

# SOUTHWEST FREIGHT INC. WAREHOUSE TERMS & CONDITIONS

## 1. **Definitions:**

- 1.1. **“Warehouseman”** shall refer to Southwest Freight Inc.
- 1.2. **“Customer”** shall refer to the person or entity tendering the goods, the person or entity holding title to the goods, and the owner of the goods and their employees, contractors, invitees, and agents.
- 1.3. **“Warehouse”** shall refer to any warehouse or storage facility owned, leased by or operated by Warehouseman where Customer’s goods are stored pursuant to an agreement between Customer and Warehouseman.
- 1.4. **“Terms and Conditions”** shall refer to this agreement.

**2. Application:** These Terms and Conditions shall apply to all of Customer’s goods tendered to Warehouseman and stored at Warehouseman’s Warehouses and any other similar warehousing services including transloading and/or cross-docking. If Customer is not the owner of the goods or does not have title to the goods, Customer agrees that it acts as the owner’s and title holder’s agent and also agrees to these Terms and Conditions on behalf of the owner and title holder of the goods and other interested parties. These Terms and Conditions, price quotes and related warehouse receipts for each tender of Customer’s goods pursuant to same shall constitute a “Warehouse Receipt” for the purposes of Article 7 of the Uniform Commercial Code as enacted by the State of Texas.

## 3. **Shipment of Goods to Warehouse.**

3.1. Customer shall identify Customer as the named consignee on all goods shipped to the Warehouse. Customer shall not ship goods to or from the Warehouse naming Warehouseman as the consignee on a bill of lading or other shipment document. Warehouseman has no beneficial title or interest in Customer’s goods, and Customer agrees to notify motor carriers that Warehouseman is providing warehousing services and to notify motor carriers of the actual consignee.

3.2. If goods which name Warehouseman as consignee are inadvertently shipped and accepted, Customer shall immediately notify Warehouseman and the motor carrier in writing that Warehouseman is the “in care of party” only and has no beneficial title or interest in Customer’s goods.

3.3. Customer shall not cause, or allow, Warehouseman to be named, labeled, or indicated as “Shipper” or other like title under any agreement, without Warehouseman’s prior written consent.

3.4. If goods which name Warehouseman as “Shipper” or other like title are inadvertently shipped and accepted, Customer shall immediately notify Warehouseman and the motor carrier in writing that Warehouseman is the “in care of party” only and has no beneficial title or interest in Customer’s goods.

**3.5. CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS WAREHOUSEMAN; ITS AFFILIATES (“AFFILIATES” AND “AFFILIATE” IS DEFINED AS ANOTHER ORGANIZATION OR PARTNERSHIP WITH COMMON OWNERSHIP, MANAGEMENT, FACILITIES, EMPLOYEES, EQUIPMENT OR INTERESTS) ITS OTHER CUSTOMERS; AND WAREHOUSEMAN’S, ITS AFFILIATES’, AND ITS OTHER CUSTOMERS’ TRUSTEES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, (WAREHOUSEMAN GROUP) OF THE ABOVE-MENTIONED ENTITIES FROM ANY AND ALL CLAIMS FOR UNPAID TRANSPORTATION CHARGES RELATED TO CUSTOMER’S GOODS, OF ANY KIND WHATSOEVER AND TO WHOMEVER OWED, INCLUDING DETENTION, DEMURRAGE, AND ALL OTHER CHARGES, WITHOUT REGARD TO WHETHER WAREHOUSEMAN WAS NAMED CONSIGNEE OR WHETHER WAREHOUSEMAN KNEW OR SHOULD HAVE KNOWN IT WAS THE NAMED CONSIGNEE ON A BILL OF LADING OR OTHER SHIPPING DOCUMENT.**

3.6. All goods shall be shipped freight prepaid by and arranged by Customer. Warehouseman shall not be liable for freight charges with respect to any transaction with Customer. In no event shall these Terms and Conditions, price quotes and/or related warehouse receipts be considered a contract of carriage.

