WAREHOUSING TERMS AND CONDITIONS OF SERVICE

These WAREHOUSING TERMS AND CONDITIONS OF SERVICE ("Terms") along with the Warehouse Receipt ("Receipt") or Contract and Rate Quotation ("Rate Quotation") contain the terms and conditions under which Star Warehouse, LLC, a Florida Limited Liability Company with its principal business offices at 11801 NW 102nd Road, Medley, Florida 33178 ("Star"), directly and/or through its affiliates (together with Star, collectively, "Service Provider"), will provide certain warehousing, storage, and logistics services ("Services") to Customer (as defined below). Star reserves the right to modify, amend, supplement or change these Terms at any time without prior notice. The most current and the controlling version of these Terms are published electronically at www.starwarehouse.com. By tendering Goods (as defined below) for Services, Customer agrees to the Terms in effect at the time of such Services.

1. Definitions. The following capitalized terms have the following meanings:

"Contract" means Service Provider's Receipt or Rate Quotation containing these Terms.

"Charges" means all amounts of any nature at any time due or claimed to be due to Provider with respect to the Goods, whether liquidated or unliquidated, including loans, disbursements, expenses, advances, storage, handling and transportation charges (including demurrage, detention and terminal charges), charges and expenses incurred in the preservation and sale of the Goods pursuant to law, charges incurred for Services as provided herein, interest charges and all other charges and expenses of every nature, present and future, incurred by or for the account of Customer or with respect to any Goods.

"Customer" means the person, firm, corporation or other entity for whom the Goods are accepted by Service Provider for the rendering of Services and that has accepted or otherwise benefited from the Services, and any person, firm, corporation or other entity acting on behalf of (*e.g.* as agent, carrier, contractor, or sub-contractor) or otherwise for the benefit of any of the foregoing persons, firms, corporations or other entities.

"Facility Operator" means any third party (other than an affiliate of Star) that owns or operates a Warehouse, or that performs all or any portion of the Services, at the request of or under an agreement with Service Provider.

"Goods" means goods, packages, or property or any portion thereof for which any of the Services are provided.

"Warehouse" means the warehouse complex or other storage or logistics facility identified on the Contract or otherwise designated by Service Provider, whether owned or operated by Service Provider or by a Facility Operator on Service Provider's behalf.

2. Tender of Goods.

(a) All Goods tendered for storage or handling shall be delivered at Service Provider's warehouse location indicated in the Contract, properly marked and packed for handling as reasonably determined by Service Provider. Service Provider shall store and deliver (if applicable) Goods in the packages in which they were originally received in the same condition as delivered. Service Provider is not responsible for damage to the Goods resulting from inherent or latent defects in the Goods, or the handling, packaging or stacking of the Goods. Service Provider is not responsible for natural changes in the Goods while in storage. Service Provider reserves the right to reject the delivery of damaged and/or defective Goods without liability to Customer. Customer shall indemnify and hold harmless Service Provider and the Indemnitees (as defined below) from all Losses (as defined below) arising from damage to or defects in the Goods existing at the time of tender.

(b) Unless otherwise specifically indicated in the Contract, Customer shall furnish, at or prior to tender of the Goods, a manifest showing marks, brands or sizes to be kept and accounted for separately and, if to be stored, the class of storage desired. If such information is not specifically indicated in either the Contract or such manifest, Service Provider may commingle and store the Goods in bulk and in a class of storage at the discretion of Service Provider and charges for such storage will be made at then applicable rates as set forth in the Contract, including any applicable hourly labor charges. Customer shall provide Service Provider with accurate and complete information concerning the Goods sufficient to permit Service Provider and any Facility Operator to comply with all laws and regulations governing the storage, handling, transportation, import and export of the Goods (including all in-bond, entry, withdrawal and export documentation for Goods stored under bond), and shall correct any deficiency in such information within twenty-four (24) hours after notice from Service Provider. Customer shall indemnify and hold harmless Service Provider and the Indemnitees from all Losses arising from Customer's failure to comply with this Section 2(b).

(c) Service Provider shall not be responsible for segregating Goods by production code date, categories of products, or otherwise, unless specifically agreed to in writing.

(d) Customer warrants that the Goods tendered for storage or handling are not infested with pests, bacteria or any other contaminants whatsoever, including, without limitation, foul odor, and that the Goods do not now and will not in the future present or constitute a danger to Service Provider, its affiliates or its employees, to other products or to the warehouse, and that Customer has disclosed to Service Provider in writing all known health, safety and environmental hazards associated with the storage and handling of the Goods. Customer hereby agrees to hold Service Provider and its affiliates, and the directors, employees, officers, agents, subcontractors (including any Facility Operator), and suppliers of each of them (collectively as used herein, the "Indemnitees") harmless from and indemnify Provider and the Indemnitees against any and all liabilities, losses, damages, costs or expenses (including the cost of cleaning and sanitizing the Warehouse), including reasonable attorneys' fees, whether suit is instituted or not, and if instituted, whether incurred at any trial or appellate level or post judgment (collectively as used herein, "Losses"), arising from or attributable to a breach of the aforesaid warranty.

