

DEFINITIONS

- a)** "Keller" means Keller Warehousing & Co-Packing, LLC
- b)** "Client" means the person and/or entity for which Keller is rendering services, including transferees of the Goods while in storage, as well as its agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, consignees, etc. It is the responsibility of Client to provide a copy of these terms and conditions of services to each of such agents or representatives.
- c)** "Parties" means Keller and Client.
- d)** "Facility" means any warehouse facility of Keller, whether owned or rented or otherwise made available to Keller.
- e)** "Goods" means the articles tendered by Client to Keller for storage and/or any value-added services related to the Goods.
- f)** "Notice" means a communication from one party to the other, in the form of email (where the receiving party acknowledges receipt), certified mail, or national courier service (UPS, FedEx, etc.), to the last known address of the receiving party.
- g)** "Operating Parameters" means the performance, operating specifications, scope of work, and assumptions provided by Client, to Keller.
- h)** "Service Rates" means charges of any kind which Keller imposes on Client based on the scope of the Operating Parameters.
- i)** "Terms" means the terms and conditions contained herein.

ACCEPTANCE – Sec. 1

- a)** In the absence of written acceptance, the act of Client tendering goods to Keller constitutes acceptance by Client of these Terms.
- b)** If goods tendered for storage or other services do not conform to Operating Parameters, or conforming goods are tendered after 30 days from the proposal date without prior written acceptance by Client as provided in paragraph (a) of this section, Keller may refuse to accept such goods. If Keller accepts such goods, Client agrees to Service Rates as may be assigned and invoiced by Keller and to these Terms.
- c)** Any goods accepted by Keller constitute goods under these Terms.
- d)** These Terms may be canceled by either party upon 30 days' Notice and are canceled if no storage or other services are performed under these Terms for a period of 180 days.

SHIPMENTS TO AND FROM KELLER – Sec. 2

Client agrees that all goods shipped to and from Keller will identify Client on the bill of lading as the named consignee, in care of Keller, and will not identify Keller as the consignee. If, in violation of these Terms, goods are shipped to Keller as named consignee on the bill of lading, Client must immediately notify carrier in writing, with copy of such notification to Keller, that Keller named as consignee is the "in care of party" only and has no beneficial title or interest in the goods. Furthermore, Keller will have the right to refuse such goods and will not be liable for any loss, mis-shipment, or damage of any nature to such goods. Whether Keller accepts or refuses goods shipped in violation of this section, Client agrees to indemnify and hold Keller harmless from all claims for transportation, storage, handling, and other charges relating to such goods, including undercharges, rail demurrage, truck/intermodal detention, and any fines, penalties, costs, and expenses (including attorney's fees) and other charges resulting from Client's failure to comply with the requirements of this section.

TENDER OF GOODS – Sec. 3

All goods must be delivered at Keller's Facility in a segregated manner, clearly marked and packaged for safe storage and handling. Client shall furnish at or prior to such delivery, a manifest or bill of lading showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other services desired. Keller is not a guarantor of the condition of such goods under any circumstances, including, but not limited to hidden, concealed, or latent defects in the goods. Keller is not responsible for concealed shortages, damage, inherent vice, or tampering.

STORAGE PERIOD AND CHARGES – Sec. 4

- a)** All charges for storage are per handling unit or other agreed upon unit of measure per month as per available space.

- b)** The Initial Storage Period begins on the date that Keller accepts care, custody, and control of the goods, and ends on the last day of that month. Client will be charged on a prorated basis for the Initial Storage Period. The daily rate for the Initial Storage Period will be determined as follows: $[(\text{Monthly Storage Rate} \times 12) / 365]$. All Initial Storage charges are due and payable on the first day of the Initial Storage Period.

- c)** The first day of the month after the Initial Storage Period will be the beginning of the first Recurring Storage Period, with that month, and each subsequent month, being considered a Recurring Storage Period. The storage charges for each Recurring Storage Period are due on the first day of the Recurring Storage Period.

TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS – Sec. 5

- a)** Instructions to transfer goods on the books of Keller are not effective until delivered to and accepted by Keller, and all charges up to the time transfer is made are chargeable to Client. If a transfer involves re-handling 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)** Keller reserves the right to move, at its expense, after 30 days' Notice to Client, any goods in storage from the warehouse in which they may be stored to any other of Keller's other warehouses.