3.7. In the event that Warehouseman is alleged to owe freight charges with respect to any transaction involving Customer:

**CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS WAREHOUSEMAN; ITS AFFILIATES (“AFFILIATES” AND “AFFILIATE” IS DEFINED AS ANOTHER ORGANIZATION OR PARTNERSHIP WITH COMMON OWNERSHIP, MANAGEMENT, FACILITIES, EMPLOYEES, EQUIPMENT OR INTERESTS) ITS OTHER CUSTOMERS; AND WAREHOUSEMAN’S, ITS AFFILIATES’, AND ITS OTHER CUSTOMERS’ TRUSTEES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, (WAREHOUSEMAN GROUP) OF THE ABOVE-MENTIONED ENTITIES FROM ANY AND ALL CLAIMS FOR UNPAID TRANSPORTATION CHARGES RELATED TO CUSTOMER’S GOODS, OF ANY KIND WHATSOEVER AND TO WHOMEVER OWED, INCLUDING, BUT NOT LIMITED TO, FREIGHT CHARGES. THIS PROVISION SHALL TAKE EFFECT WITHOUT REGARD TO WHETHER WAREHOUSEMAN OR CUSTOMER KNEW OR REASONABLY SHOULD HAVE KNOWN THAT WAREHOUSEMAN WOULD BE PRESENTED WITH SUCH CHARGES.**

## 4. **Tender of Goods for Storage.**

4.1. Customer shall deliver all goods for storage at the Warehouse properly marked and packaged for handling, storage and movement of goods.

4.2. Customer shall furnish at or prior to such delivery, a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other services desired. Otherwise the goods may be stored in bulk or assorted lots in general storage at the discretion of Warehouseman and charges for such storage will be made at the applicable storage rate.

4.3. Receipt and delivery of all or any unit of a lot shall be made without subsequent sorting except as agreed and subject to a charge.

4.4. Warehouseman shall store and deliver goods only in the packages in which they are originally received unless otherwise agreed to in writing.

4.5. Warehouseman shall not be responsible for segregating goods by production code date unless specifically agreed to in writing.

4.6. Copper, explosives, goods requiring "protective security service or armed guard surveillance," human remains, precious metals, currency, object d'art, collection, antiques or precious stones, jewelry, manufactured tobacco products, ammunition, or any items of unusual value shall not be stored on Warehouseman's premises without Warehouseman's express written consent.

#### **5. Storage Charges.**

5.1. Warehouseman shall invoice Customer according to the Rate Confirmation or as otherwise quoted by Warehouseman or agreed in writing. Additionally, any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where Warehouseman has billed the rate and Customer has paid it. All written confirmations of rates, including confirmations by billing and payment, shall be incorporated herein by this reference.

5.2. Customer shall pay Warehouseman storage charges and the charges for any additional services within 30 days of the invoice date without deduction or setoff.

5.3. Dunnage, bracing, packing materials or other special supplies may be provided by Warehouseman for Customer at a charge in addition to Warehouseman's cost as agreed to in writing or at the billed rate.

5.4. Storage charges include the ordinary labor involved in receiving goods at the door of the warehouse. Any additional labor requested will be charged by Warehouseman to Customer.

5.5. Storage charges do not include bonded storage. An additional charge may apply if Warehouseman agrees to store any goods in bond. If a warehouse receipt covers goods in U.S. Customs bond, such receipt shall be void upon the termination of the storage period fixed by law.

5.6. Customer may not offset claims for loss or damage to goods against amount owed to Warehouseman unless otherwise agreed to in writing.

5.7. Warehouseman reserves the right to adjust rates for warehousing, storage and affiliated services in its discretion, with 30 days' advance notice.

5.8. Should Customer stop doing business or reduce its business with Warehouseman below levels agreed upon between the parties, Customer shall be liable for all unrecoverable contractually obligated charges for the agreed upon term.