(e) Customer agrees that all Goods shipped to Service Provider shall identify Customer on the bill of lading or other contract of carriage as the consignee, in care of Service Provider, and shall not identify Service Provider as the consignee, and shall not identify any Facility Operator as the consignee, shipper or consignor. If, contrary to this requirement, Goods are shipped to Service Provider or any Facility Operator as consignee, or are shipped from the Warehouse identifying Service Provider or any Facility Operator as shipper or consignor, Customer shall immediately notify the carrier in writing, with a copy to Service Provider, that such party is the "in care of party" only and has no beneficial title or interest in the Goods, and Service Provider may refuse such Goods. Under no circumstances shall Service Provider or any Facility Operator be considered the consignee or the "importer" of any Goods for purposes of 21 U.S.C. § 384a, or an agent for purposes of identifying the importer, regardless of whether Service Provider or any Facility Operator is named as an "agent" for purposes of 21 U.S.C. § 350d, and Customer shall be solely responsible for performing all duties of the importer with respect to the Goods. Whether Service Provider accepts or refuses Goods shipped in violation of this Section 2(e), Customer shall indemnify and hold harmless Service Provider and the Indemnitees from all claims for transportation, storage, handling and other charges relating to such Goods, including undercharges, demurrage, detention, fines, penalties, costs and expenses (including attorneys' fees), resulting from Customer's failure to comply with this Section 2(e).

(f) **Unintentional or Mistaken Delivery of Goods to Service Provider**. Should any person, firm, corporation, or other entity purporting to act on behalf of itself or another, deliver Goods to Service Provider by mistake or otherwise intending for such Goods to be delivered elsewhere but, in any event, Service Provider in its sole discretion accepts such Goods for warehousing, storage, or other Services, then such person, firm, corporation or other entity shall conclusively be deemed a Customer for purposes of these Terms. All Services rendered in connection with any such mistaken or unintentional delivery shall at all times be pursuant to the terms and subject to the conditions of these Terms, including any and all provisions applicable to Charges and payment thereof.

(g) **Facility Operators; Third-Party Warehouses.** Customer acknowledges and agrees that Service Provider may, in its sole discretion, perform all or any portion of the Services through one or more Facility Operators and at Warehouses that are not owned or operated by Service Provider, and Customer authorizes Service Provider to deposit the Goods with any Facility Operator on such terms as Service Provider deems appropriate. Customer acknowledges that Goods deposited with a Facility Operator may be subject to such Facility Operator's warehouse lien and security interest for charges relating to the Goods and for other amounts owed by Service Provider to such Facility Operator, that such lien will not be subordinated to the interest of any lender or other third party, and that such lien may be enforced against the Goods in accordance with applicable law; and Customer shall cause any holder of a lien on or security interest in the Goods to acknowledge the foregoing. Customer shall comply, and shall cause its employees, agents, carriers and invitees to comply, with all rules, standard operating procedures, safety and security requirements and appointment requirements applicable to the Warehouse. Each Facility Operator shall be entitled to the benefit of each right, exemption from or limitation of liability, and defense available to Service Provider under these Terms, and Customer shall not assert any claim relating to the Goods or the Services directly against any Facility Operator. Nothing in these Terms shall obligate Service Provider to disclose the identity of any Facility Operator or the terms of Service Provider's arrangements with any Facility Operator.

3. Termination of Storage.

(a) Service Provider may, upon written notice to Customer, require the removal of the Goods, or any portion thereof, from the warehouse at the termination of the period of storage, if any, fixed by the Contract or after the expiration of thirty (30) days from such notice, whichever is earlier. If, in the opinion of Service Provider,

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Goods are about to deteriorate or decline in value to less than the amount of Service Provider's warehouseman's lien, or there is a threat of damage to the Goods, to other property, to the warehouse, or to persons, Service Provider may specify in the notice a shorter period for removal. All Charges relating to the Goods to be removed shall be paid prior to removal. If such Goods are not so removed and said Charges paid, Service Provider may sell the Goods as provided by applicable law and shall be entitled to exercise any other rights it has under applicable law with respect to such Goods.

(b) If, in the opinion of Service Provider, Goods may constitute a hazard to other property or to the warehouse or to persons, Service Provider may remove such Goods and sell or dispose of them as permitted by applicable law without liability of Service Provider to Customer. All Charges related to such removal, sale and disposition shall be paid by Customer.