- c)** Keller may, upon not less than 30 days' Notice to Client and any other person known by Keller to claim an interest in the goods, require the removal of any goods. If goods are not removed before the end of the Notice period, Keller may sell them in accordance with applicable law.

- d)** If Keller in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of Keller's lien before the end of the Notice period referenced above, Keller may specify in the notification any reasonable shorter time for removal of the goods and if the goods are not removed, may sell them at public sale held one week after a single advertisement or posting as provided by law.

- e)** If, after a reasonable effort, Keller is unable to sell the goods pursuant to this section, Keller may dispose of the goods, at Client's cost, in any lawful manner and will incur no liability by reason of such disposition.

- f)** If as a result of a quality or condition of the goods of which Keller had no notice at the time of deposit the goods are a hazard to other property or to its Facility or to any persons, Keller may: (i) sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods, (ii) return goods freight collect, or (iii) dispose of goods at Client's cost. Pending such disposition, sale, or return of the goods, Keller may remove the goods from a Facility and will incur no liability by reason of such removal.

HANDLING AND ADMINISTRATION CHARGES – Sec. 6

- a)** The handling and administration charges cover the ordinary labor involved in receiving goods at the Facility door, physically placing goods in storage, systemic updates and returning goods to the Facility door.

- b)** Labor for unloading and loading goods and related administrative labor will be subject to a charge. Additional expenses incurred by Keller in receiving and handling damaged goods, and additional expense in unloading from or loading into trailers, cars, or other vehicles not at the Facility door will be charged to Client. Handling charges are due and payable upon receipt and shipment of goods.

- c)** Goods ordered out in quantities less than in which received, Keller may make an additional charge for each order or item of an order.

- d)** Client shall indemnify, defend, and hold Keller harmless from all loss, costs, penalties, claims, expenses (including reasonable attorney's fees) for transportation, storage, handling, and other charges related to the goods, including but not limited to undercharges, rail demurrage, truck/intermodal detention, and other charges, asserted by any third-party. Keller will not be liable to Client 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 Keller has failed to exercise reasonable care as determined by industry practice.

SHIPMENT ORDER REQUIREMENTS – Sec. 7

No goods may be delivered or transferred except upon receipt by Keller of Client's complete written instructions. Written instructions may include, but are not limited

to EDI, E-Mail, or similar communication, provided Keller has no liability when relying on the information contained in the communication as received. Goods may be delivered upon instruction by telephone or electronically in accordance with Client's prior written authorization, but Keller will not be responsible for resulting loss or error. Keller will not be liable for failure to carry out such instructions and goods remaining in storage will continue to be subject to regular storage charges. When goods are ordered out, a reasonable time must be given to Keller to carry out instructions.

ACCESSORIALS CHARGES – Sec. 8

a) Keller will charge Client for Accessorials, which include time and materials necessary to satisfy the Operating Parameters above ordinary handling, administration, storage, and packaging.

b) Keller will use best efforts to secure Client's written pre-approval for Accessorials. Accessorials will be itemized via a transactional fee or passed through at Keller's landed cost plus an administration fee.

c) Accessorials include but are not limited to recording serial numbers, product quality checks, photographs taken at Client's request, disposal of goods or debris, dunnage, blocking and bracing, banding, physical inventory counts, ad hoc cycle counts, packing materials, wooden pallets, corner boards, slip sheets, dust covers, overwrapping unitized pallets, postage/parcel fees, expedites, late deliveries and or no-shows except where a Keller affiliate is the transportation provider, requests for overtime, weekend or holiday work, or other special supplies and services needed or requested by Client.

