



WAREHOUSING AND DISTRIBUTION TERMS AND CONDITIONS

These warehousing and distribution terms and conditions of service constitute a legally binding contract between Unipac Shipping, Inc. (the "Company") and the Customer.

1. Term of Agreement. This Agreement shall commence on the date of its execution by the parties hereto and shall continue thereafter in full force and effect for a period of one (1) year and shall thereafter automatically renew on a yearly basis, unless terminated. This Agreement must be accepted within thirty (30) days from the Proposal Date. In the absence of written acceptance, the act of tendering goods for storage or other services to Company within thirty (30) days from the Proposal Date shall constitute acceptance by Customer. The rates accepted by Customer in this Agreement are subject to change at any time by Company upon thirty (30) days written notice.

2. Right to Store Goods. Customer represents and warrants that it is the owner or has lawful possession of Goods and all right and authority to store them with Company and thereafter direct the release and/or delivery of Goods. Customer agrees to defend, indemnify, and hold harmless Company and its shareholders, managers, employees, agents, and affiliates (collectively, "Indemnified Parties") from any and all claims, actions, losses, penalties, and expenses, including reasonable attorney's fees and costs, which Company may incur, suffer or be required to pay by reason of any dispute or litigation, whether instituted by Company or others, respecting Customer's right, title or interest in Goods.

3. No Permission to Name Unipac Shipping as Consignee. Customer agrees that all Goods shipped to Company's facility or any other facility controlled by Company shall identify Customer on the bill of lading or other contract of carriage as the named Consignee, and shall not identify Company as the Consignee. If Goods are shipped with Company as the named Consignee, Customer agrees to immediately notify the carrier in writing, with copy of such notice to Company, that Company as named Consignee is the "in care of party" only and has no beneficial title or interest in Goods. Company reserves the right to refuse such Goods and shall not be liable for any loss, mis-shipment, or damage of any nature to, or related to such Goods. Customer agrees to defend, indemnify, and hold harmless Company and its Indemnified Parties from any and all claims, actions, losses, penalties, and expenses, including reasonable attorney's fees and costs, which Company may incur, suffer or be required to pay by reason of improperly naming Company as the Consignee.

4. Goods Must Be Property Marked, Packed, and Accurately Described. Customer shall tender Goods to Company that are properly marked and packed for storage and handling. Customer shall notify Company of any characteristics of Goods that may in any way be likely to cause damage to Company's facility or to other products stored in the same. Customer represents and warrants that none of Goods which it now has in storage, or will store in the future with Company are adulterated, flammable, hazardous or dangerous, explosives, or pesticides.

Customer shall provide Company with information concerning Goods that is accurate, complete, and sufficient to allow Company to comply with all laws and regulations concerning the storage, special handling, processing, and transportation of Goods. Customer represents and warrants that Goods it now has in storage with Company, or will store in the future, which require registration, permits, licenses, or similar approvals under federal, state or local laws, statutes, ordinances or regulations, are guaranteed to have such registration, permits, licenses, or similar approvals at the time Goods are tendered to Company and during the time Goods are in Company's custody.

Customer agrees to defend, indemnify, and hold harmless Company and Indemnified Parties from any and all claims, actions, losses, penalties, and expenses, including reasonable attorney's fees and costs, which Company may incur, suffer or be required to pay by reason of any failure of the aforementioned representations and guarantees of Customer.

5. Handling Release of Goods. Customer shall provide Company at least 24 hours advance notice for normal volume shipping and receiving and at least 72 hours advance notice for abnormally high volume shipping and receiving, or be subject to rush charges. Our regular Shipping and Receiving hours are Monday through Friday from 8:30am to 5:00pm with last pickup at 5:00pm. No Goods shall be delivered or transferred except upon receipt by Company of Customer's complete written instructions and authorization (each, a "Release Order"). Customer shall provide Company a reasonable time after each Release Order to carry out the instructions to release Goods to Customer or its designated party. Company may, without liability, rely on any information contained in any Release Order or other written communication from Customer.

Customer shall be responsible for all shipping, handling, and other charges assessed by carriers and/or third parties in connection with the delivery or shipment of Goods. If Company advances money or incurs liability for activities such as transportation, demurrage, handling, preparation, weighing, packing, and related charges before receiving Goods, then Customer shall reimburse Company for such charges.

6. Payment Terms For Storage and Service Rendered. Customer shall pay all charges within its credit terms established with Company. Credit accounts not paid within terms are subject to a monthly 1.5% monthly finance charge. If no credit terms exist, all charges are payable as COD term.

Customer may not dispute invoices after more than ninety (90) days from date of invoice. In addition, Customer may not offset payment of invoices for disputed claims without the prior written consent of Company.

In any dispute involving monies owed by Customer, Company shall be entitled to all costs of collection, including reasonable attorney's fees, court costs and interest. Company reserves the right to suspend the release of any Goods or cease performance of any services if Customer fails to pay any amounts when due hereunder. Company also reserves the right to require payment in full at any time for all amounts owed by Customer, including other accounts with common ownership as Customer, in advance of releasing of Goods.