4. Storage Location; Facilities. Any Goods stored pursuant to the Contract shall be stored at Service Provider's discretion in any one or more buildings at the warehouse complex or other storage facility identified in the Contract. The identification of any specific location within the warehouse complex does not constitute a representation that the Goods shall be stored there. Subject to any contrary written instructions given by Customer, Service Provider may, at any time, at its expense and without notice to Customer, remove any Goods from any room or area of the warehouse complex to any other room or area thereof. Service Provider shall not be responsible to store Goods in any specific way to avoid contamination. Service Provider may also transfer the Goods to any other warehouse operated by or on behalf of Service Provider, including a Warehouse operated by a Facility Operator, and the Contract and these Terms shall continue to apply to the Goods at such other warehouse.

5. Transfer; Delivery.

(a) Unless otherwise expressly specified in the Contract or by operation of law, title to Goods will remain with Customer. Notwithstanding anything herein or in the Contract to the contrary, nothing in the Contract or these Terms shall be deemed to waive or otherwise limit any lien rights that Service Provider may have under applicable law with respect to the Goods. Instructions by Customer to transfer Goods to the account of another person are not effective until the written instructions are delivered to and accepted by Service Provider and the proposed transferee and all Charges relating to such Goods have been paid. A charge will be made for each such transfer and for any re-handling of Goods deemed by Service Provider to be required thereby. Service Provider reserves the right not to deliver or transfer Goods to or for the account of any person except upon receipt of written instructions properly signed by Customer. Customer may furnish written instructions authorizing Service Provider to accept telephone orders for delivery. Service Provider and its affiliates shall not be liable for any loss resulting from a delivery made pursuant to a telephone order, whether or not so authorized, unless Service Provider failed to exercise reasonable care as customary for similarly situated warehousemen involving similar Goods.

(b) Service Provider shall have a reasonable time to make delivery after Goods are ordered out and shall have a minimum of thirty (30) business days after receipt of a delivery order in which to locate any misplaced Goods. If Service Provider has exercised reasonable care and is unable, due to causes beyond its reasonable control, to affect delivery before expiration of the current storage period, the Goods shall be subject to storage charges for each succeeding storage period until delivery is affected. On outbound shipments, Customer may furnish a checker to verify load and count; otherwise, Service Provider's record of load and count shall be conclusive.

(c) All instructions and requests for delivery of Goods or transfer of title are received subject to satisfaction of all Charges and all liens and security interests of Service Provider and its affiliates.

(d) Customer shall hold Service Provider and the Indemnitees harmless from and indemnify them for claims of others asserting a superior right to Customer to ownership or possession of the Goods. Nothing herein shall preclude Service Provider or its affiliates from exercising any other remedy available to them under applicable law. All Losses incurred by Service Provider relating in any way to any such claim shall be charged to Customer, shall become part of Charges, and shall be secured by the lien created by these Terms.

(e) If Customer requests Service Provider to arrange for transportation of Goods but does not specify a particular carrier, Service Provider may select any carrier in its sole discretion. **CUSTOMER SHALL BE RESPONSIBLE FOR ALL CHARGES OF ANY CARRIER AND FOR ANY LOSS RESULTING FROM DELAY IN DELIVERY. ALL CLAIMS BY CUSTOMER OF DAMAGE, SHORTAGES AND LOSS DURING TRANSPORT OR OTHER CLAIMS WHICH ARISE DURING TRANSPORT ARE NOT SERVICE PROVIDER'S RESPONSIBILITY AND CUSTOMER AGREES TO PURSUE ALL SUCH CLAIMS DIRECTLY AGAINST THE CARRIER AND SHALL HOLD PROVIDER AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL SUCH CLAIMS. ONCE GOODS ARE LOADED INTO ANY TRAILER, CONTAINER OR OTHER OUTBOUND CONVEYANCE, SERVICE PROVIDER SHALL HAVE NO RESPONSIBILITY FOR SETTING, MONITORING, VERIFYING OR MAINTAINING THE TEMPERATURE OF SUCH CONVEYANCE OR FOR THE PROGRAMMING OR OPERATION OF ITS REFRIGERATION EQUIPMENT, ALL OF WHICH SHALL BE THE SOLE RESPONSIBILITY OF CUSTOMER AND ITS CARRIER. Service Provider may refuse to load or unload any conveyance that fails Service Provider's cleanliness or temperature inspection, and all resulting costs and delays shall be for Customer's account.**

(f) Customer acknowledges and agrees that the Warehouse is operated on a strict schedule during normal business hours posted at the Warehouse. Accordingly, Customer is advised to make proper arrangements to ensure pick-up during such normal business hours. Service Provider shall not be required to accommodate any special request to pick-up Goods outside normal business hours and may raise additional handling and service charges when accommodating any such special request. All inbound and outbound appointments must be scheduled with Service Provider at least thirty-six (36) hours in advance. Customer shall pay all late, missed-appointment, work-in, detention, container plug-in and similar fees assessed by Service Provider or any Facility Operator in connection with Customer's carriers, whether or not such fees are paid by the carrier.