5.9. Warehouseman may submit invoices through its affiliate and such administrative functions shall not alter the services outlined in these Terms and Conditions, make Warehouseman liable for its affiliates' conduct, or establish any kind of joint liability between Warehouseman and its Affiliates.

**6. Transfer.** Instructions to transfer goods on the books of Warehouseman are not effective until delivered to and received by Warehouseman, and all charges up to the time transfer is made are chargeable to the Customer of record. If a transfer involves re-handling the goods, such re-handling will be subject to charges at Warehouseman's standard rates.

**7. Termination of Storage.** Warehouseman may at any time require the removal of any goods by the end of the next succeeding calendar month by providing written notice to Customer. If goods are not removed before the end of the next succeeding calendar month, Warehouseman may dispose of the goods in accordance with applicable law.

#### **8. Handling of Goods.**

8.1. Warehouseman shall provide the ordinary labor involved in receiving goods at the door of the warehouse, placing goods in storage, and releasing the goods at the door of the warehouse. Customer shall pay Warehouseman for services requested other than ordinary handling and storage as agreed to in writing by Warehouseman or at the billed rate.

8.2. Customer shall pay Warehouseman for Warehouseman's additional expenses in receiving and returning damaged goods and loading or unloading goods at a place other than the warehouse door.

8.3. Warehouseman shall not be required to store goods in a humidity-controlled or temperature-controlled environment.

8.4. Customer may be subject to an escort fee if Customer's access to Warehouseman's premises requires that Warehouseman personnel escort Customer.

**8.5. CUSTOMER SHALL NOT USE WAREHOUSEMAN'S EQUIPMENT (INCLUDING, BUT NOT LIMITED TO, LOADING, UNLOADING, HANDLING, CRATING, PACKAGING, AND CONSTRUCTION EQUIPMENT) WITHOUT WRITTEN PERMISSION FROM WAREHOUSEMAN. IF WAREHOUSEMAN ALLOWS CUSTOMER TO USE ANY OF WAREHOUSEMAN GROUP'S EQUIPMENT FOR ANY REASON, CUSTOMER ACKNOWLEDGES THAT CUSTOMER ACCEPTS ALL RISK AND RESPONSIBILITY OF DAMAGE TO PROPERTY AND INJURY AND/OR DEATH TO ANY PERSON(S) ARISING FROM SUCH USE. CUSTOMER SHALL ENSURE THAT ANY PERSON USING WAREHOUSEMAN GROUP'S EQUIPMENT SHALL BE QUALIFIED AND CERTIFIED IN ACCORDANCE WITH OSHA REQUIREMENTS AND ALL APPLICABLE STATUTES AND REGULATIONS TO OPERATE THE EQUIPMENT IN THE CONDITIONS PRESENTED. CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS WAREHOUSEMAN GROUP FROM ANY CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE ARISING FROM CUSTOMER'S USE OF WAREHOUSEMAN'S EQUIPMENT, EVEN IF SUCH CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSES (INCLUDING WITHOUT LIMITATION, ALL COSTS, EXPENSES AND ATTORNEYS' FEES), IS CAUSED IN WHOLE OR IN PART BY A PRE-EXISTING DEFECT IN SAID EQUIPMENT.**

8.6. Warehouseman Group shall not be liable for damages to Customer's and Customer's contractors' loading, unloading, packaging and related equipment and materials or damages to person or property arising from use of such equipment and materials, except to the extent of Warehouseman's proportionate fault. **CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS WAREHOUSEMAN GROUP FROM ANY CLAIM ACTION, LOSS, LIABILITY, OR REASONABLE**

**EXPENSE ARISING FROM SUCH EQUIPMENT OR MATERIALS OR THE USE THEREOF, EXCEPT TO THE EXTENT OF WAREHOUSEMAN GROUP'S PROPORTIONATE FAULT.**

8.7. Notwithstanding anything in these Terms and Conditions to the contrary, Warehouseman is not responsible nor have any role, responsibility or liability in the securement of cargo for transportation, nor shall Warehouseman be responsible for the inspection or approval of securement by any motor carrier transporting the cargo from the facility.

