

FML Warehousing and Logistics Services, LLC
2955 RIDGELAKE DRIVE, SUITE 107, METAIRIE, LA 70002

Contract Terms and Conditions

SECTION 1 – DEFINITIONS

As used in this Warehouse Receipt or Contract and Rate Quotation (collectively and/or alternatively “Warehouse Receipt”) the following terms have the following meanings:

- (a) STORER: The person, firm, corporation or other entity for whom the GOODS described herein are stored and to whom this Warehouse Receipt is issued and anyone else claiming an interest in the GOODS.
- (b) COMPANY: FML Warehousing and Logistics Services, LLC. As used in Sections 8 and 9 hereof COMPANY includes officers, directors, employees and agents of the COMPANY while acting within the scope and course of their employment.
- (c) LOT: Unit or units of GOODS which are separately identified by the COMPANY.
- (d) ADVANCE: All sums due or claimed to be due to COMPANY from STORER or others relating to the GOODS regardless of the source, whether liquidated or not, including but not limited to loans, disbursements, charges made for or on account of STORER or GOODS, necessary for preservation of GOODS or reasonably incurred in their sale pursuant to law.
- (e) GOODS: The personal property and/or any portion thereof which is described herein and/or which COMPANY has agreed to receive and/or store pursuant to this Warehouse Receipt.

SECTION 2 – TENDER FOR STORAGE

- (a) All GOODS for storage shall be delivered at the warehouse properly marked and packed for handling.
- (b) STORER 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 desired. Otherwise the GOODS may be stored in bulk or assorted lots in general storage at the discretion of the COMPANY and charges for such storage will be made at the applicable storage rate.
- (c) Receipt and delivery of all or any units of a LOT shall be made without subsequent sorting except by special arrangement and subject to a charge.
- (d) COMPANY shall store and deliver GOODS only in the packages in which they are originally received unless otherwise agreed to in writing.
- (e) COMPANY shall not be responsible for segregating GOODS by production code date unless specifically agreed to in writing.

SECTION 3 - TERMINATION OF STORAGE

- (a) COMPANY may, upon written notice, as required by law, require the removal of the GOODS, or any portion thereof, from the warehouse upon the payment of all charges attributable to said GOODS within a stated period, not less than 30 days after such notification. If said GOODS are not so removed, COMPANY may sell them as provided by law and shall be entitled to exercise any other rights it has under the law with respect to said GOODS.
- (b) If, in the opinion of COMPANY, GOODS may be about to deteriorate or decline in value to less than the amount of COMPANY'S lien thereon, or may constitute a hazard to other property or to the warehouse or persons, the GOODS may be removed or disposed of by COMPANY as permitted by law. All charges related to said removal shall be paid by STORER.

SECTION 4 – STORAGE CHARGES

- (a) Storage charges will apply to all materials in warehouse inventory on the last “free day”. Storage charges could apply upon the expiration of “free time” or at the end of the calendar month.
- (b) Rates quoted by weight will, unless otherwise specified, be computed on gross weight and 2,000 pounds shall constitute a ton.

SECTION 5 – HANDLING CHARGES

- (a) Unless otherwise specified or elected by COMPANY, handling charges could apply.
- (b) Unless otherwise specified, a charge in addition to the regular handling charges will be made for any work performed by COMPANY other than specified in Section (a) at rates which are in effect from time to time, or which rates are available upon request.
- (c) When GOODS are ordered out in quantities less than in which received, the COMPANY may make an additional charge for each order or each item of an order.

SECTION 6 – TRANSFER OF TITLE; DELIVERY

- (a) Instructions by STORER to transfer GOODS to the account of another are not effective until delivered to and accepted by COMPANY. Charges could apply for each such transfer and for any rehandling of GOODS deemed by COMPANY to be required thereby. COMPANY reserves the right not to deliver or transfer GOODS to or for the account of others except upon receipt of written instructions properly signed by STORER.
- (b) COMPANY shall have a minimum of 10 business days after receipt of a delivery order in which to locate any misplaced GOODS.
- (c) If COMPANY has exercised reasonable care and is unable, due to causes beyond its control, to affect delivery before expiration of the current storage period, the GOODS will be subject to storage charges for each succeeding storage period.
- (d) All instructions and requests for delivery of GOODS or transfer of title are received subject to satisfaction of all charges, liens and security interests of COMPANY with respect to the GOODS whether for accrued charges or ADVANCES or otherwise.
- (e) COMPANY may require, as a condition precedent to delivery, a statement from STORER holding COMPANY harmless from claims of others asserting a superior right to STORER to possession of the GOODS. Nothing herein shall preclude COMPANY 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 COMPANY relating in any way to COMPANY'S activities referred to in this Section 6 (e) shall be charged to STORER and shall, for purposes of Section 11 below, be considered "charges present or future with respect to such GOODS" and shall attach as a lien on the GOODS.