6. Storage Charges.

(a) Storage charges commence upon the date that Service Provider accepts custody of the Goods, regardless of unloading date or date Receipt is issued. Storage rates are applicable based on prices quoted by Service Provider or prices at the time of service and these terms and conditions as they may be amended from time to time by Service Provider. The most recent version of the terms and conditions maintained by Service Provider on its website or elsewhere shall govern. Any other or different rates must be approved in writing by Service Provider. Refunds are not provided for advance payments. Other services ancillary to storage and rendered in the interest of Customer or the Goods are chargeable to Customer.

(b) Service Provider's storage and other charges are set forth in the Contract and may be increased or changed without notice. All storage charges are fully earned and are due and payable in advance on the 1st day of storage for the initial month and thereafter on the 1st day of each storage month. Rates quoted by weight will, unless otherwise specified, be computed on gross weight.

7. Handling Charges. Unless otherwise specified, handling charges cover only the ordinary labor and duties incidental to receiving and delivering unitized Goods on pallets at the Warehouse dock during Service Provider's normal business hours but do not include loading and unloading. Other services ancillary to handling and rendered in the interest of Customer or the Goods are chargeable to Customer. Unless otherwise specified, a charge in addition to the regular handling charges will be made for any work performed by Service Provider other than as specified in this Section 7, at Service Provider's then current rates which are available upon request. When Goods are ordered out in quantities less than in which received, Service Provider may make an additional charge for each order or each item of an order. Delivery by Service Provider of less than all units of any lot shall be made without subsequent sorting except by special arrangement which may be subject to an additional charge.

8. Other Services, Charges and Payment Terms.

(a) Service Provider shall bill all Charges in U.S. dollars, and Customer shall pay all invoiced amounts in U.S. dollars. All Charges are due and payable upon receipt of the invoice therefor without any deduction or offset whatsoever, including no deduction or offset shall be made for any claims based on disputed invoices or in the event of destruction of the Goods, or any portion thereof, or damage necessitating disposal of the Goods, or any portion thereof. **ALL CHARGES (INCLUDING STORAGE AND HANDLING CHARGES) NOT PAID WITHIN THIRTY (30) DAYS FROM THE DATE OF BILLING ARE SUBJECT TO AN INTEREST CHARGE FROM SUCH DATE UNTIL PAID AT THE LESSER OF ONE AND ONE HALF PERCENT (1.5%) PER MONTH OR THE HIGHEST RATE PERMITTED BY LAW.**

(b) Rates invoiced to Customer do not include any sales, use, personal property or other taxes, tariffs, duties, assessments or similar charges, including any penalties, fines or interest thereon (collectively, "Taxes"), that are imposed upon the Goods while in the possession of Service Provider, all of which shall be the sole responsibility and expense of Customer. Customer shall hold Service Provider and its affiliates harmless from and indemnify them for any liability arising from such

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Taxes, including liability arising from Customer's failure to pay. All Losses incurred by Service Provider relating in any way to such Taxes shall be charged to Customer, shall become part of Charges and shall be secured by the lien created by these Terms.

(c) During normal business hours posted at the Warehouse, Customer may, subject to insurance regulations and reasonable limitations imposed by Service Provider, inspect any Goods stored in the warehouse under the Contract when accompanied by an employee of Service Provider whose time is chargeable to Customer. Customer shall give Service Provider not less than thirty-six (36) hours' prior notice of any such inspection. Customer and its representatives shall be accompanied at all times by an employee of Service Provider and shall comply with all safety, security, background-check and other requirements of the Warehouse, and Customer shall indemnify and hold harmless Service Provider and the Indemnitees from all Losses arising from the presence or acts of Customer's representatives at the Warehouse.

(d) If there is damage to the Goods, or any portion thereof, or if, in the opinion of Service Provider, there is a threat of damage to the Goods, to other property, to the warehouse, or to the safety of any persons, Customer shall pay all costs incurred by Service Provider in its sole discretion for the protection of the threatened party or property, and for transportation, handling, clean-up and disposal of the Goods. When such costs are attributable to more than one Customer, such costs shall be apportioned among all such Customers on a pro rata basis as determined by Service Provider in its reasonable discretion.

