

# TERMS & CONDITIONS

## PAYMENT TERMS

ECW PAYMENTS TERMS ARE NET 30; A 1.5% SERVICE CHARGE WILL APPLY FOR INVOICES OVER 30 DAYS DUE.

## TERMINATION OF SERVICES

ECW REQUIRES a 120 DAY ADVANCED WRITTEN NOTICE OF STORER'S INTENT TO DISCONTINUE WAREHOUSE SERVICES. FAILURE TO NOTIFY WAREHOUSE IN WRITING WILL RESULT IN ASSESSMENT OF OUTBOUND HANDLING CHARGE PER PALLET UPON EXIT FROM WAREHOUSE.

RATES CONTAINED WITHIN ARE GUARANTEED FOR 12 MONTHS AND ARE PREDICATED ON CUSTOMER PROVIDED WAREHOUSE PROFILE. AFTER FIRST INITIAL 90 DAYS, ECW WILL CONDUCT REVIEW; IN EVENT A MATERIAL DEVIATION EXISTS FROM REPORTED PROFILE, ECW RESERVES THE RIGHT TO MODIFY SAID RATES WITH 30 DAYS ADVANCED WRITTEN NOTICE TO STORER.

RATE QUOTATION IS VOID IF NOT ACCEPTED BY STORER WITHIN 60 DAYS FROM DATE OF PRESENTATION; SHIPMENT OF GOODS TO ECW CONSTITUTES ACCEPTANCE OF AGREEMENT BY STORER.

**Applicable Warehouse Terms and Conditions are attached.**

## EAST COAST WAREHOUSE STANDARD TERMS AND CONDITIONS FOR WAREHOUSE STORAGE

East Coast Warehouse Standard Contract Terms and Conditions within replace any terms and conditions listed on the reverse side of the "Warehouse Receipt Invoices".

### 1. ACCEPTANCE

(a) This contract and rate quotation including accessorial charges endorsed on or attached hereto must be accepted within 60 days from the proposal date by signature of depositor on the attached contract. In the absence of written acceptance, the act of tendering goods described herein for storage or other services by warehouseman within 30 days from the proposal date shall constitute such acceptance by depositor.

(b) In the event that goods tendered for storage or other services do not conform to the description contained herein, or conforming goods are tendered after 60 days from the proposal date without prior written acceptance by depositor as provided in paragraph (a) of this section, warehouseman may refuse to accept such goods. If warehouseman accepts such goods, depositor agrees to rates and charges as may be assigned and invoiced by warehouseman and to all terms of this contract.

(c) This contract may be canceled by either party upon 120 days written notice and is canceled if no storage or other services are performed under this contract for a period of 180 days.

### 2. SHIPPING

Depositor agrees not to ship goods to warehouseman as the named consignee. If, in violation of this agreement, goods are shipped to warehouseman as named consignee, depositor agrees to notify carrier in writing prior to such shipment, with copy of such notice to the warehouseman, that warehouseman named as consignee is a warehouseman and has no beneficial title or interest in such property and depositor further agrees to indemnify and hold harmless warehouseman

from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention or charges of any nature, in connection with goods so shipped. Depositor further agrees that, if it fails to notify carrier as required by the preceding sentence, warehouseman shall have the right to refuse such goods and shall not be liable or responsible for any loss, injury or damage of any nature to, or related to, such goods.

### 3. TENDER FOR STORAGE

All goods for storage shall be delivered at the warehouse properly marked and packaged for handling. The 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 or other services desired.

### 4. STORAGE PERIOD AND CHARGES

(a) All charges for storage are per package or other agreed unit per month.

(b) Storage charges become applicable upon the date that warehouseman accepts care, custody and control of the goods, regardless of unloading date or date of issue of warehouse receipt.

(c) 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) When mutually agreed by the warehouseman and the depositor, 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 are due and payable on the first day of the storage month.

### 5. TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS

(a) Instructions to transfer goods on the books of the warehouseman are not effective until delivered to and accepted by warehouseman, and all charges up to the time transfer is made are chargeable to the depositor of record. If a transfer involves rehandling the goods, such 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 is established on the date of transfer.

