

## **ERB COLD STORAGE – CONTRACT TERMS AND CONDITIONS**

### **SECTION 1 - LIABILITY AND LIMITATION OF DAMAGES**

As used in this Warehouse Receipt ("RECEIPT") or Contract and Rate Quotation ("RATE QUOTATION") the following terms have the following meanings:

- (a) **CONTRACT.** COMPANY'S RECEIPT or RATE QUOTATION containing these Contract Terms and Conditions.
- (b) **STORER.** The person, firm, corporation, or other entity for whom the GOODS described herein are stored and to whom this CONTRACT is issued and anyone else claiming an interest in the GOODS.
- (c) **COMPANY.** Erb Transport Limited. As used in Sections 9 and 10, COMPANY includes officers, directors, employees, and agents of COMPANY while acting within the scope and course of their employment or on behalf of the COMPANY.
- (d) **WAREHOUSE.** COMPANY'S warehouse complex is based upon where the goods were originally delivered to.
- (e) **GOODS.** The personal property and any portion thereof described herein, or which COMPANY has received, which the COMPANY will handle and/or store pursuant to this CONTRACT.

### **SECTION 2 - TENDER FOR STORAGE**

- (a) STORER agrees that all GOODS for storage shall be delivered at the WAREHOUSE properly marked and packed for handling.
- (b) STORER shall furnish, at or prior to delivery, a manifest showing marks, brands, or sizes to be kept and accounted for separately and the class of storage desired. Unless such a manifest is provided, GOODS may be stored in bulk or assorted lots in freezer, cooler or general storage at the discretion of COMPANY and at the applicable storage rate.
- (c) STORER will provide COMPANY with accurate and complete information concerning the GOODS sufficient to allow COMPANY to comply with all laws and regulations concerning the storage, handling and transportation of the GOODS and will indemnify and hold COMPANY harmless from all loss, cost, penalty, and expense (including reasonable attorneys' fees) as a result of STORER'S failure to do so.
- (d) Receipt and delivery of the GOODS shall be made without sorting except by special arrangement which may be subject to a charge.
- (e) Unless otherwise agreed to in writing, COMPANY shall store and deliver GOODS only in the packages in which they are originally received and shall not segregate GOODS by production code date.
- (f) STORER agrees that all GOODS shipped to COMPANY shall identify STORER on the bill of lading or other contract of carriage as the consignee, in care of COMPANY, and shall not identify COMPANY as the consignee. If, contrary to this requirement, GOODS are shipped to COMPANY as consignee, STORER shall indemnify and hold COMPANY harmless from all claims for transportation, storage, handling, and other charges relating to such GOODS.

### **SECTION 3 - TERMINATION OF STORAGE**

- (a) COMPANY may, upon written notice, require the removal of the GOODS, or any portion thereof, from the WAREHOUSE within a stated period, not less than 60 days after such notification. If said GOODS are not so removed, COMPANY may sell them as provided by law and shall be entitled to exercise any other rights it has under the law with respect to said GOODS.
- (b) If, in the opinion of COMPANY, GOODS may be about to deteriorate or decline in value to less than the amount of COMPANY'S lien or may constitute a hazard to other property or to the WAREHOUSE or persons, the GOODS may be removed or disposed of by COMPANY as permitted by law. All charges related thereto shall be paid by STORER.

### **SECTION 4 - STORAGE LOCATION**

- (a) The GOODS shall be stored, at COMPANY'S discretion, at any one or more buildings at the WAREHOUSE. The identification of any specific location within the WAREHOUSE does not guarantee that the GOODS shall be stored there.
- (b) Unless otherwise agreed in writing, COMPANY may, at any time, at its expense, and without notice to STORER, remove any GOODS from any room or area of the WAREHOUSE to any other room or area thereof.
- (c) Upon ten days' written notice to STORER, COMPANY may, at its expense, remove the GOODS to any other warehouse operated by COMPANY.

### **SECTION 5- STORAGE CHARGES**

- (a) COMPANY'S storage and other charges are set forth in the RATE QUOTATION or other document issued by COMPANY to STORER and/or COMPANY'S tariff and may be increased on 30 days' notice. Charges shall accrue on a weekly or monthly anniversary basis, as set out in the RATE QUOTATION, and shall accrue on the first of the relevant charge period. Charges shall accrue from the date that COMPANY accepts custody of the GOODS and no delay in unloading or issuance of a receipt shall affect the day on which charges commence.
- (b) Rates or charges quoted by weight will, unless otherwise specified, be computed on gross weight basis. COMPANY reserves the right to inspect, weigh and review the GOODS at any point to confirm the relevant factors in determining the rates or charges associated with the same.

