

WAREHOUSE RECEIPT TERMS AND CONDITIONS OF CONTRACT

also available online at <http://owispecialized.com/owl/documents.html>

1. DEFINITIONS

"Warehouse" means OWI Specialized, Inc. and its subsidiaries, related companies, agents, or representatives. "Depositor" means the shipper, consignee, or owner of the Goods or the shipper's, consignee's, or Owner's contractors or agents, including motor carriers, drayage companies, forwarders, brokers, or any entity that places or maintains a chassis/trailer pool at any of Warehouse's facilities. "Equipment" means any chassis, container, trailer, or tractor. "Goods" means the merchandise, cargo, or freight that Depositor tenders for storage, as stated on the front page of this warehouse receipt. "Yard Storage" means the placement of containers or trailers, with or without tractors, empty or loaded, secured or unsecured, in the yard of Warehouse for the benefit of Depositor or the Goods. "Contract" means this Warehouse Receipt Terms and Conditions of Contract.

2. ACCEPTANCE

(a) This Contract, including any attached accessorial charges, must be accepted within 30 days from the proposal date by signature of Depositor. In the absence of written acceptance, the act of tendering Goods for storage or other services by Warehouse within 30 days from the proposal date shall constitute acceptance by Depositor. Depositor has had the opportunity to review and inspect the warehouse facility, the address of which is on the front page of this warehouse receipt ("Facility").
(b) If Goods tendered for storage or other services do not conform to the description as stated on the front page of this warehouse receipt, or conforming Goods are tendered after 30 days from the proposal date without prior written acceptance by Depositor as provided in paragraph (a) of this section, then Warehouse may refuse to accept such Goods. If Warehouse accepts such Goods, then Depositor agrees to rates and charges that Warehouse will invoice and to all terms of this Contract.
(c) Any merchandise, cargo, or freight that Warehouse accepts shall constitute Goods under this Contract.
(d) Either party may terminate this Contract upon 30 days' written notice to the other party.

3. SHIPPING

Depositor shall not designate Warehouse to be the consignee for any Goods under any bill of lading, waybill, air waybill, or any other transportation contract, receipt, or delivery document. If, in breach of this Contract, Goods arrive at Warehouse and it is the named consignee, then Depositor agrees to notify the carrier in writing prior to such shipment, with copy of such notice to Warehouse, that Warehouse is only a warehouse that has no beneficial title or interest in such Goods and Depositor further agrees to indemnify and hold Warehouse harmless from and against any claims for unpaid transportation charges, including undercharges, demurrage, detention, or charges of any nature, that arise out of or are in any way connected to the Goods. Depositor further agrees that if it fails to notify the carrier as the preceding sentence requires, then Warehouse shall have the right to refuse such Goods and it shall not be liable for any loss, injury, or damage that arises out of or is in any way connected to such Goods.

4. TENDER FOR STORAGE

All Goods shall be delivered at the Facility properly marked and packaged for storage and handling. Depositor 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 Depositor desires.

5. STORAGE PERIOD AND CHARGES

(a) Unless Warehouse and Depositor otherwise agree in a writing signed by both parties, all charges for storage are per package or other agreed unit, per month.
(b) The storage month begins on the date Warehouse accepts care, custody, and control of Goods, regardless of their unloading date or the date of issue of the corresponding warehouse receipt.
(c) Subject to paragraph 5(d), a full month's storage charge will apply on all Goods received between the first and the 15th, inclusive, of a calendar month; one-half month's storage charge will apply on all Goods received between the 16th and the last day, inclusive, of a calendar month; and a full month's storage charge will apply on all Goods in storage on the first day of the next and succeeding calendar months. All storage charges are due on the first day of storage for the initial month and thereafter on the first day of the calendar month.
(d) Warehouse and Depositor may agree in a writing signed by both parties that 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 shall be due on the first day of the storage month.

6. TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS

(a) Instructions to transfer Goods in storage are not effective until delivery to and acceptance by Warehouse. Depositor understands and agrees that all charges up to the time of transfer are chargeable to Depositor. If a transfer involves rehandling the Goods, then 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 shall be established on the date of transfer.
(b) Upon 14 days' written notice to Depositor, Warehouse reserves the right to move, at its expense, any Goods in storage at the Facility to any other of Warehouse's facilities. Warehouse 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 Facility.
(c) At any time and for any reason, and upon giving 30 days' written notice to Depositor and to any other person Warehouse knows to claim an interest in the Goods, Warehouse may require the removal of the Goods, or any portion of them, and the immediate payment of all amounts then due. If Goods are not removed before the end of the notice period, then Warehouse may sell them in accordance with applicable law.
(d) If Warehouse in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of Warehouse's lien before the end of the 30-day notice period of section 6(c), then Warehouse may specify in the notification any reasonable shorter time for removal of the Goods and if 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 Warehouse had no notice at the time of deposit the Goods are a hazard to other property or to the Facility or to persons, then Warehouse 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 Warehouse after a reasonable effort is unable to sell the Goods, then it 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, Warehouse may remove the Goods from the Facility and shall incur no liability by reason of such removal.

