

## **WTDC Terms and Conditions of Service**

These Terms and Conditions of Service are made part of and incorporated by reference into WTDC's Standard Agreement for Merchandise Warehousemen. Depositor, having reviewed the terms and conditions contained herein, acknowledges its agreement to be bound by same. WTDC's Standard Agreement for Merchandise Warehousemen and these Terms and Conditions shall both constitute the entire agreement of the parties. In every instance, all invoices are due and payable upon presentation and when service is rendered.

### **Section 1. INSURANCE, LIABILITY AND LIMITATION OF DAMAGES.**

- A. Depositor shall maintain, throughout the duration of this Agreement, insurance covering Depositor's use of the warehouse and the goods and merchandise deposited, stored, handled, shipped or delivered pursuant to the terms of this Agreement, in such amounts, types and form as may be reasonably acceptable to Warehouseman. A certificate for all insurance policies required of Depositor, shall be delivered to Warehouseman, at or prior to the execution of this Agreement and, thereafter, an endorsement to such policies extending the insured period, within thirty (30) days prior to the expiration or termination of any such policy from time to time. Any and all insurance procured by the Depositor under this Section, whether it be to cover loss of property, liability or for any other event, reason, occurrence or circumstance whatsoever, and for any and all purposes, shall contain a waiver of subrogation rights as against the Warehouseman and any of its agents, servants and/or employees. However, if Depositor does not procure insurance or does not waive liability, Warehouseman may purchase such coverage and bill Depositor for such expense.
- B. The Warehouseman shall not be liable for any loss or injury to goods stored, however caused, unless such loss or injury resulted from the failure by the Warehouseman to exercise such care in regard to them as a reasonably prudent party would exercise under like circumstances, and Warehouseman shall not be liable for damages which could not have been avoided by the exercise of such care.
- C. Depositor shall indemnify and hold harmless Warehouseman, from and against all loss, cost (including attorney's fees), damages, expense and liability (including liability under workmen's compensation laws) of whatever nature, including, but not limited to, duties, taxes, interest, liquidated damages and penalties for violation of C&BP's laws, arising from any act, omission or negligence of Depositor.
- D. The storage and handling charges payable pursuant to this Agreement are not based on the value of the Depositor's goods. Notwithstanding any other provision herein to the contrary, Warehouseman's liability as to each package stored is limited to the actual value of each package, but not to exceed one hundred and fifty percent (150%) of the amount of the base monthly storage rate per package stored. In the event Depositor secures all risk insurance coverage through the efforts of warehousemen, or otherwise, the terms of coverage and liability limits imposed by the all risk insurer shall prevail over the liability limits contained herein. To the extent Depositor, or its insurer claims any right of subrogation,

Warehousemen's liability therefore shall not exceed the limits specified herein, to wit: 150% of the amount of the base monthly storage rate per package stored. The parties acknowledge and agree that the monthly storage rates were negotiated based on the quantity of goods and merchandise that is expected to be stored by Warehouseman, and therefore that a multiple of monthly fixed rate provided for hereinabove represents a per article, per item or value per unit of weight limit of liability for each item lost, misplaced, damaged, or destroyed. At Depositor's written request, made within ten (10) days of the date of this Agreement, Warehouseman will increase the amount of maximum liability provided for herein; provided, however, the parties hereto agree, in writing, to a changed maximum liability and the additional charges for same. Depositor waives all rights of subrogation on behalf of its insurers, if any, for any loss or damage in excess of the amount set forth in the immediately preceding sentence.

- E. Except in the case of either gross negligence or willful misconduct of the Warehouseman, nothing herein shall be construed to extend or increase the Warehouseman's liability above or beyond that which is specified herein. In no circumstances shall Depositor be entitled to consequential or special damages in connection with this Agreement, and neither Warehouseman nor any partner, member, or shareholder of Warehouseman, or any officer, director, shareholder, member, or partner of any partner, member, or shareholder of Warehouseman, shall have any personal liability whatsoever with respect to this Agreement. Furthermore, in no case shall the liability be extended to loss of profits.

## **Section 2. Notice of Claim and Filing of Suit.**

- A. Claims by the Depositor and all other persons must be presented in writing to the Warehouseman within a reasonable time, and in no event to exceed sixty (60) days after (i) delivery of the goods by the Warehouseman to the Depositor of record or the last known holder of a negotiable warehouse receipt, or (ii) after Depositor of record or the last known holder of a negotiable warehouse receipt is notified by the Warehouseman that loss, damage, or injury to part of or all of the goods has occurred.
- B. Claims by the Depositor and all other persons, regarding Credit Memos must be presented in writing to the Warehouseman within a reasonable time, and in no event to exceed thirty (30) days after (i) delivery of the goods by the Warehouseman to the Depositor of record or the last known holder of a negotiable warehouse receipt, or (ii) after Depositor of record or the last known holder of a negotiable warehouse receipt is notified by the Warehouseman that loss, damage, or injury to part of or all of the goods has occurred.
- C. No action may be maintained by the Depositor or others against the Warehouseman for loss or injury to the goods stored unless timely written claim has been given as provided in this Section 13, and unless such action is commenced within nine (9) months after the date such claim was given by the Depositor of record or the last known holder of the warehouse receipt.