**9. Release.**

9.1. No goods shall be released or transferred except upon receipt by Warehouseman of complete written instructions. However, when no negotiable receipt is outstanding, goods may be released upon instruction by telephone, but Warehouseman shall not be responsible for loss or error occasioned thereby.

9.2. Customer shall afford Warehouseman a reasonable time to release goods and shall afford Warehouseman at least 10 business days after receipt of a delivery order to locate any misplaced goods. If Warehouseman has exercised reasonable care and is unable, due to causes beyond its control, to release goods before expiration of the current storage period, the goods will be subject to storage charges for each succeeding storage period. If Warehouseman is unable to release goods because of acts of God, flood, war, public enemies, seizure under legal process, strikes, lockouts, riots and civil commotions, other force majeure causes, or any reason beyond Warehouseman's control, or because of loss or destruction of goods for which Warehouseman is not liable, or because of any other excuse provided by law, Warehouseman shall not be liable for failure to release the goods and the goods remaining in storage will continue to be subject to regular storage charges.

9.3. All instructions and requests for release or transfer of title are received subject to satisfaction of all charges, liens and security interests of Warehouseman with respect to the goods whether for accrued charges, advances, or otherwise.

9.4. Warehouseman may require, as a condition precedent to release, a statement from Customer holding Warehouseman harmless from claims of others asserting a superior right to Customer to possession of the goods. Nothing herein shall prevent Warehouseman from exercising any other remedy available to it under the law to resolve conflicting claims to possession of the goods. All costs, including attorney's fees, incurred by Warehouseman relating to Warehouseman's activities referred to in this subsection may be charged to Customer and shall be subject to Warehouseman's lien described herein.

**10. Warehouseman Group's Limited Liability.**

**10.1. WAREHOUSEMAN GROUP SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY TO GOODS STORED HOWEVER CAUSED UNLESS SUCH LOSS OR INJURY RESULTED FROM THE FAILURE BY WAREHOUSEMAN GROUP TO EXERCISE SUCH CARE IN REGARD TO THEM AS A REASONABLY CAREFUL WAREHOUSE WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND WAREHOUSEMAN IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE. WAREHOUSEMAN GROUP AND CUSTOMER AGREE THAT WAREHOUSEMAN GROUP'S DUTY OF CARE DOES NOT EXTEND TO PROVIDING A SPRINKLER SYSTEM AT THE WAREHOUSE OR ANY PORTION THEREOF.**

**10.2. WAREHOUSEMAN GROUP SHALL NOT BE LIABLE IN CONTRACT, TORT, OR OTHERWISE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES IN CONNECTION WITH ITS PERFORMANCE UNDER THESE TERMS, INCLUDING WITHOUT LIMITATION, LOST PROFITS AND LOST OPPORTUNITY, EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE AND EVEN IF WAREHOUSEMAN GROUP WAS NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSES IS CAUSED IN WHOLE OR IN PART BY A PRE-EXISTING DEFECT, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT OF WAREHOUSEMAN GROUP (OR ANY SUCH INDEMNITEE).**

