

WAREHOUSE TERMS AND CONDITIONS

DEFINITIONS:

Except as otherwise designated on the face hereof, the terms "the warehouseman," "the warehouse company" and "company" mean BGI Worldwide Logistics, Inc., its subsidiaries, related companies, agents, subcontractors and/or representatives. The term "depositor" means the shipper, consignee, owner of the goods or its agents, including, but not limited to, motor carriers, motor freight brokers and draymen and/or any entity that places or maintains a chassis/trailer pool at the warehouseman's facility identified in this warehouse receipt. The term "equipment" means any chassis, container, trailer, or tractor. The term "goods" means the merchandise, cargo or freight tendered for storage by the depositor and identified on the face of this warehouse receipt. The term "yard storage" means the placement of containers or trailers, with or without tractors, empty or loaded with merchandise, secured or unsecured, in the yard of the warehouseman for the benefit of the depositor and/or the depositor's goods.

ACCEPTANCE - Sec. 1

(a) This contract and rate quotation, including accessorial charges endorsed on or attached hereto, is effective upon receipt of goods by warehouse company into its warehouse facility or upon written acceptance by depositor, whichever occurs first.

(b) In the event that goods tendered for storage or other services do not conform to the description contained herein, or conforming goods are tendered after 30 days from the inception date without prior written acceptance by the depositor as provided in sub-paragraph (a) of this section, the warehouseman may refuse to accept such goods. If the warehouseman accepts such goods, the depositor agrees to rates and charges as may be assigned and invoiced by the warehouseman and to all terms of this contract.

(c) This contract may be canceled by either party upon 30 days' written notice and is canceled if no storage or other services are performed under this contract for a period of 90 days.

SHIPPING - Sec. 2

The depositor shall not designate the warehouseman to be the consignee for any goods under any bill of lading, waybill, air waybill, or any other transportation contract. If, in violation of this agreement, goods are shipped to the warehouseman as named consignee, the depositor agrees to notify carrier in writing prior to such shipment, with copy of such notice to the warehouseman, that warehouseman named as consignee is a warehouseman and has no beneficial title or interest in such goods and the depositor further agrees to indemnify and hold harmless the warehouseman from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention or charges of any nature, in connection with goods so shipped. The depositor further agrees that if it fails to notify carrier as required by the preceding sentence, the warehouseman shall have the right to refuse such goods and shall not be liable or responsible for any loss, injury or damage of any nature to, or related to, such goods.

TENDER FOR STORAGE - Sec. 3

All goods for storage shall be delivered at the warehouse properly marked and packaged for handling. At the time of such delivery, or prior thereto, the depositor shall furnish to the warehouseman a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other services desired.

STORAGE PERIOD AND CHARGES - Sec. 4

(a) All charges for storage are per package or other agreed unit, per month.

(b) Storage charges commence upon the date that warehouseman accepts care, custody and control of the goods, regardless of the unloading date or the date of issue of a warehouse receipt.

(c) Except as provided in sub-paragraph (d) of this section, a full month's storage charge will apply on all goods received between the first and the fifteenth, inclusive, of a calendar month; one-half month's storage charge will apply on all goods received between the sixteenth 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 and payable on the first day of storage for the initial month and thereafter on the first day of the calendar month.

(d) When mutually agreed by the warehouseman and the depositor, 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 are due and payable on the first day of the storage month.

TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS & LIEN BY WAREHOUSEMAN - Sec. 5

(a) Instructions to transfer goods to the warehouseman are not effective until delivered to and accepted by the warehouseman, and all charges up to the time transfer is made are chargeable to the depositor of record. If a transfer involves rehandling the goods, such rehandling will be subject to a charge. When goods in storage are transferred from one party to another through issuance of a new warehouse receipt, a new storage date is established on the date of transfer.

(b) The warehouseman reserves the right to move, at his expense, fourteen days after notice is sent by certified or registered mail to the depositor of record or to the last known holder of the negotiable warehouse receipt, any goods in storage from the warehouse in which they may be stored to any other of his warehouses. But if such depositor or holder takes delivery of his goods in lieu of transfer, no storage charge shall be made for the current storage month. The warehouseman 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 the warehouse complex identified on the front of this warehouse receipt.

(c) The warehouseman may, upon written notice to the depositor of record and any other person known by the warehouseman to claim an interest in the goods, require the removal of any goods by the end of the next succeeding storage month. Such notice shall be given to the last known place of business or residence of the person to be notified. If goods are not removed before the end of the next succeeding storage month, the warehouseman may sell them in accordance with applicable law.

(d) If the warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of the warehouseman's then current and otherwise outstanding warehouse or other charges before the end of the next succeeding storage month, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held one week after a single advertisement or posting as provided by law.