### **Section 3. Depositor's Default and Termination.**

If Depositor defaults in the performance of any term, undertaking or obligation of this Agreement then Warehouseman may, in addition to its other available rights and remedies, immediately or at any time thereafter, terminate Depositor's access to the Alternate Inventory Control System (as defined in the C&BPs' rules and regulations (the "Rules and Regs") maintained by Warehouseman under the supervision of the C&BP.

### **Section 4. Depositor's Information.**

- A. *(When Applicable)* Depositor acknowledges it is required to review all documents and declarations prepared and/or filed with C&BP, other Government Agency and/or third parties, including, but not limited to the Master Lot Agreement executed by Depositor simultaneously with Depositor's execution of this Agreement, and will immediately advise the Warehouseman of any errors, discrepancies, incorrect statements, or omissions on any declaration filed on Depositor's behalf.
- B. If the Depositor fails in a timely manner to furnish such information or documents, in whole or in part, as may be required to comply with U.S. laws or regulations, or if the information or documents furnished are inaccurate or incomplete, the Warehouseman shall be obligated only to use its best judgment in connection with the shipment and in no instance shall be charged with knowledge by the Depositor of the true circumstances to which such inaccurate, incomplete, or omitted information or document pertains. Where a bond is required by law to be given for the production of any document or the performance of any act, the Depositor shall be deemed bound by the terms of the bond notwithstanding the fact that the bond has been executed by the Warehouseman as principal, it being understood that the Warehouseman entered into such undertaking at the instance and on behalf of the Depositor and the Depositor shall indemnify and hold the Warehouseman harmless for the consequences of any breach of the terms of the bond.
- C. The Depositor shall indemnify and hold the Warehouseman harmless from any and all claims asserted and/or liability or losses suffered by reason of the Depositor's failure to disclose information or any incorrect or false statement by the Depositor upon which the Warehouseman reasonably relied. The Depositor has an affirmative non-delegable duty to disclose any and all information required to import, export, or enter the goods.
- D. In preparing and submitting Customs' entries, export declarations, applications, documentation and/or export data to any agency of the United States and/or a third party, the Warehouseman relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Depositor.

### **Section 5 . Liability of Warehouseman.**

Unless subject to a specific statute or international convention, any claim or demand for loss, damage, expense, or delay shall be only against the carriers, truckmen, lightermen, forwarders, customs brokers, agents, warehousemen, or others in whose actual custody or control the goods may be at the time of such loss, damage, expense, or delay, and that the Warehouseman shall not be liable or responsible for any claim or demand from any cause whatsoever, unless in each case the goods were in actual custody or control of the Warehouseman and the damages alleged to have been suffered be proven to be caused by the gross negligence or other willful misconduct of the Warehouseman, its officers or employees, in which event the limitation of liability set forth in Subsections 1 herein shall apply.

- (a) The Warehouseman shall not be liable for loss, damages, delays or demurrage caused by acts of God, civil or military authority, insurrection, riot, strikes, picketing, or any other labor trouble, disturbance or inference of whatever cause or nature, whether primary, secondary, or tertiary, etc., or enemies of the government, or by odor, sprinkler leakage, flood, wind, storm, fire, corruption, or depreciation, by rats, mice, or other vermin, or by any other cause beyond the control of the Warehouseman or any cause not originating in the warehouse.
- (b) No liability is or will be attributed to or assumed by Warehouseman for loss in weight for breakage or for insufficient cooperage, boxing or packaging, or for wear and tear. The Warehouseman shall not be responsible for loss of goods by leakage or through failure to detect same, or for concealed damage.
- (c) Perishable goods, or goods which are susceptible to damage through temperature changes, or inherent vice, or other causes incident to general storage, are accepted in general storage at owner's risk for such damages that might result in general storage conditions.

#### **Section 6. Indemnification for Freight, Duties.**

In the event that a carrier, other person, or any governmental agency makes a claim or institutes legal action against the Warehouseman for ocean or other freight, duties, fines, penalties, liquidated damages, or other money due arising from a shipment of goods to the Depositor, the Depositor shall indemnify and hold the Warehouseman harmless for any and all claims asserted and/or liability or losses suffered and shall pay reasonable expenses, including attorney's fees, incurred by the Warehouseman in connection with such claim or legal action. The confiscation or detention of the goods by any governmental authority shall not affect or diminish the liability of the Depositor to the Warehouseman to pay all charges or other money due promptly on demand.