7. HANDLING

(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 upon receipt of Goods.
(b) Unless Warehouse and Depositor otherwise agree in a writing signed by both parties, labor for unloading and loading Goods will be subject to a charge. Additional expenses Warehouse incurs in receiving and handling damaged Goods, and additional expenses in unloading from or loading into cars or other vehicles not at warehouse door will be charged to Depositor.
(c) Labor and materials used in loading rail cars or other vehicles are chargeable to Depositor.
(d) When Goods are ordered out in quantities less than in which received, Warehouse may make an additional charge for each order or each item of an order.
(e) Warehouse shall not be liable for any demurrage or detention, any delays in unloading inbound cars, trailers, or other containers, or any delays in obtaining and loading cars, trailers, or other containers for outbound shipment unless Warehouse has failed to exercise reasonable care.

8. DELIVERY REQUIREMENTS

(a) No Goods shall be delivered or transferred except upon receipt by Warehouse of Depositor's complete written instructions. Written instructions may be by fax or e-mail, provided Warehouse has no liability when relying on the information contained in the communication as Warehouse receives it. Warehouse may deliver Goods upon instruction by telephone further to Depositor's prior written authorization, but Warehouse shall not be responsible for loss or error occasioned by such instruction by telephone.
(b) When Goods are ordered out, Warehouse shall have a reasonable time to carry out instructions, and if Warehouse is unable to do so because of acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots or civil commotions, or any reason beyond Warehouse's control, or because of loss of or damage to Goods for which Warehouse is not liable, or because of any other excuse provided by law, Warehouse 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.

9. EXTRA SERVICES

(a) Warehouse shall additionally charge Depositor for any labor required for services other than ordinary handling and storage.
(b) Warehouse shall additionally charge Depositor for any special services Depositor may request, such as compiling of special stock statements, reporting marked weights, serial numbers, or other data from packages, physically checking the Goods, and handling transit billing.
(c) For an additional charge, Warehouse may provide dunnage, bracing, packing materials, or other special supplies.
(d) By prior arrangement and for an additional charge, Warehouse may receive or deliver Goods outside normal business hours.
(e) Warehouse may additionally charge Depositor for communication expenses, including postage, overnight delivery, or telephone, if such communications concern more than normal inventory reporting or if, at the request of Depositor, communications are by other than First-Class mail.

10. BONDED STORAGE

(a) Warehouse shall additionally charge Depositor for merchandise in bond.
(b) Where a warehouse receipt covers Goods in U.S. Customs and Border Protection bond, Warehouse shall have no liability for Goods seized or removed by U.S. Customs and Border Protection.

11. MINIMUM CHARGES

(a) A minimum handling charge per lot and a minimum storage charge per lot per month will apply. 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 apply.
(b) A minimum monthly charge to one account for storage or handling will apply. That charge will also apply to each account when one customer has several accounts, each requiring separate records and billing.

12. LIABILITY AND LIMITATION OF DAMAGES

(a) Warehouse shall not be liable for any loss of or damage to Goods tendered, stored, or handled, however caused, unless such loss or damage was because of Warehouse's failure to exercise care in regard to the Goods that reasonably careful person would exercise under similar circumstances. Warehouse shall not be liable for damages that could not have been avoided by the exercise of that care.
(b) Goods are not insured by Warehouse against loss or damage.
(c) Depositor understands and agrees that Warehouse's liability for loss of or damage to the Goods shall be limited to \$.50 per pound. Depositor further understands and agrees that at the time of acceptance of this Contract under section 2, Depositor may, upon its written request, increase Warehouse's level of liability on part or all of the Goods covered by this Contract, in which event Warehouse shall charge increased rates based on Depositor's increased valuation of the Goods.
(d) If loss of or damage to Goods occurs as to which Warehouse is not liable, then Depositor shall be responsible for the cost of removing and disposing of such Goods and the cost of any environmental cleanup and site remediation resulting from the loss of or damage to the Goods.