(e) Service Provider shall supply dunnage bracing and fastenings where it deems it appropriate on outbound shipments and the cost thereof is chargeable to Customer. Any additional costs incurred by Service Provider in unloading railcars or trucks containing damaged Goods or for safety reasons are chargeable to Customer. Unless specifically agreed to in writing, Service Provider shall not be required to store Goods in a humidity-controlled environment or be responsible for tempering Goods. Notwithstanding the foregoing, Service Provider shall not be responsible for detention or demurrage charges or delays in loading or unloading. An additional charge will be made for bonded storage. Service Provider may assess an additional charge when Goods, designated for cooler or freezer storage, are received at temperatures more than five degrees Fahrenheit above the applicable room temperature. Service Provider shall not be responsible for blast freezing Goods unless Customer specifically requests such services in writing. All storage, handling and other services may be subject to minimum charges. Customer shall reimburse Service Provider for the cost of all pallets supplied by Service Provider. Service Provider may charge Customer an energy surcharge in the event of an increase in Service Provider's energy costs.

(f) Customer agrees to pay Service Provider all costs, charges and expenses including reasonable attorney's fees ("Expenses") incurred by Service Provider in connection with the storage, handling and/or disposition of the Goods, including without limitation, such expenses relating to lawsuits (including bankruptcy proceedings) involving in any way said Goods and/or Customer's performance under these Terms or the Contract. All such Expenses shall constitute Charges with respect to the Goods and subject to Service Provider's general warehouse lien.

(g) Customer is responsible to communicate with its delivery drivers to comply with requirements set forth by the Service Provider. These include adherence to delivery appointments, driver assistance in unloading and loading, accepting and removing damaged or rejected goods and trash. Service Provider reserves the right to charge delivery drivers and or carriers for missed appointments, refusal to assist with loading and unloading, delays, trash removal, counting, sorting and other services.

(h) Customer shall notify Service Provider in writing of any disputed invoice amount, specifying the amount and basis of the dispute, within fifteen (15) days after the date of the invoice, and any invoice not so disputed shall be deemed accepted by Customer. Customer shall pay all undisputed amounts when due. Service Provider may suspend the release of Goods and the performance of Services while any amount owed by Customer is past due.

(i) Customer shall pay, as Charges, all fees, surcharges, accessorial charges and other amounts assessed by any Facility Operator or governmental authority (including U.S. Department of Agriculture and U.S. Customs and Border Protection inspection, certification and documentation charges) with respect to the Goods or the Services rendered for Customer, whether or not such amounts are set forth in the Contract. Customer authorizes Service Provider to perform such additional services as Service Provider reasonably determines are necessary or appropriate for the receipt, storage, handling or shipment of the Goods, and Customer shall pay for such services at Service Provider's then-current rates.

(j) In the event a recall, field alert, product withdrawal or field correction (a "Recall") may be necessary with respect to any Goods, Customer shall immediately notify Service Provider in writing. Service Provider shall not be obligated to initiate any Recall without Customer's written instructions, unless required by applicable law. Customer shall bear all costs of any Recall and shall indemnify and hold harmless Service Provider and the Indemnitees from all Losses arising from any Recall.

9. **Indemnification**. Customer shall indemnify, defend and hold harmless Service Provider and the Indemnitees from and against any and all Losses arising out of or related to the Services, including Losses arising from claims asserted by any Facility Operator relating to the Goods or to Customer's acts or omissions, including Losses for personal injury, damage to or loss of improvements to real property or tangible property, or Losses arising out of or in connection with the design, manufacture, packaging, distribution, marketing, use or sale of the Goods or Customer's instructions regarding such Goods, or lost, damaged or undelivered Goods, or Goods not delivered on time, in each case unless arising directly and exclusively from the negligence or willful misconduct of Service Provider.

10. **Storage at Customer's Own Risk; Liability and Limitation of Damages; Warranties**.

(a) SERVICE PROVIDER AND ITS AFFILIATES SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY LOSS OR DESTRUCTION OF OR DAMAGE TO THE GOODS, HOWEVER CAUSED.

(b) **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, THE RECEIPT OR ANY RATE QUOTATION, SERVICE PROVIDER SHALL HAVE NO LIABILITY WHATSOEVER IN CONNECTION WITH THE PROVISION OF SERVICES, INCLUDING, WITHOUT LIMITATION ANY LOSS OR DAMAGE TO THE GOODS (I) CAUSED BY ANY DEFECTS IN THE PACKAGING OR MANUFACTURE OF SUCH GOODS, (II) ATTRIBUTABLE TO CARRIERS (CONTRACT OR OTHERWISE), (III) DELIVERED TO SERVICE PROVIDER IN A DAMAGED CONDITION, (IV) ATTRIBUTABLE TO CONCEALED DAMAGE OR DATA ENTRY ERRORS, (V) ARISING AS A RESULT OF THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CUSTOMER OR ANY OF ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS (OTHER THAN SERVICE PROVIDER) (VI) CAUSED BY CONTAMINATION WITHIN THE WAREHOUSE (VII) CAUSED BY ANY REFRIGERATION FAILURE; OR (VIII) CAUSED BY A FORCE MAJEURE EVENT (AS DEFINED BELOW).**