PACKAGING SERVICES – Sec. 9

a) Keller may provide to Client, upon purchase order submitted by Client, repackaging, or co-packaging services ("Packaging Services").

b) Keller will package Goods in the Packaging ("Packaged Products") in accordance with the Operating Parameters.

c) Client shall procure, inspect, and release adequate packaging materials, as necessary to meet commitment. Client shall provide all manufacturing and regulatory information related to the Packaged Products, without exception, for all applicable or requesting government agencies, regulatory bodies or certifying organizations, including, but not limited to, the U.S. Food and Drug Administration. Client shall provide all necessary instruction, training, and technical guidance to Keller.

d) Client shall provide or approve, prior to the procurement of applicable components, all artwork, advertising, labeling, and packaging information necessary to package the Goods, and the same will remain the exclusive property of Client, who is solely responsible for the content thereof.

e) In the event of (i) an Operating Parameter change requested by Client, or by Keller for Client's benefit, or to comply with any new requirement of any regulatory authority, (ii) termination by Client without cause; or (iii) unforeseeable obsolescence of any packaging materials, Client will solely bear the cost of all unused materials.

f) If Keller mispackages, mislabels, or uses the wrong Packaging materials while packaging Packaged Products, Keller shall repackage or relabel the Packaged Products to correct the mistake, if possible. If Keller cannot repackage or relabel the Packaged Products, Keller will issue a credit for the cost of the Packaging Services performed in error. Keller will not have any additional liability or responsibility for any acts, errors, or omissions resulting from mispackaged or mislabeled Packaged Products.

SERVICE CHARGES – Sec. 10

a) A minimum handling charge per lot, SKU, or agreed upon measure and a minimum storage charge per lot, SKU, or agreed upon measure per month may be made. When a warehouse receipt covers more than one lot or SKU or when a lot or SKU is in assortment, a minimum charge per mark, brand, or variety may be made.

b) There may be a minimum monthly charge for each Client's account for storage and/or handling.

c) The Service Rates may, at Keller's sole option, be subject to an annual General Rate Increase (GRI), which will not exceed the greater of (i) five percent, and (ii) a percentage equal to the percentage change in the Consumer Price Index statistics published by the United States Bureau of Labor. The GRI may take effect at the

beginning of the calendar year and may be applied to all charges incurred from that date forward.

d) Keller has calculated the Service Rates based on the Operating Parameters. In the event of any proposed change in any Operating Parameter, Keller shall notify Client of any proposed rate adjustment that it deems necessary to respond to the change. A change in Operating Parameters may include but is not limited to: (i) a change in service requirements such as new service request; (ii) Client requiring a different distribution solution; (iii) material change in throughput or average inventory (plus or minus ten percent); or (iv) Client acquires or merges with another entity.

e) If a Changed Condition occurs (defined as (i) the enactment or promulgation of any new law, regulation, or statute, (ii) the imposition of new material conditions on the issuance or renewal of any official permit, license, or approval, or (iii) a material change in global supply chain dynamics which affects the operating or capital costs of Keller's ability to perform services under these Terms), Keller may adjust Service Rates as it deems reasonably necessary to preserve for Keller its intended benefits, by providing Client with 30 days' Notice, and setting forth the nature of the Changed Condition as the basis for the rate adjustment.

f) Any invoice over 30 days past due may be assessed a service charge of 2% APR per month or a charge otherwise permitted by law. Any dispute as to the amount of the invoice must be claimed in writing within 30 days from date of invoice. Client may not offset payment of invoices under any circumstances.

LIABILITY AND LIMITATION OF DAMAGES – Sec. 11

A) KELLER IS NOT LIABLE FOR DAMAGE TO GOODS TENDERED, STORED, OR HANDLED HOWEVER CAUSED UNLESS SUCH DAMAGE RESULTED FROM THE FAILURE BY KELLER TO EXERCISE SUCH CARE REGARDING THEM AS A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER LIKE CIRCUMSTANCES. KELLER IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.

B) GOODS ARE NOT INSURED BY KELLER AGAINST LOSS OR DAMAGE HOWEVER CAUSED.

C) IN THE EVENT OF LOSS OR DAMAGE TO THE GOODS FOR WHICH KELLER IS LEGALLY LIABLE, CLIENT DECLARES THAT KELLER'S LIABILITY FOR DAMAGES ARE LIMITED TO THE LESSER OF \$0.50 PER POUND, OR \$50.00 PER WAREHOUSE RECEIPT, AND NO CLAIM MAY EXCEED THE LIMIT OF KELLER'S LIABILITY INSURANCE, PROVIDED, HOWEVER, THAT SUCH LIABILITY MAY AT BE INCREASED UPON CLIENT'S WRITTEN REQUEST, AND KELLER'S WRITTEN APPROVAL, ON PART OR ALL OF THE GOODS HEREUNDER IN WHICH EVENT AN ADDITIONAL MONTHLY CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION.