### **SECTION 6 - HANDLING CHARGES**

Handling charges as set out in the relevant RATE QUOTATION shall only mean ordinary labor and duties incidental to receiving and delivering unitized GOODS on pallets at the WAREHOUSE dock during COMPANY'S normal business

hours. Additional handling charges may be applied if any additional labor or costs arise from the handling of the GOODS.

### **SECTION 7 - INSTRUCTIONS OF TRANSFER**

- (a) STORER may instruct COMPANY to transfer the GOODS to the account of another. Such instructions shall only be effective upon the acceptance of the same, in writing, by the COMPANY. All instructions to transfer the GOODS shall be delivered to the COMPANY in writing, unless previous instructions to accept telephone directions are arranged. STORER shall indemnify and hold the COMPANY harmless for any and all costs, liabilities and expenses arising from the transfer of the GOODS as requested by the STORER.
- (b) STORER acknowledges that any transfer of GOODS shall bear additional cost to the STORER, including, but not limited to rehandling charges, additional storage charges, etc.
- (c) STORER shall provide the COMPANY with instructions in advance of their requirement to transfer the GOODS and shall provide the COMPANY a reasonable time to make delivery after GOODS, but no less than 10 days' notice shall be considered reasonable.
- (d) If COMPANY is unable, due to any cause beyond its control, to effect delivery before expiration of the then current storage period, the GOODS may, at COMPANY'S discretion, be subject to storage charges for each succeeding storage period.
- (e) All instructions and requests for delivery and/or transfer of GOODS are received subject to satisfaction of all charges, liens, and security interests of COMPANY. Upon termination of the storage relationship for any reason, COMPANY shall have no obligation to provide STORER with access or deliver the GOODS until it has been fully paid for all charges then due.
- (f) COMPANY may require, as a condition to delivery, a statement from STORER holding COMPANY harmless from claims of others asserting rights to the GOODS. All costs, charges, and expenses, including reasonable attorneys' fees, incurred by COMPANY relating in any way to COMPANY'S activities referred to in this Section 7(f) shall be charged to STORER and shall be considered charges with respect to the GOODS and subject to Company's general warehouse lien.

### **SECTION 8 - OTHER SERVICES AND CHARGES AND OBLIGATION TO PAY**

- (a) STORER acknowledges that the RATE QUOTATION and charges set out therein describe the services to be delivered pursuant to such RATE QUOTATION only. Any additional services, costs, or expense arising from the storage of the GOODS by the COMPANY will be subject to additional charges, as set out herein and in all quotes and information provided by the COMPANY to the STORER.
- (b) All charges are due and payable upon the date of invoice. All charges not paid within 30 days of the date of the invoice are subject to an interest charge, from the date said charge became due until paid, at the lesser amount of 1.5% per month or the maximum amount allowed by law, compounded monthly. Any payments made by the STORER shall first be applied to any interest due and outstanding on the account of the STORER.
- (c) STORER may, subject to reasonable limitations, inspect the GOODS when accompanied by an employee of COMPANY whose time is chargeable to STORER.
- (d) STORER acknowledges that additional charges may apply including:
  - In the event of damage or threatened damage to the GOODS, costs of protecting and preserving the GOODS and for clean-up and disposal of damaged and destroyed GOODS. When such costs are attributable both to GOODS of STORER and property of others, said costs shall be apportioned among STORER and others on a pro rata basis as determined by COMPANY.
  - The cost of dunnage bracing and fastenings where it deems it appropriate on outbound shipments, at the discretion of the COMPANY.
  - Any additional costs incurred by COMPANY in unloading railcars or trucks containing damaged GOODS.
  - Detention or demurrage charges or delays in loading or unloading.
  - Additional charges for bonded storage.
  - Additional charges for pallets supplied by the COMPANY.
  - An additional energy surcharge, provided that the COMPANY provides STORER with no less than 30 days' notice prior to the application of an energy surcharge.
  - Additional charges for cooler or freezer storage, GOODS that are received at a temperature greater than five degrees Celsius above the applicable room temperate, and specifically, COMPANY shall bear no responsibility for blast freezing GOODS.
- (e) STORER acknowledges that the list set out herein is for example purposes only and agrees to pay additional charges, costs and expenses pursuant to this CONTRACT, as reasonably required by the COMPANY.
- (f) All storage, handling and other services may be subject to minimum charges.
- (g) STORER agrees to pay COMPANY all costs, charges and expenses including reasonable attorney's fees ("EXPENSES") incurred by COMPANY 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 STORER'S performance under this CONTRACT. All such EXPENSES shall constitute charges with respect to the GOODS and subject to COMPANY'S general warehouse lien.

## **SECTION 9 – LIABILITY**

(a) COMPANY shall not be liable for any loss or destruction of or damage to GOODS, however caused, unless such loss, destruction or damage resulted from COMPANY'S negligent behaviour. COMPANY shall not be liable for any loss or destruction of or damage to GOODS that could not have been avoided by the exercise of reasonable care of the GOODS.