(b) The warehouseman reserves the right to move, at his expense, 14 days after notice is sent by certified or registered mail to the depositor of record or to the last known holder of the negotiable warehouse receipt, any goods in storage from the warehouse in which they may be stored to any other of his warehouses; but if such depositor or holder takes delivery of his goods in lieu of transfer, no storage charge shall be made for the current storage month. Warehouseman will store the goods at, and may without notice move the goods within and between, any one or more of the warehouse buildings which comprise the warehouse complex identified on the front of this warehouse receipt.

(c) The warehouseman may, upon written notice to the depositor of record and any other person known by the warehouseman to claim an interest in the goods, require the removal of any goods by the end of the next succeeding storage month. Such notice shall be given to the last known place of business or abode of the person to be notified. If goods are not removed before the end for the next succeeding storage month, the warehouseman may sell them in accordance with applicable law.

(d) If warehouseman in good faith believes that the 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, the warehouseman may specify in the notification any reasonable shorter time

# TERMS & CONDITIONS

for removal of the goods and in case 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 the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman 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 the warehouseman after a reasonable effort is unable to sell the goods he 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, the warehouseman may remove the goods from the warehouse and shall incur no liability by reason of such removal.

## 6. HANDLING

(a) The handling charge covers the ordinary labor involved in receiving goods at warehouse door, placing goods in storage, and returning goods to warehouse door. Handling charges are due and payable on receipt of goods.

(b) Unless otherwise agreed, labor for unloading and loading goods will be subject to a charge. Additional expense incurred by the warehouseman in receiving and handling damaged goods, and additional expense in unloading from or loading into cars or other vehicles not at warehouse door will be charged to the depositor.

(c) Labor and materials used in loading rail cars or other vehicles are chargeable to the depositor.

(d) When goods are ordered out in quantities less than in which received, the warehouseman may make an additional charge for each order or each item of an order.

(e) The warehouseman shall not be liable for demurrage or detention, delays in unloading inbound cars, trailers or other containers, or delays in obtaining and loading cars, trailers or other containers for outbound shipment unless warehouseman has failed to exercise reasonable care.

## 7. DELIVERY REQUIREMENTS

(a) No goods shall be delivered or transferred except upon receipt by the warehouseman of complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, TWX or similar communication, provided warehouseman has no liability when relying on the information contained in the communication as received,. However, when no negotiable receipt is outstanding, goods may be delivered upon instruction by telephone in accordance with a prior written authorization, but the warehousemen shall not be responsible for loss or error occasioned thereby.

(b) When a negotiable receipt has been issued no goods covered by that receipt shall be delivered, or transferred on the books of the warehouseman, unless the receipt, properly endorsed, is surrendered for cancellation, or for endorsement of partial delivery thereon. If a negotiable receipt 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 as provided by law.

(c) When goods are ordered out a reasonable time shall be given the warehouseman to carry out instructions, and if he is unable because of acts of God, war, public enemies, seizure under legal process, strikes,

lockouts, riots and civil commotions, or any reason beyond the warehouseman's control, or because of loss or destruction of goods for which warehouseman is not liable, or because of any other excuse provided by law, the warehouseman 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.

## 8. EXTRA SERVICES (SPECIAL SERVICES)

(a) Warehouse labor required for services other than ordinary handling and storage will be charged to the depositor.

(b) Special services requested by depositor including but not limited to compiling of special stock statements; reporting marked weights, serial numbers or other data from packages; physical check of goods; and handling transit billing will be subject to a charge.

(c) Dunnage, bracing, packing materials or other special supplies, may be provided for the depositor at a charge in addition to the warehouseman's cost.

(d) By prior arrangement, goods may be received or delivered during other than usual business hours, subject to a charge.

(e) Communication expense including postage, teletype, telegram, or telephone will be charged to the depositor if such concern more than normal inventory reporting or if, at the request of the depositor, communications are made by other than regular United States Mail.

## 9. BONDED STORAGE

(a) A charge in addition to regular rates will be made for merchandise in bond.

(b) Where a warehouse receipt covers goods in U.S. Customs bond, such receipt shall be void upon the termination of the storage period fixed by law.

## 10. MINIMUM CHARGES

(a) A minimum handling charge per lot and a minimum storage charge per lot per month will be made. 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 be made.