**Section 7. No Responsibility for Governmental Requirements,**

The Warehouseman is not responsible to know and comply with the marking requirements of C&BP, the regulations of the U.S. Food and Drug Administration, and all other governmental requirements, including regulations of Federal, state, and/or local agencies both here and in the country of destination pertaining to the merchandise. The Warehouseman shall not be responsible for action taken or fines or penalties assessed by any governmental agency against the shipment because of the failure of the Depositor to comply with the law or the requirements or regulations of any governmental agency or with a notification issued to the Depositor by any such agency.

**Section 8. Indemnity Against Liability Arising from the Importation of Merchandise.**

The Depositor agrees to indemnify, defend, and hold the Warehouseman harmless from any claims and/or liability arising from the importation or exportation of merchandise, and/or any conduct of the Depositor, which violates any Federal, state, and/or other laws or regulations and further agrees to indemnify and hold the Warehouseman harmless against any and all liability, loss, damages, costs, claims, and/or expenses, including, but not limited to attorney's fees, which the Warehouseman may incur, suffer, or be required to pay by reason of such claims. In the event that any action, suit, or proceeding is brought against the Warehouseman by any governmental agency or any private party, the Warehouseman shall give notice in writing to the Depositor by mail at its address on file with the Warehouseman. Upon receipt of such notice, the Depositor, at its own expense, shall defend against such action and take all steps as may be necessary or proper to prevent the obtaining of a judgment and/or order against the Warehouseman.

**Section 8. Loss, Damage, or Expense Due to Delay.**

Unless the services to be performed by the Warehouseman on behalf of the Depositor are delayed by reason of the negligence or other fault of the Warehouseman, the Warehouseman shall not be responsible for any loss, damage, or expense incurred by the Depositor because of such delay. In the event the Warehouseman is at fault, as aforesaid, its liability is limited in accordance with the provisions above.

**Section 9. No Duty to Maintain Records for Depositor.**

Depositor acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC 1508 and 1509) the Depositor has the duty and is solely liable for maintaining all records required under the C&BP and/or other Laws and Regulations of the United States; unless otherwise agreed to in writing, the Warehouseman shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but shall not act as a "record keeper" or "record keeping agent" for Depositor.

**Section 10. Ownership of Goods.**

- A. Depositor shall have all right, title, and interest in each item of the goods. Warehouseman will not in any way acquire any right, title, or interest in any of the goods and shall not represent itself to any third party as being the owner of any such item of the goods, claim

any rights of ownership therein, encumber, lease, transfer, or otherwise dispose of (other than in accordance with the terms of Section 19 above) any such item of the goods.

- B. Depositor agrees to allow a representative of Warehouseman to have access at any time to inspect or inventory the goods and the premises in which the goods are stored.

**Section 11. Hazardous Materials.**

Depositor represents and warrants and agrees to indemnify Warehouseman from any breach thereof, that the goods do not contain, or are they, Hazardous Materials as that term is defined in the Hazardous Materials Laws (as hereinafter defined). Depositor shall be required to, from time to time and at any time, when Warehouseman reasonably believes that goods may contain, or may be, Hazardous Materials, to retain one or more environmental consultants to advise Warehouseman with respect to the presence or absence of hazardous or toxic substances, waste, materials, electromagnetic fields, radon, or radioactive materials upon or within the goods; compliance with environmental, hazardous, or solid materials or waste laws, rules and regulations; or the clean-up or remediation of hazardous materials spills or contamination, and/or the compliance of the goods with, or the enforcement of, Federal, state, and local laws, rules, regulations, directives, ordinances, and requirements relating to Hazardous Materials (hereinafter collectively "Hazardous Materials Laws"). Warehouseman shall act at the direction of the Depositor's environmental consultant, if any, and shall (i) undertake, on the Depositor's behalf and at the Depositor's expense, necessary actions for the Depositor to comply with Hazardous Materials Laws in accordance with the environmental recommendations contained in the environmental assessment report, and/or (ii) seek, on the Depositor's behalf and at the Depositor's expense, to enforce Depositor's compliance with any Hazardous Materials Laws in accordance with the environmental consultant's recommendations contained in the environmental assessment report.

**Section 12. GOVERNING LAWS; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL; ATTORNEYS' FEES.**

- A. **THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY, AND PERFORMANCE, SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.**
- B. **EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT THE STATE OR FEDERAL COURTS LOCATED IN MIAMI-DADE COUNTY, FLORIDA, SHALL HAVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THEM PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT.**
- C. **BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY**

**AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY, THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.**

- D. IF ANY ACTION OR PROCEEDING IS INSTITUTED TO ENFORCE OR INTERPRET ANY PROVISION OF THIS AGREEMENT, THE PREVAILING PARTY THEREIN SHALL BE ENTITLED TO RECOVER ITS ATTORNEYS' FEES AND COSTS FROM THE NON-PREVAILING PARTY, FOR ALL PHASES OF SUCH ACTION OR PROCEEDING, INCLUDING WITHOUT LIMITATION ANY APPELLATE PROCEEDING.**