(b) COMPANY and STORER agree that COMPANY'S duty of care referred to in Section 9(a) does not extend to providing a sprinkler system at the WAREHOUSE or any portion thereof and is only applicable to the handling of the GOODS.

(c) Unless specifically agreed to in writing, COMPANY shall not be required to store GOODS in a humidity-controlled environment or be responsible for tempering GOODS.

(d) **IN THE EVENT OF LOSS OR DESTRUCTION OF OR DAMAGE TO GOODS FOR WHICH COMPANY IS LEGALLY LIABLE, STORER DECLARES THAT COMPANY'S LIABILITY SHALL BE LIMITED TO THE LESSER OF THE FOLLOWING: (1) THE ACTUAL COST TO STORER OF REPLACING, OR REPRODUCING THE LOST, DAMAGED, AND DESTROYED GOODS, (2) THE FAIR MARKET VALUE OF THE LOST, DAMAGED, AND DESTROYED GOODS ON THE DATE STORER IS NOTIFIED OF SUCH LOSS, DAMAGE AND DESTRUCTION, (3) 50 TIMES THE MONTHLY STORAGE CHARGE APPLICABLE TO SUCH LOST, DAMAGED AND DESTROYED GOODS, (4) \$0.50 PER POUND FOR SAID LOST, DAMAGED, AND DESTROYED GOODS. PROVIDED, HOWEVER THAT WITHIN A REASONABLE TIME AFTER RECEIPT OF THIS CONTRACT, STORER MAY REQUEST, IN WRITING, AN INCREASE IN COMPANY'S LIABILITY ON PART OR ALL OF THE GOODS 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 OR DESTRUCTION OF OR DAMAGE TO ANY PORTION OF THE GOODS HAS OCCURRED.**

(e) COMPANY'S liability referred to in Section 9(d) shall be STORER'S exclusive remedy for any claim or cause of action whatsoever relating to loss or destruction of or damage to GOODS. STORER waives any right to rely upon any presumption of conversion imposed by law.

(f) In no event shall STORER be entitled to recover any incidental, special, punitive, or consequential damages of any type or description.

(g) If COMPANY negligently misships GOODS, COMPANY, at its option, shall pay the reasonable transportation charges to return the misshipped GOODS to the WAREHOUSE or the value of the misshipped GOODS based upon Section 9(d). COMPANY shall have no liability whatsoever for any damages once the COMPANY is no longer in possession or control of the GOODS.

(h) COMPANY and STORER agree that COMPANY'S duty of care does not extend to ensuring the reasonableness of the COMPANY'S cybersecurity posture and the occurrence of a "CYBER INCIDENT" (an incident that impacts the integrity or availability of any COMPANY system, network, or equipment, or that would allow unauthorized access to same). Specifically, COMPANY shall not be responsible for any loss, destruction, or damage to GOODS, or have any liability to STORER due to lack of access to GOODS, based on a CYBER INCIDENT affecting the COMPANY'S operations, irrespective of whether the cause of such incident was internal or external and whether or not it was caused by any type of cyber-attack, network failures, human error, or any shortcomings in COMPANY'S cybersecurity systems or program, unless such shortcomings were due to the gross negligence of the COMPANY.

(i) STORER will not hold COMPANY liable for failure to comply with any term of this CONTRACT where failure to comply has been caused by an event or conditions beyond the reasonable control of the COMPANY (each a "FORCE MAJEURE EVENT"). A FORCE MAJEURE EVENT may include but is not limited to an act of God, force of nature, fire or other casualty, expropriations, war-like activity, insurrection, civil commotion, pandemic or other similar act.

## **SECTION 10 - NOTICE OF CLAIM AND FILING OF SUIT**

(a) COMPANY shall not be liable for any claim of any type whatsoever including, without limitation, any claim for loss or destruction of or damage to GOODS unless such claim is presented, in writing, within a reasonable time, not exceeding the earlier of (1) 60 days after delivery of GOODS by COMPANY or (2) 60 days after STORER learned or, in the exercise of reasonable care, should have learned of such loss or destruction of or damage to the GOODS or the basis for any other claim against COMPANY.

(b) As a condition precedent to filing any lawsuit or other action, STORER shall provide COMPANY with a reasonable opportunity to inspect the GOODS which are the basis of STORER'S claim.