SECTION 7 – 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, cooping, sampling, weighing, repiling, inspecting, compiling stock statements, making collections, furnishing revenue stamps, reporting or recording marked weights or numbers, handling railroad expense bills, and handling shipments.
- (b) All ADVANCES are due and payable fifteen (15) days after invoice date. All charges and ADVANCES not paid within thirty (30) days from the due date are subject to an interest charge, from the date said charge or ADVANCE became due until paid, at the lesser of one and one half (1 ½) percent per month or the maximum amount allowed by law.
- (c) STORER may, subject to insurance regulations and reasonable limitations, inspect the GOODS when accompanied by an employee of COMPANY whose time is chargeable to STORER.
- (d) In the event of damage or threatened damage to the GOODS, STORER shall pay all reasonable and necessary costs of protecting and preserving the GOODS. When the costs of protecting and preserving stored property are attributable to more than one STORER, said costs shall be apportioned among all affected STORERS on a pro-rated basis to be determined by the COMPANY.
- (e) COMPANY may supply dunnage bracing and fastenings where it deems it appropriate on outbound shipments and the cost thereof is chargeable to STORER.
- (f) Any additional costs incurred by COMPANY in unloading cars or trucks containing damaged GOODS are chargeable to STORER.
- (g) COMPANY shall not be responsible for demurrage charges or delays in loading or unloading unless such demurrage charge or delay was caused solely by COMPANY'S negligence.
- (h) All storage, handling and other services may be subject to minimum charges.
- (i) STORER agrees to pay COMPANY all costs and ADVANCES including reasonable attorney's fees incurred by COMPANY in connection with the storage, handling and/ or disposition of GOODS, including without limitation, such costs, ADVANCES, and/or fees relating to lawsuits (including Bankruptcy proceedings) involving in any way said GOODS and/or STORER'S performance under this agreement. All such costs, ADVANCES, and fees, for purposes of Section 11 below, shall constitute "charges present or future with respect to such GOODS."

SECTION 8 – LIABILITY AND LIMITATION OF DAMAGES

- (a) COMPANY shall not be liable for any loss, damage or destruction to GOODS, however caused, unless such loss, damage or destruction resulted from the COMPANY'S failure to exercise such

care in regard to the GOODS as a reasonable careful man would exercise under like circumstances. COMPANY is not liable for damages which could not have been avoided by the exercise of such care.

- (b) COMPANY and STORER agree that COMPANY'S duty of care referred to in Section 8(a) above does not extend to providing a sprinkler system at the warehouse complex or any portion thereof.
- (c) Unless specifically agreed to in writing, COMPANY shall not be required to store GOODS in a humidity controlled environment or be responsible for tempering GOODS.
- (d) **IN THE EVENT OF LOSS, DAMAGE OR DESTRUCTION TO GOODS FOR WHICH THE COMPANY IS LEGALLY LIABLE, STORER DECLARES THAT COMPANY'S LIABILITY SHALL BE LIMITED TO THE LESSER OF THE FOLLOWING: (1) THE ACTUAL COST TO STORER OF REPLACING, OR REPRODUCING THE LOST, DAMAGED, AND/OR DESTROYED GOODS TOGETHER WITH TRANSPORTATION COSTS TO WAREHOUSE, (2) THE FAIR MARKET VALUE OF THE LOST, DAMAGED, AND/OR DESTROYED GOODS ON THE DATE STORER IS NOTIFIED OF LOSS, DAMAGE, AND/OR DESTRUCTION, (3) 50 TIMES THE MONTHLY STORAGE CHARGE APPLICABLE TO SUCH LOST, DAMAGED, AND/OR DESTROYED GOODS, (4) \$0.50 PER POUND FOR SAID LOST, DAMAGED, AND/OR DESTROYED GOODS, PROVIDED HOWEVER THAT WITHIN A REASONABLE TIME AFTER RECEIPT OF THIS WAREHOUSE RECEIPT, STORER MAY, UPON WRITTEN REQUEST INCREASE COMPANY'S LIABILITY ON PART OR ALL OF THE GOODS IN WHICH CASE AN INCREASED CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION; FURTHER PROVIDED THAT NO SUCH REQUEST SHALL BE VALID UNLESS MADE BEFORE LOSS, DAMAGE OR DESTRUCTION TO ANY PORTION OF THE GOODS HAS OCCURRED.**
- (e) The COMPANY'S liability referred to in Section 8(d) above shall be STORER'S exclusive remedy against COMPANY 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 unless STORER proves by affirmative evidence that COMPANY converted the GOODS to its own use. STORER waives any rights to rely upon any presumptions of conversion imposed by law. In no event shall STORER be entitled to incidental, special, punitive, or consequential damages.