**10.3. IN THE EVENT OF LOSS, DAMAGE OR DESTRUCTION TO GOODS FOR WHICH WAREHOUSEMAN GROUP IS LEGALLY LIABLE, CUSTOMER AGREES THAT WAREHOUSEMAN GROUP'S MAXIMUM LIABILITY SHALL NOT EXCEED \$2.50 PER POUND FOR THE ACTUAL WEIGHT OF THE DAMAGED OR LOST PORTION OF THE GOODS, SUBJECT TO A MAXIMUM LIABILITY OF \$100,000.00 ("RELEASE RATE"). CUSTOMER MAY, HOWEVER, REQUEST AN INCREASE TO THE MAXIMUM LIABILITY OF WAREHOUSEMAN GROUP BY: A.) SUBMITTING A WRITTEN REQUEST FOR A HIGHER MAXIMUM LIABILITY BEFORE THE GOODS ARE TENDERED TO WAREHOUSEMAN, B.) PAYING AN ADDITIONAL CHARGE BASED ON THE INCREASED MAXIMUM LIABILITY, AND C.) OBTAINING WRITTEN CONFIRMATION OF THE HIGHER MAXIMUM LIABILITY FROM AN OFFICER OF WAREHOUSEMAN. THIS MAXIMUM LIABILITY APPLIES TO THE AGGREGATE OF ALL OF CUSTOMER'S GOODS STORED BY WAREHOUSEMAN AT ANY GIVEN TIME.**

**10.4. UNDER NO CIRCUMSTANCES SHALL WAREHOUSEMAN GROUP'S LIABILITY FOR LOSS OR DAMAGE TO GOODS EXCEED THE GREATER OF 1) THE AMOUNT AVAILABLE TO COVER THE LOSS OR DAMAGE UNDER WAREHOUSEMAN GROUP'S INSURANCE, WHICH IS SUBJECT TO THE POLICY CONDITIONS, THEN EXISTING COVERAGE LIMITS, AND AMOUNT REMAINING UNDER THE POLICY FOR COVERAGE, OR 2) \$500 FOR ALL OF CUSTOMER'S GOODS IN THE POSSESSION OF WAREHOUSEMAN GROUP; UNLESS CUSTOMER 1) SUBMITS A WRITTEN REQUEST FOR WAREHOUSEMAN GROUP TO BE LIABLE IN EXCESS OF WAREHOUSEMAN'S INSURANCE COVERAGE, 2) PAYS AN ADDITIONAL CHARGE, AS APPLICABLE, BASED ON THE INCREASED LIABILITY, AND 3) RECEIVES WRITTEN CONFIRMATION FROM AN OFFICER OF WAREHOUSEMAN OF ACCEPTANCE OF LIABILITY ABOVE INSURANCE COVERAGE; THIS LIMITATION OF LIABILITY SHALL NOT ALTER OR AFFECT WAREHOUSEMAN'S RELEASE RATE AND THE PROCEDURES CONTAINED HEREIN TO**

**INCREASE WAREHOUSEMAN'S RELEASE RATE. THIS MAXIMUM LIABILITY APPLIES TO THE AGGREGATE OF ALL OF CUSTOMER'S GOODS STORED BY WAREHOUSEMAN AT ANY GIVEN TIME.**

**10.5. WAREHOUSEMAN GROUP'S MAXIMUM LIABILITY REFERRED TO ABOVE SHALL BE CUSTOMER'S EXCLUSIVE REMEDY AGAINST WAREHOUSEMAN GROUP OR ANY OF ITS AFFILIATES, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES AND INSURERS FOR ANY CLAIM OR CAUSE OF ACTION WHATSOEVER RELATING TO LOSS, DAMAGE AND/OR DESTRUCTION OF GOODS AND SHALL APPLY TO ALL CLAIMS INCLUDING INVENTORY SHORTAGE AND MYSTERIOUS DISAPPEARANCE CLAIMS. CUSTOMER WAIVES ANY RIGHTS TO RELY UPON ANY PRESUMPTION OF CONVERSION IMPOSED BY LAW.**

**10.6. WHERE LOSS OR INJURY OCCURS TO STORED GOODS, FOR WHICH WAREHOUSEMAN GROUP IS NOT LIABLE, CUSTOMER 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.**

