor and duties incidental to receiving and delivering unitized Goods at the Warehouse dock during CWI's normal business hours but does not include loading and unloading unless otherwise agreed in writing by CWI.
- b) A charge in addition to the regular handling charge will be made for any work performed by CWI other than specified in Section 6(a) above.
- c) When Goods are ordered out in quantities less than that in which received, CWI may make an additional charge for each order or each item of an order.
- d) Delivery by CWI of less than all units of any lot or of less than all of Storer's Goods shall be made without subsequent sorting except by special arrangement and subject to an additional charge.
- e) CWI shall assess an additional charge when Goods, designated for freezer storage, are received at temperatures above +5° Fahrenheit, or when Goods, designated for refrigerated storage, are received at temperatures above +39° Fahrenheit.

SECTION 7 - TRANSFER OF TITLE; DELIVERY

- a) Instructions by Storer to transfer Goods to the account of another person are not effective until the written instructions are delivered to and accepted by CWI and the proposed transferee and all Charges relating to such Goods have been paid. A charge will be made for each such transfer and for any rehandling of Goods deemed by CWI to be required thereby. CWI reserves the right not to deliver or transfer Goods to or for the account of any person except upon receipt of written instructions properly signed by Storer.
- b) Storer may furnish written instructions authorizing CWI to accept telephone orders for delivery. In such case, (i) CWI may require that each telephone order be confirmed by Storer in writing within 24 hours, and (ii) accuracy of any telephone order shall be at the risk of Storer. CWI shall not be liable for any loss resulting from a delivery made pursuant to telephone order, whether or not so authorized, unless CWI failed to exercise
- c) as customary for similarly situated warehousemen involving similar Goods with respect thereto.
- d) CWI shall have a reasonable time to make delivery after Goods are ordered out and shall have a minimum of thirty (30) business days after receipt of a delivery order in which to locate any misplaced Goods.



- e) If CWI has exercised reasonable care and is unable, due to any cause beyond its reasonable control, to effect delivery before expiration of the current storage period, the Goods shall be subject to storage charges for each succeeding storage period until delivery is affected.
- f) All instructions and requests for delivery of Goods or transfer of title are received subject to satisfaction of all Charges due CWI.
- g) Storer shall hold CWI harmless from and indemnify it for claims of others asserting a superior right to Storer to ownership or possession of the Goods (a "Possession Claim"). Nothing herein shall preclude CWI from exercising any other remedy available to it under the law in relation to a Possession Claim. All costs, including attorneys' fees, incurred by CWI relating in any way to any such Possession Claim shall become part of the Charges to Storer and shall be secured by CWI's general warehouse lien.
- h) On outbound shipments, Storer may furnish a checker to verify load and count; otherwise, CWI's record of load and count shall be conclusive.
- i) When Storer requests CWI to arrange for transportation of Goods but does not specify a particular carrier, CWI may select any carrier in its sole discretion as a shipper's agent or property broker subject to a reasonable care standard. Storer shall be responsible for all charges of any carrier arranged by CWI pursuant to this Section 7(h).

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, the following: furnishing of special Warehouse space or material; repairing, re-couping, sampling, weighing, repiling or inspecting the Goods; compiling statements; making collections; furnishing revenue stamps; reporting or recording marked weights or numbers; handling railroad expense bills; and handling shipments.
- b) Storer may, subject to insurance regulations and reasonable limitations required by CWI, inspect the Goods stored in the Warehouse when accompanied by an employee of CWI whose time is chargeable to Storer.
- c) If there is damage to the Goods, or any portion thereof, or if, in the opinion of CWI, there is a threat of damage to the Goods, Storer shall pay all costs incurred by CWI in its sole discretion for the protection and transportation, handling, clean-up and disposal of the Goods. When such costs are attributable to Storer's Goods and property of other CWI customers, such costs shall be apportioned among Storer and CWI's other customers on a pro rata basis as determined by CWI in its reasonable discretion.
- d) CWI shall supply dunnage bracing and fastenings where it deems it appropriate on outbound shipments and the cost thereof is chargeable to Storer.
- e) Any additional costs incurred by CWI in unloading, storing and handling damaged Goods are chargeable to Storer.
- f) A charge in addition to regular storage and handling rates will be made for bonded storage.

