



## Metro International Trade Services LLC General Terms and Conditions of Warehousing

**Section 1: Acceptance of Goods.** (a) By its tender of any goods into the warehouse, Depositor accepts the terms and conditions set forth herein for the storage, handling, and related services of all such goods tendered. These terms and conditions shall be binding upon Depositor and all subsequent assignees or transferees.

(b) As to any transaction between Depositor and Warehouseman, the terms and conditions contained herein shall be binding upon them except to the extent (but only to the extent) specifically in conflict with the terms of a separate written instrument agreed to by the parties, such as the following: (i) a separate written agreement or proposal signed by Depositor; (ii) a separate negotiable warehouse receipt issued by Warehouseman; (iii) a separate commodity exchange tariff (e.g. The London Metal Exchange, Ltd.); or (iv) Warehouseman's Foreign Trade Zone Tariff.

(c) In the event that goods tendered for storage or other services do not conform to the description contained in the accompanying documentation, Warehouseman may (i) refuse to accept such goods; (ii) require Depositor to modify the documents to reflect the actual weight, count, or description of the goods; or (iii) modify the documents of its own accord. If Warehouseman accepts such goods, Depositor agrees to rates and charges as may be assessed and invoiced by Warehouseman in accordance with the terms herein and Depositor shall be deemed to have accepted all other terms and conditions contained herein. In no event shall Warehouseman have any responsibility for the care, custody and control of any goods unless and until Warehouseman acknowledges in writing that such goods conform to the accompanying documentation.

(d) WAREHOUSEMAN HAS MADE NO WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, TO DEPOSITOR REGARDING THE PHYSICAL CONDITION OF THE WAREHOUSE IN WHICH DEPOSITOR'S GOODS ARE OR WILL HEREAFTER BE STORED, INCLUDING ITS SUITABILITY FOR STORAGE OF DEPOSITOR'S GOODS OR ITS WATERTIGHTNESS, THE QUALIFICATIONS OF WAREHOUSEMAN'S STAFF TO HANDLE THE GOODS, OR THE SECURITY OF THE WAREHOUSE. ANY SUCH WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED.

(e) Depositor will provide Warehouseman with documentation and information to sufficiently and accurately describe the actual goods received by the Warehouseman and to comply with all applicable laws and regulations concerning the storage, handling and transporting of the goods. Depositor will release, indemnify, hold harmless and defend Warehouseman from and against all loss, cost, penalty, and expense (including court costs and attorneys fees) that Warehouseman incurs because Depositor fails to fully discharge this obligation.

**Section 2: Rates and Charges.** (a) Warehouseman's storage, handling, and related services shall be subject to the latest schedule of rates, charges, rules, tariffs and services adopted by Warehouseman. Such rates, charges, rules, tariffs and services are subject to change without notice. Depositor acknowledges receipt of a copy of the latest form of the schedule.

(b) Storage charges become applicable upon the date that Warehouseman takes possession of the goods, regardless of unloading date or date of issue of any warehouse receipt. Storage charges shall be assessed until the goods are shipped out of the warehouse.

(c) A full month's storage charge shall apply on all goods received between the first and the fifteenth, inclusive, of a calendar month; one-half month's storage charge shall apply to all goods received between the sixteenth and last day, inclusive, of a calendar month; and a full month's storage charge shall 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) Minimum charges shall be assessed as follows: (i) a minimum storage charge per month; (ii) a minimum handling charge per lot; (iii) a minimum monthly charge for each account in the event that Depositor has several accounts, each requiring separate records and billing; and (iv) a minimum charge per mark, brand, or variety, when a warehouse receipt covers more than one lot or when a lot is in assortment.

(e) Invoices for all warehouse rents and fees shall be paid net ten days after the date of invoice and must be paid in advance of outbound shipment from the warehouse. Daily compounded interest at the rate of eighteen percent per annum or the highest rate permitted by law, whichever is less, shall be assessed on the unpaid balance for invoices remaining unpaid thirty days after the invoice date. The confiscation or detention of Depositor's goods by any governmental authority shall not affect or diminish the liability of Depositor or any Transferee to pay all charges or other money due promptly on demand.

(f) A quotation of any fee or charge shall not be binding unless provided in writing by Warehouseman to Depositor or any Transferee and such quotation references a specific stock of goods and the terms and conditions of shipment and/or storage.

(g) GOODS ARE NOT INSURED BY WAREHOUSEMAN AGAINST LOSS OR INJURY HOWEVER CAUSED NOR DO THE RATES SPECIFIED IN THIS AGREEMENT INCLUDE THE COST OF INSURANCE.