D) THE LIMITATION OF LIABILITY REFERRED TO ABOVE IS CLIENT'S EXCLUSIVE REMEDY AGAINST KELLER FOR ANY CLAIM OR CAUSE OF ACTION WHATSOEVER RELATING TO LOSS, DAMAGE, AND/OR DESTRUCTION OF THE GOODS AND WILL APPLY TO ALL CLAIMS INCLUDING INVENTORY SHORTAGE AND MYSTERIOUS DISAPPEARANCE CLAIMS UNLESS CLIENT PROVES BY AFFIRMATIVE EVIDENCE THAT KELLER CONVERTED THE GOODS TO ITS OWN USE. ANY PRESUMPTION OF CONVERSION IMPOSED BY LAW WILL NOT APPLY.

E) WHERE LOSS OR DAMAGE OCCURS TO TENDERED, STORED, OR HANDLED GOODS, FOR WHICH KELLER IS NOT LIABLE, CLIENT WILL BE RESPONSIBLE FOR THE COST OF REMOVING AND DISPOSING OF SUCH GOODS AND THE COST OF ANY ENVIRONMENTAL CLEANUP AND SITE REMEDIATION RESULTING FROM THE LOSS OR DAMAGE TO THE GOODS.

NOTICE OF CLAIM AND FILING OF SUIT – Sec. 12

a) Client must give Keller Notice within a reasonable time, and in no event any later than the earlier of: (i) 60 days after delivery of the goods by Keller or (ii) 60 days after Client is notified by Keller that loss or damage to part or all the goods has occurred.

b) No lawsuit or other action may be maintained by Client or others against Keller for loss or damage to the goods unless timely written claim has been given as provided in this section and unless such lawsuit or other action is commenced by no later than the earlier of: (i) six months after date of delivery by Keller or (ii) six months after Client is notified that loss or damage to part or all of the goods has occurred.

c) When goods have not been delivered, Notice may be given to Client of known loss or damage to the goods. Time limitations for presentation of claim in writing and maintaining of action after Notice begin on the date of mailing of such Notice by Keller.

LIABILITY FOR CONSEQUENTIAL DAMAGES, CHARGEBACKS – Sec. 13

Keller will never be liable for special, indirect, exemplary, punitive, or consequential damages of any kind, including but not limited to lost profits, lost sales, chargebacks, or damages due to business interruption, regardless of whether such damages were foreseeable, or Keller had Notice of the possibility of such damages.

LIABILITY FOR MIS-SHIPMENT– Sec. 14

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

RECALL – Sec. 15

If a recall, field alert, product withdrawal or field correction (together, "Recall") becomes necessary for any goods provided under these Terms, Client shall immediately notify Keller in writing. Keller will not act to initiate a Recall without the express prior written approval of Client unless otherwise required by applicable laws. The cost of any Recall will be borne by Client. Client shall indemnify and hold harmless Keller from all loss, cost, penalty, and expense (including reasonable attorneys' fees) which Keller pays or incurs because of a Recall.

FORCE MAJEURE – Sec. 16

Neither party will be liable to the other for default in the performance or discharge of any duty or obligation under these Terms, except for Client's obligation to pay for services rendered by Keller, when caused by acts of God, hurricanes, tidal waves, flood, tornadoes, cyclone, wind storm, earthquake, public enemy, civil commotion, strikes, labor disputes, work stoppages or other difficulties within the workforce, failure to provide power by the utility provider, intentional or malicious acts of third persons or any other organized opposition, cyber-attacks, viruses, corruption, depredation, accidents, explosions, fire, water sprinkler leakage, moths, vermin, insect, seizure under legal process, embargo, prohibition of import or export of goods, closure of public highways, railways, airways or shipping lanes, governmental interference, order, regulation, or other action(s) by governmental authority, national, regional, or local emergency(ies), plague, epidemic, pandemic, outbreaks for infectious disease or any public health crisis, including but not limited to compliance with related practices required or recommended by governmental or health organizations (including but not limited to quarantine or other employee restrictions) or other contingency(ies), similar or dissimilar to the foregoing, beyond the reasonable control of the affected party. Upon the occurrence of such an event the party seeking to rely on this provision must promptly give Notice to the other party of the nature and consequences of the cause. If the cause is one which nevertheless requires Keller to continue to protect the goods, Client agrees to pay the storage or similar charges associated with Keller's obligation during the continuance of the force majeure. All goods are stored, handled, and transported at Client's sole risk of loss, damage, or delay caused by any of the above.