7. Limited Warranty. Customer understands and agrees that Company shall not be responsible for the following:

(a) Company 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 Company has failed to exercise reasonable care.

(b) Company shall not be liable for any loss, damage, or destruction to Goods tendered, stored, or handled, however caused, unless such loss damage, or destruction resulted from the failure by Company to exercise reasonable care. Company agrees to notify Customer promptly of any loss or damage, however caused, to its Goods.

(c) Company shall not be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods, unless Customer establishes such loss occurred because of Company's failure to exercise reasonable care. Any presumption of conversion under applicable law shall not apply to a loss with respect to any Goods, and a claim for conversion must be established through affirmative evidence that Company converted Goods to its own use.

(d) Company shall not be liable for mis-shipped Goods. If Company negligently mis-ships Goods to the wrong location, then Company shall pay reasonable transportation to re-route Goods to the correct destination. If Company negligently mis-ships the incorrect Goods, then Company shall pay reasonable transportation charges to return the mis-shipped Goods to its facility. If consignee fails to return the mis-shipped Goods, Company's maximum liability shall be for the lost, damaged, or destroyed Goods provisions as specified in Section 8, and Company shall have no liability for damages due to the consignee's acceptance or use of Goods.

(e) Company shall not be responsible for chargebacks of any kind.

8. Lost, Damaged, or Destroyed Goods. IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION TO STORED GOODS FOR WHICH COMPANY IS LEGALLY LIABLE, CUSTOMER UNDERSTANDS AND AGREES THAT COMPANY'S LIABILITY FOR DAMAGES SHALL BE LIMITED TO THE LESSER OF THE FOLLOWING AMOUNTS:

(a) the actual cost of repairing the lost, damaged, or destroyed portion of Goods;

(b) the actual cost of replacing the lost, damaged, or destroyed portion of Goods together with transportation costs to Company's facility;

(c) the import value of the lost, damaged, or destroyed portion of Goods as declared to Customs including purchase price, duties, and fees; or

(d) \$0.50 per pound net weight of the lost, damaged, or destroyed portion of Goods, up to a maximum total claim of \$500.00.

THE REMEDIES SET FORTH ABOVE SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY FOR ANY BREACH OF COMPANY'S OBLIGATIONS FOR LOST, DAMAGED, OR DESTROYED GOODS. CUSTOMER AND ITS INSURERS HEREBY WAIVE THEIR RIGHTS OF RECOVERY AGAINST COMPANY FOR CLAIMS IN EXCESS OF COMPANY'S LIABILITY AS EXPRESSED IN THIS SECTION 8.

COMPANY SHALL NOT BE LIABLE FOR ANY BREACH OF THIS SECTION 8 UNLESS: (I) CUSTOMER GIVES WRITTEN NOTICE TO COMPANY OF ANY CLAIM WITHIN TEN (10) BUSINESS DAYS AFTER RELEASE OF GOODS BY COMPANY; OR (II) CUSTOMER IS NOTIFIED BY COMPANY THAT LOSS OR DAMAGE TO PART OR ALL OF GOODS HAS OCCURRED. EACH CLAIM MUST CONTAIN INFORMATION NECESSARY TO IDENTIFY GOODS AFFECTED, THE BASIS FOR LIABILITY AND THE AMOUNT OF THE ALLEGED LOSS OR DAMAGE.

9. Limitation of Liability. IN NO EVENT SHALL COMPANY BE RESPONSIBLE OR LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES OF ANY TYPE OR NATURE WHATSOEVER AND HOWEVER ARISING, INCLUDING, WITHOUT LIMITATION, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF ANY PROVISION OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY PERSON OR ENTITY, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LIABILITY UNDER SECTION 8 OF THIS AGREEMENT, EXCEED THE TOTAL OF THE AMOUNTS PAID BY CUSTOMER TO COMPANY FOR SERVICES RENDERED TO THE SPECIFIC GOODS AT ISSUE.

10. Insurance. Company is under no obligation to procure insurance for the benefit of Customer's Goods. If Customer desires that Goods be insured, then Customer shall obtain insurance through its own insurance agent and/or carrier. Customer may submit a written request to Company to procure insurance on behalf of Customer's Goods subject to approval. If Company approves such request in writing, Customer shall pay all premiums and costs in connection with procuring requested insurance.

11. Termination and Subsequent Removal of Goods. This Agreement may be terminated by either party upon thirty (30) days written notice with or without any cause or reason being given or required. In addition, Company may terminate this Agreement with immediate effect upon written notice to Customer if any of the following occur:

- (a) Customer fails to pay any amount when due under this Agreement;
- (b) Customer has not performed or complied with its obligations under any of the provisions contained in this Agreement, in whole or in part;
- (c) Customer becomes insolvent, files a petition for bankruptcy, commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors;
- (d) Goods are a hazard to persons, other property, or Company's facility or any other facility controlled by Company as a result of the quality or condition of Goods of which Company had no notice at the time of deposit; or
- (e) Goods are about to deteriorate or decline in value to less than the amount of Company's liens within thirty (30) days.