SECTION 9 – NOTICE OF CLAIM AND FILING OF SUIT

- (a) COMPANY shall not be liable for any claim of any type whatsoever for loss and/or destruction of and/or damage to GOODS unless such claim is presented, in writing, within a reasonable time, not exceeding 180 days after STORER learns or, in the exercise of reasonable care, should have learned of such loss, destruction and/or damage.
- (b) As a condition precedent to making any claim and/or filing any suit, STORER shall provide COMPANY 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 COMPANY WITH RESPECT TO THE GOODS UNLESS A TIMELY WRITTEN CLAIM HAS BEEN MADE AS PROVIDED IN PARAGRAPH (a) OF THIS SECTION AND UNLESS STORER HAS PROVIDED WAREHOUSEMAN WITH A REASONABLE OPPORTUNITY TO INSPECT THE GOODS AS PROVIDED IN PARAGRAPH (b) OF THIS SECTION AND UNLESS SUCH LAWSUIT OR OTHER ACTION IS COMMENCED WITHIN NINE (9) MONTHS AFTER STORER LEARNS OR, IN THE EXERCISE OF REASONABLE CARE, SHOULD HAVE LEARNED OF THE LOSS AND/OR DESTRUCTION OF AND/OR DAMAGE TO THE GOODS.**

SECTION 10 – INSURANCE

GOODS are not insured by COMPANY and the storage rates do not include insurance on the GOODS unless COMPANY has agreed, in writing, to obtain such insurance for the benefit of STORER.

SECTION 11 – LIEN

COMPANY shall have a lien against the GOODS and on the proceeds thereof for all charges for storage, handling, transportation (including demurrage and terminal charges), insurance, labor and other charges present or future with respect to the GOODS, ADVANCES or loans by COMPANY in relation to the GOODS and for expenses necessary for preservation of the GOODS or reasonably incurred in their sale pursuant to law. COMPANY further claims a lien on the GOODS for all such charges, ADVANCES and expenses in respect to any other property stored by STORER in any

warehouse owned or operated by COMPANY or its subsidiaries wherever located and whenever deposited and without regard to whether or not said other property is still in storage.

SECTION 12 – WAIVER – SEVERABILITY

- (a) COMPANY’S failure to insist upon strict compliance with any provision of this Warehouse Receipt shall not constitute a waiver or estoppel to later demand strict compliance thereof and shall not constitute a waiver or estoppel to insist upon strict compliance with all other provisions of this Warehouse Receipt.
- (b) In the event any section of this Warehouse Receipt or part thereof shall be declared invalid, illegal and/or unenforceable, the validity, legality and enforceability of the remaining sections and parts shall not, in any way, be affected or impaired thereby.

SECTION 13 – AUTHORITY

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/or any holder of a lien or security interest and has full power and authority to enter into the agreement incorporated into this Warehouse Receipt. STORER agrees to notify all parties acquiring any interest in the GOODS of the terms and conditions of this Warehouse Receipt and to obtain as a condition of granting such an interest, the agreement of such parties to be bound by the terms and conditions of this Warehouse Receipt.

SECTION 14 – NOTICES

All written notices provided herein may be transmitted by any commercially reasonable means of communication and directed to COMPANY at the address on the front hereof and to STORER at its last known address. STORER is presumed to have knowledge of the contents of all notices transmitted in accordance with this SECTION within five days of transmittal.

SECTION 15 – ENTIRE AGREEMENT

This agreement shall constitute the entire agreement between COMPANY and STORER relating to the GOODS and is superseded only by a valid written contract **signed** by both COMPANY and STORER.

SECTION 16 – CHOICE OF LAW

This contract is governed by the law of the State of Texas and all suits brought against COMPANY pursuant to this contract must be brought in the federal and/or state court in Harris County, Texas.