(e) If, as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit or to which the goods have deteriorated and the goods are a hazard to other property or to the warehouse or to any persons in the warehouseman's sole opinion, the warehouseman 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 the warehouseman after a reasonable effort is unable to sell the goods, he 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, the warehouseman may remove the goods from the warehouse and shall incur no liability by reason of such removal.

(f) The warehouseman claims a lien for all lawful charges for storage and preservation of the goods and/or equipment; also, for money advanced, interest, insurance, transportation, labor, weighing, cooping and other charges and expenses in relation to such goods, and for the balance on any other accounts that may be due. The warehouseman also claims a lien under maritime law, if applicable, the Company's bill of lading, if issued, and the Company's "Terms & Conditions of Service," if applicable. The warehouseman reserves the right to exercise its lien rights under the terms of any applicable law and/or agreement between the depositor and the warehouseman. **THE GOODS COVERED BY THIS RECEIPT HAVE NOT BEEN INSURED BY THE WAREHOUSEMAN FOR THE BENEFIT OF THE DEPOSITOR AGAINST FIRE OR ANY OTHER CASUALTY. PROCUREMENT OF SUCH INSURANCE IS THE SOLE RESPONSIBILITY OF THE DEPOSITOR, AT THE DEPOSITOR'S SOLE DISCRETION AND EXPENSE.**

HANDLING - Sec. 6

(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 and payable on receipt of goods.

(b) Unless otherwise agreed, labor for unloading and loading goods will be subject to a charge. Additional expenses incurred by the warehouseman in receiving and handling damaged goods, and additional expenses incurred in unloading from or loading into cars or other vehicles not at the warehouse door will be charged to the depositor.

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

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

(e) The warehouseman shall not be liable for demurrage or detention, delays in unloading inbound cars, trailers, or other containers, or delays in obtaining and loading cars, trailers, or other containers for outbound shipment unless the warehouseman has failed to exercise reasonable care.

DELIVERY REQUIREMENTS - Sec. 7

(a) No goods shall be delivered or transferred except upon receipt by the warehouseman of complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, TWX or similar communications, provided the warehouseman has no liability when relying on the information contained in the communication as received. However, when no negotiable receipt is outstanding, goods may be delivered upon instruction by telephone, in accordance with a prior written authorization, but the warehouseman shall not be responsible for loss or error occasioned thereby.

(b) When a negotiable receipt has been issued, no goods covered by that receipt shall be delivered or transferred on the books of the warehouseman, unless the receipt, properly endorsed, is surrendered for cancellation, or for endorsement of partial delivery thereon. If a negotiable receipt is lost or destroyed, delivery of goods may be made only upon order by a court of competent jurisdiction and the posting of security approved by the court as provided by law.

(c) When goods are ordered out, a reasonable time shall be given the warehouseman to carry out instructions, and if he is unable to do so because of acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots and civil commotions, or any reason beyond the warehouseman's control, or because of the loss or destruction of goods for which warehouseman is not liable, or because of any other excuse or justification provided by law, the warehouseman 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.

EXTRA SERVICES/SPECIAL SERVICES - Sec. 8

(a) Warehouse labor required for services other than ordinary handling and storage will be charged to the depositor.

(b) Special services requested by depositor including, but not limited to, compiling of special stock statements, reporting marked weights, serial numbers or other data from packages, physical checking of goods, and handling transit billing will be subject to a charge.

(c) Damage, bracing, packing materials or other special supplies may be provided to the depositor at a charge in addition to the warehouseman's cost.

(d) By prior arrangement, goods may be received or delivered other than during usual business hours, subject to a charge.

(e) Communication expenses, including postage, teletype, telegram, or telephone will be charged to the depositor if such expenses concern more than normal inventory reporting or if, at the request of the depositor, communications are made by other than regular United States mail.

BONDED STORAGE - Sec. 9

(a) A charge in addition to regular rates will be made for merchandise in bond.

(b) Where 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.

MINIMUM CHARGES - Sec. 10

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

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

LIABILITY AND LIMITATION OF DAMAGES - Sec. 11

(a) 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 reasonable care and the warehouseman is not liable for damages that could not have been avoided by the exercise of such care.

(b) goods are not insured by the warehouseman against loss or injury, however caused.

(c) **the depositor declares that aggregate damages are limited to \$.50 per lb. not to exceed \$50,000** for all services provided or arranged, provided, however, that such liability may at the time of acceptance of this contract, as provided in section 1, be increased upon depositor's written request on part or all of the goods hereunder in which event an additional monthly charge will be made based upon such increased valuation.

(d) where loss or injury occurs to stored goods, for which the warehouseman is not liable, the depositor 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.