(b) A minimum monthly charge to one account for storage and/or handling will be made. This charge will apply also to each account when one customer has several accounts, each requiring separate records and billing.

## 11. LIABILITY AND LIMITATION OF DAMAGES

(a) THE WAREHOUSEMAN SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY TO GOODS STORED HOWEVER CAUSED UNLESS SUCH LOSS OR INJURY RESULTED FROM THE FAILURE BY THE WAREHOUSEMAN TO EXERCISE SUCH CARE IN REGARD TO THEM AS A REASONABLY CAREFUL MAN WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND WAREHOUSEMAN IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.

(b) GOODS ARE NOT INSURED BY THE WAREHOUSEMAN AGAINST LOSS OR INJURY HOWEVER CAUSED.

(c) In the event of loss, damage or destruction to stored goods for which company is legally liable, CUSTOMER declares that WAREHOUSE's liability for damages shall be limited to the lesser of the following amounts (1) the

# TERMS & CONDITIONS

actual cost to CUSTOMER of replacing or reproducing the damaged goods together with transportation costs to warehouse (2) the fair market value of the goods on the date ECW is notified of loss, damage or destruction, or (3) fifty (50) times the monthly storage rate per single-stacked pallet applicable to such lost, damaged or destroyed goods, or (4) \$0.50 per pound net weight of the goods, exclusive of tare, provided, however that within a reasonable time after receipt of this agreement, CUSTOMER may, upon written request, increase contractor's liability in part on all of the goods stored under the agreement, in which case an increased charge will be made based upon such increased valuation: further provided that no such request shall be valid unless made before loss, damage or destruction to any portion of the goods stored under this agreement has occurred. In no event shall WAREHOUSE's liability exceed \$1,000,000.00 in any one occurrence.

(d) WHERE LOSS OR INJURY OCCURS TO STORED GOODS, FOR WHICH THE WAREHOUSEMAN IS NOT LIABLE, THE DEPOSITOR SHALL BE RESPONSIBLE FOR THE COST OF REMOVING AND DISPOSING OF SUCH GOODS AND THE COST OF ANY ENVIRONMENTAL CLEAN UP AND SITE REMEDIATION RESULTING FROM THE LOSS OF INJURY TO THE GOODS.

(e) THE DEPOSITOR DECLARES THAT SOME AMOUNT OF DAMAGE IS INEVITABLE IN AN OPERATION OF THIS SIZE. THE DEPOSITOR AGREES TO GRANT THE WAREHOUSE AN ANNUAL DAMAGE ALLOWANCE EQUAL TO 5/10TH OF 1% OF TOTAL CASES HANDLED PER CONTRACT YEAR. ANY AMOUNTS ABOVE THIS THRESHOLD ARE SUBJECT TO TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO SECTION 11(C) ABOVE.

## 12. NOTICE OF CLAIM AND FILING OF SUIT

(a) Claims by the depositor and all other persons must be presented in writing to the warehouseman within a reasonable time, and in no event longer than either 30 days after delivery of the goods by the warehouseman or 60 days after depositor of record or the last known holder of a negotiable warehouse receipt is notified by the warehouseman that loss or injury to part or all of the goods has occurred, whichever time is shorter.

(b) No action may be maintained by the depositor or others against the warehouseman for loss or injury to goods stored unless timely written claim has been given as provided in paragraph (a) of this section and unless such action is commenced either within nine (9) months after date of delivery by warehouseman or within nine (9) months after depositor of record or the last known holder of a negotiable warehouse receipt is notified that loss or injury to part or all of the goods has occurred, whichever item is shorter.

(c) When goods have not been delivered, notice may be given of known loss or injury to the goods by mailing of a registered or certified letter to the depositor of record or to the last known holder of a negotiable warehouse receipt. Time limitations for presentation of claim in writing and maintaining of action after notice begin on the date of mailing of such notice by warehouseman.

(d) ECW ASSUMES NO LIABILITY FOR VENDOR CHARGE BACKS, OFFSETS, OR INVOICE DEDUCTIONS UNLESS PREVIOUSLY AGREED TO IN WRITING BY BOTH PARTIES.

## 13. LIABILITY FOR CONSEQUENTIAL DAMAGES

Warehouseman shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind.