13. NOTICE OF CLAIM AND TIME-BAR

(a) Depositor or any other person must provide Warehouse with written notice within a reasonable time, and in no event any later than the earlier of (i) 60 days after the date of delivery by Warehouse or (ii) 60 days after Warehouse notifies Depositor of a loss of or damage to part or all of the Goods. Failure to provide a timely notice of claim shall extinguish any liability of Warehouse.
(b) In any event, Warehouse shall be discharged from all liability to Depositor or any other person as to any services that Warehouse has provided unless Depositor or such other person files an action in the mandatory venue under section 22(b) by no later than the earlier of (i) nine months after the date of delivery by Warehouse or (ii) nine months after Warehouse notifies Depositor of a loss of or damage to part or all of the Goods.
(c) When Goods have not been delivered, notice may be given of known loss of or damage to the Goods by mailing of a letter via certified mail or overnight delivery to Depositor. The above notice-of-claim period and time-bar limitations period shall begin on the date of mailing of such notice by Warehouse.

14. NO LIABILITY FOR CONSEQUENTIAL DAMAGES

In no event shall Warehouse be liable for any loss of profit or for any special, indirect, or consequential damages, notwithstanding Warehouse's notice of the possibility of any of the above types of damages.

15. LIABILITY FOR MISSHIPMENT

If Warehouse negligently misships Goods, then Warehouse shall pay the reasonable transportation charges of returning the misshipped Goods to the Facility. If a consignee fails to return the Goods, then Warehouse's maximum liability shall be subject to the contractual limitation stated in section 12, and Warehouse shall have no liability for damages due to the consignee's acceptance or use of the Goods, regardless of their ownership.

16. MYSTERIOUS DISAPPEARANCE

Warehouse shall be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods only if Depositor establishes that such loss occurred because of Warehouse's failure to exercise the care required under section 12. Any presumption of conversion imposed by law shall not apply to such loss and a claim by Depositor of conversion must be established by affirmative evidence that Warehouse converted the Goods to Warehouse's own use.

17. RIGHT TO STORE GOODS

Depositor states that it is lawfully possessed of the Goods and has the right and authority to store them with Warehouse. Depositor agrees to indemnify and hold Warehouse harmless from and against any loss, cost, and expense, including reasonable attorneys' fees, which Warehouse pays or incurs as a result of any dispute or litigation, whether instituted by Warehouse or others, as to Depositor's right, title, or interest in the Goods. Such amounts shall be subject to Warehouse's liens in section 20.

18. ACCURATE INFORMATION

Depositor will provide Warehouse with information concerning the Goods that is accurate, complete, and sufficient to allow Warehouse to comply with all laws and regulations concerning the storage, handling, and transporting of the Goods. Depositor shall indemnify and hold Warehouse harmless from and against any loss, cost, penalty, and expense, including reasonable attorneys' fees, which Warehouse pays or incurs as a result of Depositor's failing to fully discharge that obligation.

19. SEVERABILITY, NON-WAIVER, AND ENTIRE AGREEMENT

(a) If any portion of this Contract shall for any reason be held to be invalid or unenforceable, then the remainder of this Contract shall be unaffected by such holding and shall remain in full force and effect.
(b) Warehouse's waiver of any right under this Contract on one occasion shall not constitute a waiver of such right on any subsequent occasion.
(c) This Contract is the parties' final expression and entire agreement arising out of or in any way relating to the Goods. This Contract states forth the parties' entire understanding and it supersedes any contemporaneous and prior oral and written understandings and agreements that arise out of or are in any way related to the Goods. This Contract shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each party.

20. GENERAL AND SPECIFIC LIENS

Warehouse shall have a general lien and a specific lien for all lawful charges for storage and preservation of the Goods, and also, for money Warehouse has 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. Warehouse shall further have a general warehouse lien for all such charges, advances, and expenses as to any other goods stored by Depositor in the Facility or in any other facility Warehouse owns, operates, or stores goods. To protect its liens, Warehouse may require advance payment of all charges prior to shipment of Goods. Warehouse may exercise its lien rights under this Contract and any applicable law. Depositor agrees that Warehouse's liens shall survive delivery.

21. YARD STORAGE

The liability of Warehouse for any Yard Storage of containers or trailers, whether loaded or empty, secured or unsecured, shall be subject to this Contract.

22. MANDATORY LAW, VENUE, AND JURISDICTION

All claims or disputes arising out of or in any way related to this agreement shall be determined under the laws of the State of California, without regard to its conflict of laws rules. Without prejudice to a party's right to remove an action to federal court, the exclusive and mandatory venue for any such claims or disputes shall be the federal or state courts in Los Angeles County, California, to the exclusion of all other courts. The parties agree to irrevocably submit to the personal jurisdiction of the above courts and to waive any jurisdictional, venue, or inconvenient forum objections to those courts.