The liability of Warehouseman for loss or damage of the goods shall be limited to that provided in this agreement. Warehouseman shall not arrange for insurance unless it agrees to do so in writing. Insurance covering loss or damage to goods shall be the sole responsibility of the Depositor.

**Section 3: Handling of Goods and Special Services.** (a) The handling rates identified in Section Two cover the ordinary labor, excluding overtime, involved in receiving goods at the warehouse door, placing goods in storage, returning goods to the warehouse door, and loading vehicles presented at the warehouse door. The following special services, which the Warehouseman may elect to furnish, shall be subject to an additional charge at rates agreed to by the Warehouseman:

1. Labor, equipment and materials to secure goods within vehicles presented at the warehouse door, such as dunnage, blocking, bracing, packing materials, or other special supplies.
2. Loading and unloading goods to and from vehicles not at the warehouse door.
3. Transportation of goods to or from the warehouse door to or from any off-site location or vehicle.
4. Reloading of goods into secondary vehicles.
5. Third party services or charges or any kind, including, without limitation, warehouse labor for services other than ordinary handling and storage.
6. Outbound shipping or customs documentation.
7. Re-weighing.
8. Trafficking.
9. Receipt or delivery of goods, by prior arrangement, in other than usual business hours.
10. Communications services, including postage, teletype, telegram, telefax, telephone, or overnight courier, if the services concern more than normal inventory reporting or if, at the request of Depositor, communications are made by other than regular United States mail.
11. Compiling of special stock statements.
12. Reporting and/or sorting individual pieces or bundles for marked weights, serial numbers, or other data from physical goods in storage.
13. Physical check of goods.

(c) Warehouseman shall not be liable for demurrage; detention; delays in unloading inbound railcars, trucks or containers; or delays in obtaining or loading cars, truck or containers for outbound shipments.

**Section 4: Bonded Storage.** (a) Storage of goods in bond shall be subject to additional charges in addition to regular rates, as well as to additional obligations on the part of the Depositor or Transferee.

(b) Warehouseman retains the right to withhold the shipment of goods if the documentation therefor does not ensure adherence to Customs regulations and procedures of U.S. Customs, the FTZ operator (if any) and Warehouseman's internal procedures, and offering Warehouseman relief from U.S Customs obligations for duty and any potential for penalties.

(c) Goods stored in a Foreign Trade Zone shall be subject to additional third party charges upon discharge from the warehouse. Such charges include, but are not limited to the following:

1. Foreign Trade Zone release (U.S. Customs Form 3461).
2. Consumption entry into the United States (U.S. Customs Form 7501).
3. U.S. Customs bond fee.
4. Duty charged by U.S. Customs.
5. Merchandise Processing Fee charged by U.S. Customs.
6. Special Courier fees for transporting documents to U.S. Customs and the Foreign Trade Zone.

**Section 5: Warehouseman's Lien.** Warehouseman claims a lien for all lawful charges for storage and preservation of goods, handling, transportation, labor, weighing, coopering, insurance, and other charges and expenses in relation to goods, and also for all lawful claims for money advanced, with interest.

**Section 6: Shipping of Goods.** Depositor covenants and agrees not to ship goods to Warehouseman as the named consignee. In the event that, in violation of this agreement, goods are shipped to Warehouseman as named consignee, Depositor shall notify the carrier of goods in writing prior to the shipment, with a copy of the notice sent to Warehouseman, that Warehouseman is a warehouseman and has no beneficial title or interest in goods. Further, Depositor shall indemnify Warehouseman against any and all claims for unpaid transportation charges, including undercharges, demurrage, detention charges, or charges of any other nature, in connection with goods so shipped. In the event that Depositor fails to notify the carrier in accordance with this provision, Warehouseman shall have the right to refuse goods and shall not be liable or responsible for any loss, injury, or damage to goods.

**Section 7: Moving of Goods.** Warehouseman reserves the right to move, at its expense, any goods in storage from the warehouse in which they are stored to any other of its warehouses.



## Metro International Trade Services LLC General Terms and Conditions of Warehousing

**Section 8: Termination of Storage.** (a) On written notice to Depositor and to any other person known by Warehouseman to claim an interest in goods, Warehouseman may require the removal of any goods by the end of the next succeeding storage month. If goods are not removed before the end of the next succeeding storage month, Warehouseman may sell them in accordance with applicable law.

(b) In the event that Warehouseman, in good faith, believes that goods are about to deteriorate or decline in value to less than the amount of Warehouseman's lien before the end of the next succeeding storage month, Warehouseman may specify in the notification any reasonable shorter time for removal of goods. If goods are not so removed, Warehouseman may sell goods at public sale after advertisement or posting as is required by law.