RIGHT TO STORE GOODS – Sec. 17

Client states that it has legal possession of the goods and has the right and authority to store them with Keller. Client agrees to indemnify and hold harmless Keller from all loss, cost, and expense (including reasonable attorneys' fees) which Keller pays or incurs because of any dispute or litigation, whether instituted by Keller or others, respecting Client's right, title, or interest in the goods. Such amounts will be charges in relation to the goods and subject to Keller's lien.

ACCURATE INFORMATION – Sec. 18

Client states that there is no known potential health, safety and/or environmental hazards associated with the storage and handling of the goods that have not been disclosed to and acknowledged by Keller. Notwithstanding, Client will provide Keller with information concerning the goods which is accurate, complete, and sufficient to allow Keller to comply with all laws and regulations concerning the storage, handling, and transporting of the goods. Client will indemnify and hold Keller harmless from all loss, cost, penalty, and expense (including reasonable

attorneys' fees) which Keller pays or incurs because of Client failing to fully discharge this obligation.

CONFIDENTIALITY – Sec. 19

a) The Parties shall keep in confidence and not disclose to any third party any confidential or proprietary information ("Confidential Information") that either learns about the other Party, such as, but not limited to, the rates, value, origin, destination, or consignee of any goods or shipment made hereunder. The Parties may disclose such terms and information to the extent required by law, to obtain financing, to substitute service providers to the extent necessary to provide such substitute service, to their respective parent and/or affiliate companies, or to auditors retained for the purpose of assessing the accuracy of freight bills.

b) Keller will maintain and enforce safety and physical security procedures with respect to its possession and maintenance of Confidential Information that comport with the standard of care outlined in Section 11 of these Terms and will not be liable for any breach of security or unauthorized access affecting Confidential Information which could not be avoided by the exercise of reasonable care.

SEVERABILITY, WAIVER, AND ASSIGNMENT – Sec. 20

a) If any provision of these Terms, 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 these Terms will not be affected thereby but will remain in full force and effect.

b) Keller's failure to require strict compliance with any provision of these Terms will not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of these Terms.

c) The provisions of these Terms will be binding upon the heirs, executors, successors and assigns of both Client and Keller; contain the sole agreement governing goods tendered to Keller; and cannot be modified except by a writing signed by Keller and Client.

d) Client may not assign or sublet its interest or obligations herein, including, but not limited to, the assignment of any monies due and payable, without the prior written consent of Keller.

LIEN – Sec. 21

Keller has a general warehouse lien for all lawful charges for storage and preservation of the goods, and 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 from Client. Keller further claims a general warehouse lien for all such charges, advances, and expenses with respect to any other goods stored by Client in any other facility owned or operated by Keller. To protect its lien, Keller may require advance payment of all charges prior to shipment of goods. Keller will not subordinate its lien to any lender, financial institution, or any other third party.

DOCUMENTS OF TITLE - Sec. 22

Documents of title, including warehouse receipts, may be issued either in physical or electronic form at the option of the parties. Any inconsistencies between the terms of a warehouse receipt and these Terms will be governed by these Terms.

GOVERNING LAW AND JURISDICTION – Sec. 23

These Terms and the legal relationship between the parties are governed by and construed in accordance with the substantive laws of the state where Keller's 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 these Terms may be brought only in the appropriate state or federal court in the state where Keller's Facility is located.

USE OF CLIENT'S NAME AND LIKENESS – Sec. 24

Client grants Keller the non-exclusive right to use Client's name, product, artwork, advertising, labeling, and packaging information in Keller's marketing materials for the purpose of promoting the Keller's services. Keller agrees to use reasonable efforts to ensure that all marketing materials accurately reflect Client's name and product.