**(c) NO LAWSUIT OR OTHER ACTION MAY BE MAINTAINED BY STORER OR OTHERS AGAINST COMPANY UNLESS A TIMELY WRITTEN CLAIM HAS BEEN MADE AS PROVIDED IN SECTION 10(a) AND UNLESS STORER HAS PROVIDED COMPANY WITH A REASONABLE OPPORTUNITY TO INSPECT THE GOODS AS PROVIDED IN SECTION 10(b) AND UNLESS SUCH LAWSUIT OR OTHER ACTION IS COMMENCED WITHIN THE EARLIER OF (1) NINE (9) MONTHS AFTER DELIVERY OF GOODS BY COMPANY OR (2) NINE (9) MONTHS AFTER STORER LEARNED OR, IN THE EXERCISE OF REASONABLE CARE, SHOULD HAVE LEARNED OF**

## **THE LOSS OR DESTRUCTION OF OR DAMAGE TO THE GOODS OR THE BASIS FOR ANY OTHER CLAIM AGAINST COMPANY.**

## **SECTION 11 - INSURANCE**

STORER acknowledges that the GOODS are not insured by COMPANY and the storage rates do not include insurance on the GOODS.

## **SECTION 12 - LIEN**

COMPANY shall have a general warehouse lien against the GOODS and on the proceeds thereof for all charges for storage, handling, transportation (including detention, demurrage, and terminal charges), insurance, labor and other charges present or future with respect to the GOODS, advances or loans by COMPANY in relation to the GOODS and for expenses necessary for the preservation of the GOODS or reasonably incurred in their sale pursuant to law. COMPANY further claims a general warehouse lien on the GOODS for all other such charges, advances and expenses due Company or any related entity from STORER for property stored by STORER in any warehouse owned or operated by COMPANY or any related entity wherever located. COMPANY reserves the right to require advance payment of all charges prior to releasing GOODS regardless of otherwise applicable payment terms.

## **SECTION 13 - WAIVER - SEVERABILITY**

(a) COMPANY'S failure to insist upon strict compliance with any provision of this CONTRACT shall not constitute a waiver of or estoppel to later demand strict compliance with said provision or to insist upon strict compliance with all other provisions of this CONTRACT.

(b) In the event any Section of this CONTRACT or part thereof shall be declared invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining Sections and parts shall not, in any way, be affected or impaired thereby.

## **SECTION 14 - AUTHORITY**

STORER 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. STORER agrees to notify all parties acquiring any interest in the GOODS of the Terms and Conditions of this CONTRACT and to obtain, as a condition of granting any interest, the agreement of such parties to be bound by such Contract Terms and Conditions.

## **SECTION 15 – NOTICES**

All written notices required herein may be transmitted by any commercially reasonable means of communication and directed to COMPANY at the address on the front hereof and to STORER at its last known address. STORER is presumed to have knowledge of the contents of all notices transmitted in accordance with this Section 15 within five days of transmittal.

## **SECTION 16 - ENTIRE AGREEMENT**

This CONTRACT constitutes the entire agreement between COMPANY and STORER relating to the GOODS and supersedes all existing agreements between them whether written or oral and shall not be changed, amended or modified except by written agreement signed by representatives of COMPANY and STORER. In the event of conflict or inconsistency between the provisions of this CONTRACT and the terms and conditions contained in any acknowledgment or in other form issued by STORER, whether any such form has been acknowledged or accepted by COMPANY, the terms of this CONTRACT shall prevail.

## **SECTION 17 – ENUREMENT**

This CONTRACT will be binding upon and will enure to the benefit of the parties hereto and their respective lawful successors and permitted assigns.

## **SECTION 18 – ASSIGNMENT**

Except as provided herein, neither party may assign, contract, or delegate the performance of its obligations hereunder, in whole or in part, without the prior written consent of the other party, which consent may not be unreasonably withheld. Any such consent given either by COMPANY or STORER will not constitute a waiver of its consent to any subsequent assignment, contracting or delegation. The COMPANY may assign this CONTRACT to an affiliate (as that term is defined in the Ontario Business Corporations Act) without the consent of the STORER, but only upon prior written notice to the STORER.

## **SECTION 19 – GOVERNING LAW**

This CONTRACT will be governed by and construed in accordance with the laws of the Province of Ontario, which will be deemed to be the proper law hereof. The courts of Ontario will have exclusive jurisdiction to entertain and determine all disputes and claims, whether for specific performance, injunction, declaration or otherwise howsoever both at law and in equity, arising out of or in any way connected with the construction, breach, or alleged, threatened, or anticipated breach of this CONTRACT and will have jurisdiction to hear and determine all questions as to the validity, existence or enforceability thereof.

## **SECTION 20 – FRENCH LANGUAGE**

The parties hereto have requested and consented that this CONTRACT and all documents, notices, correspondence, and legal proceedings consequently upon ancillary or relating directly or indirectly hereto, forming part hereof or resulting here from be drafted in the English language. Les parties aux présentes ont demandé et consenti à ce que la présente convention ainsi que tous documents, avis, correspondance et procédures légales soient rédigés en anglais.