(c) In the event that, as a result of a quality or condition of goods of which Warehouseman had no notice at the time of deposit, goods are a hazard to other property, to the warehouse, or to any person, Warehouseman may sell goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in goods. If Warehouseman, after a reasonable effort, is unable to sell goods, Warehouseman may dispose of goods in any lawful manner and shall incur no liability by reason of such disposition.

**Section 9: Transfer and Delivery of Goods.** (a) When a negotiable warehouse receipt has been issued, goods shall not be shipped from the warehouse, transferred to any other party, or placed onto London Metal Exchange warrant without (i) written shipping instructions of the Depositor delivered to Warehouseman, (ii) the surrender of a negotiable warehouse receipt or warrant to Warehouseman, (iii) a written release received by Warehouseman from Depositor and any creditor of record, (iv) U.S. Customs clearance, and (v) full payment of all charges then owing to the Warehouseman relating to such goods. Transferee thereafter shall become the Depositor, subject to all terms and conditions set forth herein and a new storage date shall be established. Because the transfer of a London Metal Exchange warrant may occur without Warehouseman's knowledge, immediately upon any such transfer, the Transferee shall automatically be bound by and responsible for discharging all past, present and future obligations of the Depositor to Warehouseman in accordance with the rules of the London Metal Exchange. If a transfer involves rehandling goods, such rehandling shall be subject to a charge. If a negotiable receipt or warrant is lost or destroyed, delivery of goods may be made only upon order of a court of competent jurisdiction and the posting of security approved by the court.

(b) When no negotiable warehouse receipt is outstanding, goods may be delivered by written instructions given by telecopier or e-mail, but Warehouseman shall not be responsible for loss or error occasioned by such delivery.

(c) When goods are ordered out, a reasonable time shall be given Warehouseman to carry out instructions. The warehouse capacity, limited manpower (without requiring overtime hours), and the available means of shipping, shall be shared and balanced with other depositors and Warehouseman's contractual commitments. In no event shall Warehouseman be liable for the delay or failure in carrying out instructions due to any event or circumstance beyond Warehouseman's reasonable control or because of any other excuse provided by law, and goods remaining in storage shall continue to be subject to regular storage charges.

(d) Upon written shipping instructions received from the Depositor or Transferee, Warehouseman shall be authorized to issue bills of lading for the transportation of goods upon delivery by the Warehouseman. Warehouseman shall not be a common carrier; shall not be a party to the bill of lading; and shall have no duties, responsibilities or liabilities to the carrier, Depositor, or any other person, arising under the bill of lading or from the transportation of the goods.

**Section 10: Liability of Warehouseman.** (a) WAREHOUSEMAN SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY TO GOODS HOWEVER CAUSED UNLESS THE LOSS OR INJURY RESULTS FROM THE FAILURE BY WAREHOUSEMAN TO EXERCISE SUCH CARE IN REGARD TO GOODS AS A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER LIKE CIRCUMSTANCES, AND WAREHOUSEMAN IS NOT LIABLE FOR DAMAGES THAT COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE WAREHOUSEMAN IS NOT RESPONSIBLE FOR LOSS OR DAMAGE CAUSED BY FIRES FROM ANY CAUSE, WEATHER CONDITIONS, PHYSICAL CONDITION OF THE WAREHOUSE, STRIKES, INSURRECTIONS, EARTHQUAKES, INHERENT OR PERISHABLE QUALITY OF THE MERCHANDISE, LEAKAGE, PILFERAGE, SPRINKLER LEAKAGE, THEFT, VERMIN, FLOOD OR WATER, OR ANY OTHER CAUSES BEYOND ITS CONTROL, EXCEPT TO THE EXTENT CAUSED BY ITS FAILURE TO EXERCISE THE CARE REQUIRED ABOVE IN THIS PARAGRAPH. INSURANCE FOR SAID CASUALTIES IS THE RESPONSIBILITY OF THE DEPOSITOR OF RECORD AND NOT THE WAREHOUSEMAN. DEPOSITOR SHALL NOT GIVE ORDERS AND INSTRUCTIONS REGARDING GOODS BY TELEPHONE. THE

WAREHOUSEMAN WILL NOT BE RESPONSIBLE FOR LOSS OR DAMAGE OCCASIONED BY MISUNDERSTOOD ORDERS OR INSTRUCTIONS COMMUNICATED BY TELEPHONE.