## 14. LIABILITY FOR MISSHIPMENT

If warehouseman negligently mis-ships goods, the warehouseman shall pay the reasonable transportation charges incurred to return the mis-shipped goods to the warehouse. If the consignee fails to return the goods, warehouseman's maximum liability shall be for the lost or damaged goods as specified in Section 11 above, and warehouseman shall have no liability for damages due to the consignee's acceptance or use of the goods whether such goods be those of the depositor or another.

## 15. MYSTERIOUS DISAPPEARANCE

Warehouse shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods unless Depositor establishes such loss occurred because of Warehouse's failure to exercise reasonable care. In any event, Warehouseman's liability for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods shall be limited as stated in Section 11 above. 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 the warehouseman converted the goods to the warehouseman's own use.

WAREHOUSE and CUSTOMER agree that some amount of inventory shrinkage due to damage and misplacement is inevitable in an operation of this size. CUSTOMER agrees to grant WAREHOUSE an annual inventory shortage allowance equal to 5/10th of 1% OF TOTAL CASES HANDLED PER CONTRACT YEAR. Any amounts above this amount are subject the terms and conditions of this agreement, including but not limited to Section 11(C) above.

## 16. RIGHT TO STORE GOODS

Depositor represents and warrants that depositor is lawfully possessed of the goods and has the right and authority to store them with warehouseman. Depositor agrees to indemnify and hold harmless the warehouseman from all loss, cost and expense (including reasonable attorneys' fees) which warehouseman pays or incurs as a result of any dispute or litigation, whether instituted by warehouseman or others, respecting depositor's right, title or interest in the goods. Such amounts shall be charges in relation to the goods and subject to warehouseman's lien.

## 17. ACCURATE INFORMATION

Depositor will provide warehouseman with information concerning the stored goods which is accurate, complete and sufficient to allow warehouseman to comply with all laws and regulations concerning the storage, handling and transporting of the stored goods. Depositor will indemnify and hold warehouseman harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which warehouseman pays or incurs as a result of depositor failing to fully discharge this obligation.

## 18. SEVERABILITY and WAIVER

(a) If any provision of this receipt 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 receipt shall not be affected thereby but shall remain in full force and effect.

(b) Warehouseman's failure to require strict compliance with any provision of the Warehouse Receipt shall not constitute a waiver or

# TERMS & CONDITIONS

estoppel to later demand strict compliance with that or any other provision(s) of this Warehouse Receipt.

(c) The provisions of this Warehouse Receipt shall be binding upon the depositor's heirs, executors, successors and assigns; contain the sole agreement governing goods stored with the warehouseman; and, cannot be modified except by a writing signed by warehouseman.

## 19. LIEN

Warehouse shall have a general warehouse lien for all lawful charges for storage and preservation of the Goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing cooperating, and other charges and expenses in relation to such Goods, and for the balance on any other accounts that may be due. Warehouse further claims a general warehouse lien for all such charges, advances and expenses with respect to any other Goods stored by the Depositor in any other facility owned or operated by Warehouse. In order to protect its lien, Warehouse reserves the right to require advance payment of all charges prior to shipment of Goods.

## 20. DOCUMENTS OF TITLE

Documents of title, including warehouse receipts, may be issued either in physical or electronic form at the option of the parties.

## 21. GOVERNING LAW AND JURISDICTION

This Contract and the legal relationship between the parties hereto shall be governed by and construed in accordance with the substantive laws of the state where the Facility is located, including Article 7 of the Uniform Commercial Code as ratified in that state, notwithstanding its conflict of laws rules. Any lawsuit or other action involving any dispute, claim or controversy relating in any way to this Contract shall be brought only in the appropriate state or federal court in the state where the Facility is located.

## 22. NON-SOLICITATION

During the term of this Agreement and for two years after any termination of this Agreement, [Party] will not directly or indirectly solicit, induce, recruit, encourage or otherwise endeavor to cause or attempt to cause any employee of East Coast Warehouse & Distribution Corp, East Coast C.E.S., Safeway Trucking Corp. and TJN Trucking Corp. (the Company) to terminate their relationship the Company; provided, however, that nothing in this section shall prohibit the use of a general solicitation in a publication or by other means.