**11. Indemnification by Customer. CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS WAREHOUSEMAN GROUP, WAREHOUSEMAN'S AFFILIATES, LIENHOLDER, AND THEIR RESPECTIVE AGENTS FROM: ANY INJURY TO OR DEATH OF ANY PERSON; ANY DAMAGE TO OR LOSS OF PROPERTY; ANY ENVIRONMENTAL DAMAGE INCLUDING SPILLS AND POLLUTION; AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS ARISING FROM CUSTOMER'S ACTS OR OMISSIONS RELATED TO THESE TERMS, EXCEPT TO THE EXTENT OF WAREHOUSEMAN GROUP'S PROPORTIONATE FAULT. THE INDEMNITY CONTAINED IN THIS PARAGRAPH: (A) IS INDEPENDENT OF CUSTOMER'S INSURANCE OBLIGATIONS IN THIS AGREEMENT; (B) WILL SURVIVE THE TERMINATION OF THIS AGREEMENT, AND (C) SHALL APPLY IN INSTANCES WHERE WAREHOUSEMAN GROUP, CUSTOMER, AND/OR THIRD PARTIES ARE AT FAULT (EXCEPT TO THE EXTENT OF WAREHOUSEMAN GROUP'S PROPORTIONATE FAULT).**

**12. Insurance.**

12.1. Customer shall maintain the following insurance policies, at Customer's sole cost and expense, with at least the coverages described below:

12.1.1. Comprehensive General Liability Insurance, including contractual liability coverage, and bodily injury and property damage coverage, with limits of no less than \$2,000,000.00 per occurrence, or the amount required by law, whichever is higher;

12.1.2. Worker's Compensation Insurance or Occupational Disease Insurance, and Employer's Liability Insurance with limits of no less than \$1,000,000.00, or the amount required by law, whichever is higher, for accidents or occupational disease covering all work related to Customer's business; and

12.1.3. Commercial Auto Liability Insurance, with a combined single limit of no less than \$1,000,000.00 to injuries to any person or for damages to property in any one occurrence.

12.1.4. Insurance covering loss or damage for the total value of all of Customer's goods while in the possession of Warehouseman.

12.2. Customer's insurance shall include the following terms, and Customer shall furnish to Warehouseman Certificates of Insurance evidencing the insurance required by these Terms & Conditions. The insurance policies as evidenced by the Certificates of Insurance must contain the following terms:

12.2.1. Inclusion of Warehouseman and its Affiliates as additional insured on the aforementioned policies;

12.2.2. Waiver of subrogation in favor of Warehouseman Group on the aforementioned policies;

12.2.3. The on the aforementioned policies shall be primary and non-contributory to any other coverage in favor of Warehouseman;

12.2.4. The policies and insurance certificates shall provide coverage in those territories as may be applicable to the location where the services will be performed; and

12.2.5. 30 days' prior written notice will be given to Warehouseman in the event of cancellation, suspension, or material change in the policy to which it relates.

12.3. The insurance requirements contained herein shall in no way limit Customer's liability or responsibility under these Terms and Conditions nor shall they be construed to be the ultimate types and amounts of insurance Customer should maintain to adequately insure itself.

12.4. Failure of Customer to provide a compliant Certificate of Insurance and Warehouseman's failure to insist upon a compliant Certificate of Insurance shall in no way alter the requirements herein.

**13. Warehouseman's Lien and Security Interest.** To secure Customer's performance under these Terms & Conditions, Customer grants to Warehouseman a lien and security interest against: (1) all of Customer's non-exempt personal property that is in or on the Warehouse; (2) all lawful claims for money advanced, interest, insurance, transportation, labor, and other charges and expenses in relation to Customer's non-exempt personal property and goods in or on the Warehouse; and (3) the balance on any other Customer accounts that may be due. This is a security agreement for the purposes of the Uniform Commercial Code and Warehouseman may file a financing statement to perfect Warehouseman's security interest under the Uniform Commercial Code. Warehouseman shall have a lien on the non-exempt personal property and goods of Customer and may refuse to surrender possession until all charges or debts are paid in full. In addition to the charges described herein, Customer shall be liable for any and all expenses Warehouseman incurs to sell or dispose of the goods, including, but not limited to, attorney fees, transportation costs, administrative costs, and expenses necessary for the preservation of the goods. Warehouseman shall have the right to pay another service provider, whether hired by Warehouseman