- g) All storage, handling and other services may be subject to minimum charges.
- h) Storer agrees to hold CWI harmless from and indemnify CWI against all liabilities, costs and expenses, including reasonable attorneys' fees, incurred by CWI in connection with the storage, handling or disposition of the Goods, including claims and lawsuits to which CWI is made a party relating in any way to its performance under the Agreement unless arising directly and exclusively from CWI's negligence or willful misconduct.

SECTION 9 - LIABILITY AND LIMITATION OF DAMAGES

- a) CWI shall not be liable for any loss or destruction of or damage to Goods, however caused, unless such loss, destruction or damage resulted from CWI's failure to exercise such care in regard to the Goods as a reasonably careful person would exercise under like circumstances. CWI shall not be liable for any loss or destruction of or damage to Goods that could not have been avoided by the exercise of such care. Nothing in the Agreement shall require CWI to exercise a standard of care higher than reasonable care.
- b) CWI and Storer agree that CWI's duty of care referred to in subsection 9(a) above does not extend to providing and maintaining a sprinkler system at any warehouse.
- c) Unless specifically agreed to in writing, CWI shall not be required to store Goods in a humidity-controlled environment or be responsible for blast freezing or tempering Goods.
- d) CWI shall not be responsible for demurrage or delays in loading or unloading railcars or delays in obtaining railcars for outbound shipment unless such demurrage or delay was caused directly and exclusively by CWI's failure to exercise reasonable care.
- e) IN THE EVENT OF LOSS OR DESTRUCTION OF OR DAMAGE TO GOODS FOR WHICH CWI IS LIABLE THAT EXCEEDS THE LOSS ALLOWANCE (DEFINED BELOW), STORER DECLARES THAT CWI'S LIABILITY FOR SHALL BE LIMITED TO THE LESSER OF THE FOLLOWING: (1) THE ACTUAL COST TO STORER OF REPLACING, OR REPRODUCING THE LOST, DAMAGED, AND DESTROYED GOODS TOGETHER WITH TRANSPORTATION COSTS TO THE WAREHOUSE, (2) THE FAIR MARKET VALUE OF THE LOST, DAMAGED, AND DESTROYED GOODS ON THE DATE STORER IS NOTIFIED OF SUCH LOSS, DAMAGE AND DESTRUCTION, (3) 50 TIMES THE MONTHLY STORAGE CHARGE APPLICABLE TO SUCH LOST, DAMAGED AND DESTROYED GOODS, (4) \$0.50 PER POUND FOR SAID LOST, DAMAGED, AND DESTROYED GOODS.
- f) CWI shall be entitled to a loss allowance of two tenths of one percent (0.2%) of the throughput of Goods under the Agreement (the "Loss Allowance"). Throughput is the sum of the total amount of inbound Products plus the total amount of outbound Products divided by two (2).
- g) TO THE EXTENT ALLOWABLE BY LAW, WITH RESPECT TO ALL CLAIMS INVOLVING THE GOODS AND/OR STORER, CWI SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OF DESCRIPTION, UNDER ANY CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REVENUE OR SAVINGS.



- h) THE LIMITATION OF LIABILITY REFERRED TO IN SECTION 9(e) ABOVE SHALL BE STORER'S EXCLUSIVE REMEDY FOR ANY CLAIM OR CAUSE OF ACTION WHATSOEVER RELATING TO LOSS OR DESTRUCTION OF OR DAMAGE TO GOODS. STORER WAIVES ANY RIGHT TO RELY UPON ANY PRESUMPTION OF CONVERSION IMPOSED BY LAW.
- i) Storer shall hold CWI harmless from and indemnify it against all claims, regardless of how or by whom such a claim is raised, asserting liability for loss or destruction of or damage to Goods in an amount in excess the amount for which CWI is liable pursuant to Section 9(e) above. All costs, including attorneys' fees, incurred by CWI relating in any way to any such claim shall be charged to Storer, shall become part of Charges, and shall be secured by the lien created by this Warehouse Receipt on all of Storer's Goods, whether or not covered by this Warehouse Receipt.