(c) IN THE EVENT OF LOSS OR DESTRUCTION OF OR DAMAGE TO GOODS FOR WHICH SERVICE PROVIDER IS FOUND LIABLE, AS A RESULT OF A FINAL, NON-APPEALABLE JUDGMENT RENDERED BY A COURT OF APPLICABLE JURISDICTION, DECLARING THAT THE LOSS FALLS OUTSIDE THE EXCLUSION OF LIABILITY SET FORTH IN THIS SECTION 10, CUSTOMER ACKNOWLEDGES AND AGREES THAT SERVICE PROVIDER'S LIABILITY SHALL BE LIMITED TO THE MONTHLY STORAGE CHARGE APPLICABLE TO SUCH LOST, DAMAGED AND DESTROYED GOODS. CUSTOMER ACKNOWLEDGES AND AGREES THAT IT IS STORING GOODS AT ITS OWN RISK. ACCORDINGLY, CUSTOMER IS ADVISED TO OBTAIN AND MAINTAIN ITS OWN INSURANCE COVERAGE IN CONNECTION WITH THE GOODS. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ABOVE LIMITATIONS OF LIABILITY SHALL ALSO APPLY TO ANY DAMAGE TO THE GOODS CAUSED BY REFRIGERATION FAILURES.

(d) The liability referred to in Section 10(c) above shall be Customer's exclusive remedy against Service Provider and its affiliates for any claim or cause of action whatsoever which is deemed, in a final, non-a judgment rendered by a court of applicable jurisdiction, to fall outside the exclusion of liability set forth in this Section 10 and shall apply to all claims including inventory shortage and mysterious disappearance claims. Customer must make a written claim of loss or damage to the Goods within 7 days of the date the Goods leave the warehouse. With respect to Goods that have not left the Warehouse, Customer must make a written claim within thirty (30) days after Customer learns or, in the exercise of reasonable care, should have learned of the loss or damage. No lawsuit or other action may be maintained against Service Provider unless a timely written claim has been made as provided herein and such action is commenced within six (6) months after the earlier of (i) the date the Goods leave the Warehouse or (ii) the date Customer learns or, in the exercise of reasonable care, should have learned of the loss or damage. As a condition precedent to any such action, Customer shall provide Service Provider and any applicable Facility Operator a reasonable opportunity to inspect the Goods that are the basis of the claim. Customer waives any right to rely upon any presumption of conversion imposed by law.



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(e) Customer shall hold Service Provider and the Indemnitees harmless from and indemnify them against all claims, regardless of how or by whom such a claim is raised, asserting liability for loss, damage, or destruction of Goods in an amount above the limitations of damages set forth in this Section. All Losses incurred by Service Provider or its affiliates relating in any way to any such claim shall be charged to Customer, shall become part of Charges, and shall be secured by the lien created by these Terms.

(f) IN NO EVENT WILL PROVIDER BE LIABLE TO CUSTOMER FOR ANY ECONOMIC LOSSES, INCLUDING LOSS OF PROFITS, USE, INCOME, BUSINESS OPPORTUNITIES, COSTS OF ALTERNATIVE MEANS OF TRANSPORT, MERCHANTABILITY, OR CUSTOMER GOODWILL, OR FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES, IN CONNECTION WITH THESE TERMS, THE CONTRACT, OR THE SERVICES PROVIDED THEREUNDER, WHETHER OR NOT A PROVIDER HAS BEEN ADVISED OF SUCH LOSSES OR DAMAGES OR WHETHER PLED UNDER TORT, CONTRACT OR ANY OTHER LEGAL THEORY.

(g) ANY WARRANTIES OF THE PARTIES EXPRESSLY SET FORTH IN THE CONTRACT AND THESE TERMS ARE THE SOLE WARRANTIES MADE BY THE PARTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, OF TITLE OR NONINFRINGEMENT, OF FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE.

(h) Shrinkage Allowance. Service Provider shall not be liable for inventory loss, damage or mis-shipment that, in the aggregate during any twelve (12) month period, does not exceed 0.18% of the total number of cases received for Customer's account, determined after netting overages against shortages across all product lines. In addition, Service Provider shall not be liable for (i) shortages in sealed cartons or containers that bear no evidence of having been opened, (ii) Goods found to be missing upon the dismantling of any pallet load, or (iii) Goods damaged or destroyed due to faulty or inadequate packaging by Customer or its suppliers.

11. [Reserved].