ARBITRATION - Sec. 12

(a) The warehouseman and depositor, on behalf of itself and its heirs, assigns, and/or subrogees, agree that any dispute arising under this Warehouse Receipt shall be submitted to the American Arbitration Association, under its Commercial Arbitration rules then in force, or the Transportation ADR Council, Inc. The parties agree to be bound by the arbitration decision and judgment upon such decision may be entered in any federal or state court of competent jurisdiction in the state of California. Any arbitration shall be held in the state of California, city of Los Angeles, and no other place.

(b) The depositor expressly agrees that the time for commencement of such arbitration proceedings by the depositor against the warehouseman shall be limited to 9 months after date of delivery by the warehouseman or within 9 months after the depositor of record or the last known holder of a negotiable warehouse receipt is notified that loss or injury to part or all of the goods has occurred, whichever time is shorter—all proceedings commenced thereafter being time-barred, however founded.

NOTICE OF CLAIM AND COMMENCEMENT OF ARBITRATION - Sec. 13

(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 longer than either 60 days after delivery of the goods by the warehouseman or 60 days after the depositor of record or the last known holder of a negotiable warehouse receipt is notified by the warehouseman that loss or injury to part or all of the goods has occurred, whichever time is shorter.

(b) Neither the depositor nor any other person may commence an arbitration against the warehouseman for loss or injury to the goods stored unless timely written claim has been given as provided in sub-paragraph (a) of this section.

(c) When goods have not been delivered, notice may be given of known loss or injury to the goods by mailing of a registered or certified letter to the depositor of record or to the last known holder of a negotiable warehouse receipt. Time limitations for presentation of claim in writing and commencing an arbitration after notice begin on the date of mailing of such notice by the warehouseman.

NO LIABILITY FOR CONSEQUENTIAL DAMAGES - Sec. 14

The warehouseman shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind whatsoever.

LIABILITY FOR MIS-SHIPMENT - Sec. 15

If the warehouseman negligently misships goods, the warehouseman shall pay the reasonable transportation charges incurred to return the mis-shipped goods to the warehouse. If the consignee fails to return the goods, the warehouseman's maximum liability shall be for the lost or damaged goods, as specified in Section 11 above, and the warehouseman shall have no liability for damages due to the consignee's acceptance or use of the goods, whether such goods be those of the depositor or another.

MYSTERIOUS DISAPPEARANCE - Sec. 16

The warehouseman shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods unless the depositor establishes that such loss occurred because of the warehouseman's failure to exercise the care required of warehouseman under Section 11 above. Any presumption of conversion imposed by law shall not apply to such loss and a claim by the depositor of conversion must be established by affirmative evidence that the warehouseman converted the goods to the warehouseman's own use.

RIGHT TO STORE GOODS - Sec. 17

The depositor represents and warrants that the depositor is lawfully possessed of the goods and has the right and authority to store them with the warehouseman. The depositor agrees to indemnify and hold harmless the warehouseman from all loss, cost and expense, including reasonable attorneys' fees that warehouseman pays or incurs as a result of any dispute or litigation, whether instituted by the warehouseman or others, respecting depositor's right, title or interest in the goods. Such amounts shall be charges in relation to the goods and subject to the warehouseman's lien.

ACCURATE INFORMATION - Sec. 18

The depositor will provide the warehouseman with information concerning the stored goods that is accurate, complete, and sufficient to allow the warehouseman to comply with all laws and regulations concerning the storage, handling, and transporting of the goods. The depositor will indemnify and hold the warehouseman harmless from all loss, cost, penalty and expense, including reasonable attorneys' fees that the warehouseman pays or incurs as a result of depositor failing to fully discharge this obligation.

SEVERABILITY AND WAIVER - Sec. 19

(a) If any provision of this Warehouse Receipt, or any application thereof, should be construed or held to be void, invalid or unenforceable, by order, decree, or judgment of a court of competent jurisdiction, the remaining provisions of this receipt shall not be affected thereby but shall remain in full force and effect.

(b) The warehouseman's failure to require strict compliance with any provision of the Warehouse Receipt shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of this Warehouse Receipt.

(c) The provisions of this Warehouse Receipt shall be binding upon the depositor's heirs, executors, successors and assigns. Those provisions contain the sole agreement governing goods stored with the warehouseman, and they cannot be modified except by a writing signed by the warehouseman.

YARD STORAGE - Sec. 20

The liability of the warehouseman for any yard storage of containers or trailers, whether loaded or empty, secured or unsecured, shall be subject to Sections 11, 12, and 13 of this Warehouse Receipt.

CONSTRUCTION OF TERMS AND VENUE - Sec. 21

The terms and conditions of this Warehouse Receipt shall be construed and interpreted under the laws of the State of California, except when a law of the United States, convention, treaty, or other law is otherwise compulsorily applicable. Proper venue is in the state of California, city of Los Angeles, and no other place.

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