SECTION 10 - NOTICE OF CLAIM AND FILING OF SUIT

- a) CWI shall not be liable for any claim of any type whatsoever including, without limitation, any claim for loss or destruction of or damage to Goods unless such claim is presented in writing within a reasonable time, not exceeding sixty (60) days after the earlier of (1) the date CWI delivered the Goods at the Warehouse dock, or (2) the date Storer learned, or in the exercise of reasonable care, should have learned of the loss, damage, destruction or other the basis for any other claim against CWI.
- b) As a condition to making any claim and as a condition precedent to filing any suit, Storer shall provide CWI with a reasonable opportunity to inspect the Goods which are the basis of Storer's claim.
- c) NO LAWSUIT OR OTHER ACTION MAY BE MAINTAINED BY STORER OR OTHERS AGAINST CWI WITH RESPECT TO THE GOODS UNLESS A WRITTEN CLAIM HAS BEEN MADE WITHIN THE TIME PERIOD SET FORTH IN SECTION 10(a) ABOVE AND UNLESS STORER HAS PROVIDED CWI WITH A REASONABLE OPPORTUNITY TO INSPECT GOODS AS PROVIDED IN SECTION 10(b) ABOVE AND UNLESS SUCH LAWSUIT OR OTHER ACTION IS COMMENCED WITHIN THE EARLIER OF (1) NINE (9) MONTHS AFTER DELIVERY OF THE GOODS BY COMPANY AT THE WAREHOUSE DOCK OR (2) NINE (9) MONTHS AFTER STORER LEARNED OR, IN THE EXERCISE OF REASONABLE CARE, SHOULD HAVE LEARNED OF THE LOSS OR DESTRUCTION OF OR DAMAGE TO THE GOODS OR THE BASIS FOR ANY OTHER CLAIM AGAINST COMPANY.
- d) Any lawsuit or other action against CWI must be brought in the state where the Warehouse is located and will be governed by the laws of such state.

SECTION 11 - INSURANCE

The Goods are not insured by CWI and the storage rates do not include insurance on the Goods.

SECTION 12 - LIEN AND SECURITY INTEREST

CWI shall have a general warehouse lien on and 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 CWI in relation to the Goods and for expenses necessary for the preservation of the Goods or reasonably incurred in their sale pursuant to law. CWI further claims a general warehouse lien on



the Goods for all other such charges, advances and expenses due CWI and/or due any entity related to CWI from STORER for property stored for STORER's account in any warehouse owned or operated by CWI or any related entity wherever located. CWI reserves the right to require advance payment of all charges prior to releasing Goods regardless of otherwise applicable payment terms.

SECTION 13 - MISCELLANEOUS

- a) CWI's failure to insist upon strict compliance with any provision of the Agreement shall not constitute a waiver or estoppel to later demand strict compliance therewith and shall not constitute a waiver or estoppel to insist upon strict compliance with all other provisions of the Agreement.
- b) In the event any Section of the Agreement 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.
- c) Storer represents and warrants that it 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 has full power and authority to enter into the Agreement.
- d) All notices provided herein may be transmitted by any commercially reasonable means of communication and directed to CWI and to Storer at the applicable address set forth in the Letter. Such notices shall be effective on confirmed receipt or refused delivery.
- e) This Agreement constitutes the entire agreement between CWI 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 CWI and Storer.

SECTION 14 –DISPUTE RESOLUTION

CWI and Storer will attempt in good faith to resolve any dispute arising out of or relating to the Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for the administration of the Agreement. Either CWI or Storer (the "Disputing Party") may give the other Party (the "Non-Disputing Party") written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days of receipt of such notice, the Non-Disputing Party will submit to the Disputing Party a written response. The notice and the response will include a statement of each Party's position and a summary of arguments supporting that position and the name and title of the executive who will represent that Party at a Dispute Resolution Meeting (defined below) and of any other person who will accompany that executive to such Dispute Resolution Meeting. Within thirty (30) days after receipt of the Disputing Party's notice, the executives of both Parties will meet at a mutually acceptable time and place and thereafter as often as they deem reasonably necessary to attempt to resolve the dispute (each a "Dispute Resolution Meeting"). All reasonable requests for information made by one Party to the other will be honored.

All negotiations pursuant to this Section 14 are confidential and will be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. If CWI and Storer are unable to resolve the dispute based on the foregoing procedure, either Party may proceed with litigation.