12. Insurance. CUSTOMER ACKNOWLEDGES THAT THE GOODS ARE NOT INSURED AND THE RATES CHARGED BY SERVICE PROVIDER DO NOT INCLUDE INSURANCE UNLESS SERVICE PROVIDER HAS AGREED IN WRITING TO OBTAIN INSURANCE FOR THE BENEFIT OF CUSTOMER. CUSTOMER SHALL MAINTAIN, AT ITS OWN EXPENSE, PROPERTY INSURANCE COVERING THE GOODS FOR THEIR FULL VALUE WHILE IN THE POSSESSION OF SERVICE PROVIDER OR ANY FACILITY OPERATOR, AND SHALL CAUSE SUCH INSURANCE TO INCLUDE A WAIVER OF SUBROGATION IN FAVOR OF SERVICE PROVIDER AND THE INDEMNITEES.

13. Release of Goods from Storage; Lien and Security Interest; Disposal of Goods.

(a) Service Provider reserves the right to release Goods to Customer only upon full payment of any outstanding invoices.

(b) Customer grants to Service Provider a first priority general warehouse lien upon and security interest in the goods and on the proceeds thereof for all Charges, including 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 Service Provider in relation to the Goods and for expenses necessary for preservation of the Goods or reasonably incurred in their sale pursuant to applicable law. Customer further grants Service Provider a lien on the Goods for all such charges, advances and expenses in respect of any other property stored by Customer in any warehouse owned or operated by Service Provider or its affiliates wherever located and whenever deposited and without regard to whether or not said other property is still in storage. Customer acknowledges that Service Provider will not release the Goods until all charges are paid in full. Service Provider will issue only non-negotiable warehouse receipts, and will not subordinate its lien to the interest of any lender or other third party unless expressly agreed in writing by Service Provider.

(c) Upon the nonpayment of any Charges when due, Service Provider may obtain satisfaction of its lien by sale of the Goods on which the lien and security interest is held, by judicial proceeding, or as otherwise provided by applicable law. In the event of a sale of the Goods, Service Provider will notify Customer of the amount due, as well as the time, place, and nature of the proposed sale. In all instances the lien may in Service Provider's discretion be deemed to have been acquired in the city or county in which the Goods are stored at the time the lien is enforced, and any sale may be held in such city or county. All proceeds from a sale of Goods shall be used to cover the Charges due to Service Provider, as well as any costs incurred by Service Provider as a result of the sale. Any proceeds above those required to cover such amounts shall be credited to the account of Customer. Should the sale fail to generate sufficient proceeds to cover such costs, Service Provider retains the right to pursue other remedies to recover the full amount due.

(d) Service Provider shall be under no obligation to mitigate damages by selling the Goods. Should the sale of the Goods be unlikely or impractical, in the sole and absolute discretion of Service Provider, Service Provider shall have the right to dispose of the Goods in any way deemed acceptable to Service Provider.

14. Force Majeure. If and to the extent that either Service Provider or Customer may be precluded or delayed from performance hereunder by (a) acts of war, acts of public enemies, terrorist attacks, insurrections, third party theft, riots, sabotage, earthquakes, floods, acts of God, embargoes, pandemic, executive action, authority of laws, labor disputes (including strikes, lockouts job actions, or boycotts) or (b) fires, air conditions, explosives, failure of electrical power, heat, light, air conditioning or communications equipment (provided that the events described in clause (b) are not due to such party's fault or negligence of the party claiming relief under this Section 14) or (c) other events beyond its control, including, without limitation, refrigeration failures, failure of utility service, cyber-attacks, water or sprinkler leakage, vermin or insects, seizure under legal process, prohibition of import or export, closure of highways, ports or shipping lanes, governmental orders, and any act, omission, default or cessation of operations of any Facility Operator (each a "Force Majeure Event"), such performance will be excused to the extent and for the time necessitated by such Force Majeure Event. This provision does not apply to monetary amounts owed by either party to the other. Service Provider is not liable for any loss or damage to Goods caused by a Force Majeure Event, and Customer will have the risk of loss for such loss or damage and the responsibility to insure against the same. If Service Provider takes steps outside the ordinary course of business to protect Goods due to a Force Majeure Event, Customer shall pay the storage, handling or other similar charges associated with Service Provider's efforts.