or not, for services provided with relation to transportation, handling, warehousing, or related services, including instances where Warehouseman provides such services, Warehouseman hires a third party to provide the services, or otherwise. Customer consents to such costs being included in Warehouseman's lien and sale of the goods to satisfy such costs. Customer remains responsible for any deficiency outstanding to Warehouseman. Customer agrees that any goods sold pursuant to a claim of a Warehouseman's lien shall be deemed to be goods stored for hire by a merchant in the course of its business, and the sale may be accomplished by any means allowed by law for merchants or otherwise. Customer agrees that any sale by Warehouseman shall be commercially reasonable, and Customer waives all claims that a sale of goods is not commercially reasonable.

**14. Notice of Claims.**

14.1. It is a condition precedent to recovery on any claim against Warehouseman that Customer shall present all claims for loss or damage to goods to Warehouseman in writing within 91 days after delivery or the expected delivery date of the goods underlying the claims. Customer agrees that any claims for which notice is not provided to Warehouseman within 91 days are waived.

14.2. Customer may only maintain an action by Customer or others against Warehouseman for loss or damage to goods if said action is commenced within 2 years after delivery or the expected delivery date of the goods underlying the action.

14.3. As a condition precedent to making any claim and/or filing any suit, Customer shall provide Warehouseman a reasonable opportunity to inspect the goods which form the basis of Customer's claim and/or suit.

**15. Customer's Representations.**

15.1. Customer represents and warrants that Customer has lawful possession of the goods and has the right and authority to tender those goods to Warehouseman. Customer agrees to indemnify and hold harmless Warehouseman Group from all loss, cost and expense (including reasonable attorneys' fees) which Warehouseman Group pays or incurs as a result of any dispute or litigation, whether instituted by Warehouseman Group or others, respecting Customer's right, title or interest in the goods. Such amounts shall be charges in relation to the goods and subject to Warehouseman's lien.

15.2. Customer represents and warrants that the information concerning the goods it provides Warehouseman will be accurate, complete and sufficient to comply with all laws and regulations concerning the storage, handling, and transporting of the goods, and Customer shall indemnify, defend, and hold Warehouseman Group harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which Warehouseman Group pays or incurs as a result of Customer's failure to comply with this provision.

**16. Warehouse Receipt.** Any warehouse receipt issued by Warehouseman in connection with these Terms and Conditions will be non-negotiable. A warehouse receipt, if issued by Warehouseman, may be issued in either physical or electronic form at Warehouseman's option.

**17. Abandoned Property.** Warehouseman may retain, destroy, or dispose of any property left on the Premises after termination of these Terms and Conditions by providing 60 days' written notice to Customer by certified mail at Customer's last known address.

**18. Force Majeure.** Warehouseman shall not be liable for failure to perform any of its obligations during any time in which such performance is prevented by fire, flood, hurricane, storm, weather-related incidents, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of Warehouseman.

**19. Governing Law; Venue.** These Terms and Conditions shall be subject to and governed by the laws of the State of Texas, without regard to choice-of-law principles and irrespective of the fact that one or more of the parties may be or may become a resident of a different state. The parties agree that any and all claims or disputes arising out of or under these Terms and Conditions shall be filed in the appropriate county, state and federal courts located within Harris County, Texas.

**20. Non-Waiver.** The failure or refusal of either party to insist upon the strict performance of any provision of these Terms and Conditions, or to exercise any right in any one or more instances or circumstances shall not be construed as a waiver or relinquishment of such provision or right, nor shall such failure or refusal be deemed a customary practice contrary to such provision or right.

**21. Severability.** If any provision in these Terms and Conditions is held to be unenforceable the parties intend and request that the provisions be reformed and replaced with a provision as close as the parties' original intent as permitted by law, and that as much of these Terms and Conditions remain in effect as permitted by law.