(b) THE RESPONSIBILITY OF WAREHOUSEMAN FOR LOSS OR DAMAGE TO ANY GOODS COVERED BY THIS AGREEMENT, WHILE IN THE WAREHOUSE OR BEING TRANSPORTED TO OR FROM THE WAREHOUSE BY WAREHOUSEMAN, SHALL IN NO EVENT EXCEED THE LESSER OF (i) \$0.01 PER POUND OF THE ACTUAL GOODS SUFFERING LOSS OR DAMAGE, OR (ii) THE ACTUAL VALUE OF THE LOSS OR DAMAGE TO THE ACTUAL GOODS SUFFERING LOSS OR DAMAGE (INCLUDING ALL APPLICABLE DUTIES AND EXCISE TAXES), UNLESS WAREHOUSEMAN HAS AGREED TO A GREATER AMOUNT IN WRITING AND HIGHER RATES ARE PAID. LIABILITY FOR A PARTIAL LOSS SHALL BE LIMITED TO SUCH PORTION OF THE ACTUAL LOSS OR DAMAGE AS IS PROPORTIONATE TO THE AFORESAID LIMITATION OF LIABILITY.

(c) WAREHOUSEMAN SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, EXPENSE, OR DELAY TO GOODS ENTRUSTED TO CARRIERS, TRUCKMEN, LIGHTER MEN, FORWARDERS, CUSTOMS BROKERS, AGENTS, WAREHOUSEMEN, OR TO ANY OTHER THIRD PARTIES TO WHOM DEPOSITOR MAY ENTRUST ITS GOODS FOR TRANSPORTATION, CARTAGE, HANDLING, DELIVERY, STORAGE, OR OTHERWISE. WAREHOUSEMAN IS NOT A COMMON CARRIER AND SHALL NOT HAVE ANY LIABILITY AS A COMMON CARRIER.

(d) WAREHOUSEMAN SHALL IN NO EVENT BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM DELAYS, MARKET OBLIGATIONS, MARKET COMMITMENTS, METAL QUALITY STANDARDS AND QUALIFICATIONS, LOST SALES OR MISSED BUSINESS OPPORTUNITIES.

(e) THESE LIMITATIONS ON WAREHOUSEMAN'S LIABILITY EXTEND TO ALL SERVICES PROVIDED BY WAREHOUSEMAN, INCLUDING BUT NOT LIMITED TO STORAGE, HANDLING, TRANSPORTATION, AND SPECIAL SERVICES.

### **Section 11: Indemnification:**

(a) As to goods stored in a Foreign Trade Zone, it is the responsibility of Depositor to know and comply with the marking requirements of the U.S. Customs Service, the regulations of the U.S. Food and Drug Administration, and any other applicable federal state or local laws and regulations pertaining to the goods. Warehouseman shall not be responsible for action taken or penalties assessed against the goods because of Depositor's failure to comply with such laws of regulations. Depositor shall indemnify, hold harmless and defend Warehouseman from and against any liability, loss, damage, claims, costs or expenses, including attorneys fees, arising from the importation of goods that violate any federal, state or local laws or regulations.

(b) DEPOSITOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS WAREHOUSEMAN FROM AND AGAINST (i) ANY LOSS OR INJURY SUFFERED BY WAREHOUSEMAN, ITS AGENTS OR EMPLOYEES RESULTING FROM DEPOSITOR'S NEGLIGENCE, INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, OR DEPOSITOR'S FAILURE TO COMPLY WITH ANY OF THE TERMS AND CONDITIONS HEREIN, OR (ii) ANY LIABILITY TO THIRD PARTIES (INCLUDING WAREHOUSEMAN'S ATTORNEYS FEES) ARISING FROM ANY SERVICE PROVIDED BY WAREHOUSEMAN PURSUANT TO THIS AGREEMENT. NO TERMS CONTAINED IN THIS AGREEMENT ARE INTENDED NOR SHALL BE CONSTRUED TO INURE TO THE BENEFIT OF ANY THIRD PARTIES.

**Section 12: Notice of Claim: Filing of Suit.** (a) Depositor must provide Warehouseman with a written notice of intent to file a claim, by registered mail, within ten (10) days after (i) delivery of the goods by Warehouseman, or (ii) Depositor is notified by Warehouseman that loss or damage to goods has occurred, whichever occurs first. A full claim must be submitted to Warehouseman within sixty (60) days after the letter of intent is provided to Warehouseman.

(b) No action may be maintained by Depositor or others against Warehouseman for loss or damage to the goods unless a timely written notice and claim has been provided to Warehouseman, as required by paragraph (a) of this section and unless such action is commenced either within nine months after (i) date of delivery by Warehouseman, or (ii) Depositor or Transferee is notified that loss or damage to all or any part of the goods has occurred, whichever is shorter.

**Section 13: Severability and Waiver:** If any provision of this agreement, 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 agreement shall not be affected thereby, but shall remain in full force and effect.

**Section 14: Successors and Assigns.** The rights and liabilities set forth in this agreement shall inure to the benefit of, and be binding on, Warehouseman and Depositor and their respective heirs, executors, administrators, successors and assigns.