15. Hazardous Materials and Other Regulated Goods. Unless Service Provider expressly agrees in the Contract to handle Hazardous Goods (as defined below), Service Provider will not handle, receive, accept, ship, carry, dispose of, transport, store, or arrange for the handling, disposal, storage or transportation of: (a) any type of hazardous materials, dangerous goods, or Goods containing hazardous materials or dangerous goods regulated under Title 49 of the Code of Federal Regulations ("49 CFR") or the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the International Air Transport Association (IATA) Dangerous Goods Regulations, or (b) any type of Goods, which may be regulated by a governmental body, entity or agency, including those Goods which are regulated by the United States Food and Drug Administration, the United States Department of Agriculture, the United States Drug Enforcement Administration, the United States Bureau of Alcohol, Tobacco, Firearms and Explosives, and analogous regulatory agencies in countries in which the Services are provided (collectively, "Hazardous Goods"). Customer covenants and warrants that it will not itself or through others offer, present or otherwise tender any Hazardous Goods to Service Provider, its affiliates, assignees, agents or subcontractors under the Contract, except as specifically provided therein. Customer further covenants and warrants that it will not itself or through others offer, present or otherwise tender any "Hazardous Waste", as defined under Title 40 of the Code of Federal Regulations, to Service Provider, its affiliates, assignees, agents or subcontractors under the Contract, as Service Provider will not handle, receive, accept, ship, carry, dispose of, transport, store, or arrange for the handling, disposal, storage or transportation of Hazardous Waste. Notwithstanding the foregoing, Service Provider may take any reasonable action, which is not against any applicable law, that Service Provider, in its sole discretion, deems appropriate or necessary in relation to any actual or suspected Hazardous Goods or Hazardous Waste. Customer hereby fully and completely releases and forever discharges Service Provider and the Indemnitees from and against all Losses arising out of or caused by (x) Customer's failure to notify Service Provider in writing 60 days in advance of Customer or others offering, presenting or otherwise tendering to Service Provider Hazardous Goods; or (y) Service Provider's reasonable actions, which are not against any applicable law, in connection with actual or suspected Hazardous Goods or Hazardous Waste not addressed in the Contract in connection with such Goods. Customer shall defend and indemnify Service Provider and the Indemnitees from and against all Losses related to or arising out of (1) any Service Provider action taken in relation to such actual or suspected Hazardous Goods or Hazardous Waste, except to the extent that any such Losses result from Service Provider's gross negligence or willful misconduct, (2) Customer's noncompliance with applicable laws and regulations, or (3) the breach of any covenant of Customer contained in or

made pursuant to this Section 15.

16. Miscellaneous.

(a) **Notices.** All written notices required herein may be transmitted by any commercially reasonable means of communication and directed to Service Provider at the address on the front hereof and to Customer at its last known address. Customer is presumed to have knowledge of the contents of all notices transmitted in accordance with this Section within five days of transmittal.

(b) **Authority**. Customer represents and warrants that it is either (a) the lawful owner of the Goods which are not subject to any lien or security interest of others; or (b) the authorized agent of the lawful owner or any holder of a lien or security, interest and has full power and authority to enter into the agreements incorporated into this Contract, including to authorize the deposit of the Goods with any Facility Operator as provided in Section 2(g). Customer agrees to notify all parties acquiring any interest in the Goods of the Terms and the Contract and to obtain, as a condition of granting any interest, the agreement of such parties to be bound by such Terms and the Contract.

(c) **Controlling Law and Jurisdiction.** These Terms and Customer's use of the Services will be interpreted in accordance with the laws of the State of Florida and the United States of America, without regard to its conflict-of-law provisions. Customer and Service Provider agree to submit to the exclusive, personal jurisdiction of a state court located in Miami-Dade County, Florida or a United States District Court, Southern District of Florida located in Miami, Florida for any actions related to or arising under these Terms.

(d) **Waiver and Enforceability.** The failure of Service Provider to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Service Provider. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If for any reason an arbitrator or a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

(e) **Term and Termination.** These Terms are effective upon Service Provider's acceptance of Goods and shall continue until all Charges have been paid and all Services have been terminated. We reserve the right to refuse Services to any Customer and anyone else for any reason not prohibited by law.

(f) **Assignment.** These terms are neither assignable nor transferrable by Customer, by operation of law or otherwise, without Service Provider's prior written consent. Any attempt by Customer to assign or transfer these Terms, without such consent, will be null and of no effect. Service Provider may assign or transfer these Terms, at its sole discretion, without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

(g) **References.** All references in these Terms to Sections and other subdivisions refer to the Sections and other subdivisions of these Terms unless expressly provided otherwise. The word "including" shall not be restrictive. The word "or" has the inclusive meaning represented by the phrase "and/or." The words "this Agreement," "herein," "hereof," "hereby," "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. All headings and captions in these Terms are for convenience of reference only and are not intended to and shall not define or limit the scope or intent of any provision of this Agreement.

(h) **Independent Contractor Agreement**. No agency, partnership, joint venture, employee- employer or franchisor-franchisee relationship between Service Provider and Customer or any other person or entity is intended or created by these Terms.

(i) **Entire Agreement.** These Terms constitute the entire and exclusive understanding and agreement between Service Provider and Customer regarding the Goods and Services, and unless otherwise agreed to between Service Provider and Customer these Terms supersede and replace any and all prior oral or written understandings or agreements between Service Provider and Customer and regarding the Goods and Services.