If this Agreement is terminated for any reason, Customer is required at their expense to remove all of their Goods from Company's facility or any other facility controlled by Company within thirty (30) days. All account balances must be paid in full before Goods will be released to Customer. If Goods are not removed within the thirty (30) day period, Company may without liability remove Goods and sell Goods at public or private sale without advertisement and with or without notification to all persons known to claim an interest in Goods in the manner provided by law. If Company, after a reasonable effort, is unable to sell Goods, it may dispose of them without liability in any lawful manner.

12. Force Majeure. Company shall not be liable for losses, damages, delays, wrongful or missed deliveries or nonperformance, in whole or in part, of its responsibilities under the Agreement, resulting from circumstances beyond the control of either Company or its sub-contractors, including but not limited to:

- (i) acts of God, including flood, earthquake, tornado, storm, hurricane, power failure, epidemic or other severe health crisis, or other natural disaster;
- (ii) war, hijacking, robbery, theft or terrorist activities;
- (iii) incidents or deteriorations to means of transportation;
- (iv) embargoes;
- (v) civil commotions or riots;
- (vi) defects, nature or inherent vice of the goods;
- (vii) acts, breaches of contract or omissions by Customer, Shipper, Consignee or anyone else who may have an interest in the shipment;
- (viii) acts by any government or any agency or subdivision thereof, including denial or cancellation of any import/export or other necessary license; or
- (ix) strikes, lockouts or other labor conflicts.

In such event, Company reserves the right to amend its service rates on one (1) day notice, as necessary to provide the requested service. Goods are stored, handled, and transported at Customer's sole risk of loss, damage, or delay caused by any of the above. Customer agrees to pay the storage or similar charges associated with Company's obligation during the continuance of the Force Majeure.

13. Written Claim Requirement Prior to Filing Suit; Time Limit for Filing Suit. No lawsuit or other action may be initiated or maintained by Customer against Company for loss, damage or destruction to Goods unless a timely written claim has been given by Customer as provided for in Section 8 and unless such lawsuit or other action is commenced no later than the earlier of:

- (i) Twelve (12) months after the date of delivery of Goods to Customer by Company; or
- (ii) Twelve (12) months after Customer is notified by Company that loss or damage to part or all of Goods has occurred.

14. General Warehouseman's Lien; Continuing Lien That Survives Delivery. Company claims, and Customer grants, a general Warehouseman's lien that attaches to any of Customer's Goods in Company's facility or any other facility controlled by Company, regardless of whether the charges claimed due relate to those Goods. Company shall have a general Warehouseman's lien for all lawful charges for storage and preservation of Goods; also for all lawful claims for money advanced, interest, insurance, transportation, demurrage and terminal charges, labor, weighing, labeling, packaging, re-packaging, sorting, counting, assembling, dismantling, building, disposal, or other work done with Goods, and other present or future charges and expenses in relation to such Goods; and for unpaid balance on any other accounts with common ownership as Customer that may be due; and for all costs including reasonable attorney's fees, legal expenses, and other legal charges arising out of Company's actions to collect unpaid account balances from Customer, enforce its liens, determine ownership of Goods, or defend against any litigation concerning Goods stored under this Agreement where Company is made a party.

Company also claims, and customer also grants, a continuing lien on any and all Goods relating thereto of Customer coming into Company's actual or constructive possession, custody or control or en route, which lien shall survive delivery, for all charges, expenses or advances owed by Customer to Company with regard to Goods on which the lien is claimed, previous Goods already delivered and/or both.

15. 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. Company's decision to waive any provision herein, either by conduct or otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.

16. No Assignment. This Agreement and all rights and obligations of the Customer are personal to the Customer and may not be transferred or assigned at any time.

17. Entire Agreement. This Agreement constitute the entire understanding between Company and Customer, and no working arrangement, instructions, or operating manuals intended to facilitate the effective carrying out of this Agreement shall in any way affect the liabilities of either party as set forth herein. Warehouse receipts may be issued for goods received in storage and the provisions of the Warehouse receipt shall apply, provided any inconsistency between the terms of the receipt and this Agreement shall be governed by this Agreement.

18. Governing Law; Consent to Jurisdiction and Venue. These terms and conditions of service and the relationship of the parties shall be construed according to the laws of the State of California without giving consideration to principles of conflict of law. Customer and Company:

- (a) irrevocably consent to the jurisdiction of the United States District Court and the State courts of California
- (b) agree that any action relating to the services performed by Company, shall only be brought in said courts;
- (c) consent to the exercise of *in personam* jurisdiction by said courts over it, and
- (d) further agree that any action to enforce a judgment may be instituted in any jurisdiction.