

TERMS AND CONDITIONS FOR WAREHOUSING

NIPPON EXPRESS CANADA LTD.

Definitions – Section 1

In these Terms and Conditions, “Goods” means the goods delivered to the Warehouseman for storage and/or cross-docking, unloading, breakdown, repacking, reloading and forwarding; “Warehouseman” means the issuer of this receipt, its employees, servants, successors and assigns; and the words “owner”, “storer”, or “depositor” shall mean the party for whose account the Goods are being stored.

Contract – Section 2

Subject to the legislation in force governing warehouse receipts in the province where the goods covered by this Receipt are stored, this Receipt including the Terms and Conditions hereinafter set out, when delivered or mailed to the owner or depositor of the goods at his address last known to the warehouseman, shall constitute the contract between the owner or depositor and the warehouseman; provided that the owner or depositor may within twenty days after such delivery or mailing, notify the warehouseman in writing that he does not accept the contract and forewith thereafter shall pay the warehouseman’s lien for charges and remove the goods. If such notice is not given then this Receipt constitutes the contract. This contract may be cancelled by either party upon 30 days written notice and is cancelled if no storage or other services are performed under this contract for a period of 180 days.

Tender for Storage – Section 3

All Goods tendered for storage shall be delivered at the warehouse properly marked and packed for handling. The storer 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 and other services desired.

Warehouseman’s Lien – Section 4

All advances and charges are due and payable prior to delivery or transfer of the stored goods. The warehouseman shall have a lien upon, right of retention and security interest in all goods of storer at any time heretofore and hereafter deposited by storer in any warehouse owned or operated by the warehouseman. Such lien, right of retention and security interest shall be for all charges, advances and expenses in relation to such goods of storer, whether or not heretofore released from the warehouse. In the event of nonpayment of any such amounts, the warehouseman has the right, after reasonable notice, to sell or otherwise dispose of the goods in any manner he may reasonably think fit to satisfy his lien.

Basis of Charges – Section 5

Any charge made with respect to the goods covered by this receipt shall conform to the warehouseman’s quotation and/or tariff in effect at the time the service is performed.

Access and Inspection – Section 6

The storer may, subject to the warehouseman’s security and insurance regulations and other reasonable limitations, have access to the goods at any reasonable time, provided at least 48 hours written notice is given and provided the storer or its authorized representative is accompanied by an employee of the warehouseman, whose time shall be an additional charge to the storer.

Dangerous Goods – Section 7

It is the storer’s responsibility to provide the warehouseman in advance with detailed, written information and instructions on any of its Goods that may be considered hazardous, whether or not they are regulated under the *Transportation of Dangerous Goods Act* or other applicable legislation. If the storer fails to do so, the warehouseman shall have the right to refuse to accept such Goods when tendered for storage or other services and shall not be liable for any loss, misconsignment or damage of any nature to such Goods. The storer warrants that the Goods, the packaging and marking thereof comply in all respects with the provisions of any federal or provincial legislation or regulations governing the handling or storage of dangerous goods. The Depositor assumes all liability for costs incurred and/or damages resulting from storer’s failure to do so. The storer shall indemnify, defend and hold the warehouseman (including its officers, directors, parent and affiliated companies, employees, servants and agents) harmless from and against any loss, liability, damage, penalty, demand, expense, claim of whatever type or nature by or on behalf of any person, including but not limited to damage or destruction of property or injury (including death) to any person, arising out of the Goods being stored at the Warehouse facility or tendered for transportation or handled by third parties retained by the warehouseman.

Removal of Goods – Section 8

No explosive or other dangerous article that may, in the opinion of the warehouseman, create a condition hazardous to any personnel or goods in the warehouse shall be delivered to the warehouse and any such article may, upon being discovered, be destroyed, dumped, sold or otherwise disposed of as the warehouseman reasonably sees fit, the whole at the risk and expense of the owner and/or depositor. The warehouseman shall have the right to require the removal from its premises of any other goods of any kind or description, at any time, without stated reasons, upon written notice of not less than thirty (30) days from the end of the current storage month.

Liability of Warehouseman – Section 9

- (a) The responsibility of the warehouseman is the reasonable care and diligence required by the laws of the province where the goods are stored.
- (b) The quality, condition, contents and value of goods stored are not known to the warehouseman except as declared by the storer and described on the face of the Receipt.
- (c) Goods covered by the Receipt are not insured by the warehouseman.
- (d) Without limiting the generality of the foregoing, it is specifically declared that:

- (i) All goods are stored at the owner’s risk of loss, damage or delay in the delivery caused by or through inaccuracies, obliteration or absence of marks, numbers, address or description, act of God, irresistible force, enemies of the Queen, civil or military authorities, insurrection, riot, strikes, picketing or any other labour trouble, water, steam, sprinkler leakage, floods, rain, wind, storm, fire, frost, vermin, heating or corruption, deterioration, drainage, dampness, rust, decay, collapse of the building, inevitable accident, depreciation or perishing by elapse of the time, changes in temperature, contact with or odours from other goods, inherent defects, lack of any special care or precaution, injury to articles insufficiently protected or arising from the nature of the goods, loss in weight, insufficient cooerage, boxing, crating or packing, ordinary wear and tear in handling, leakage, concealed damage, or any cause beyond the control of the company or failure to detect any of the foregoing. All storage and other applicable charges must be paid on goods stored for an additional time, or lost or damaged by any of the above causes.

- (ii) The legal liability of the warehouseman shall be strictly limited to the lesser of the monetary amount of the damage incurred or 100 times the monthly storage rate on any one package or stored unit with the contents (or, in cases where the warehouseman’s charges are calculated for other than actual storage, maximum \$50.00 per unit) unless the owner specifically requests a higher limit in writing and declares an excess value, in which case the warehouseman may, at his option, accept liability and assess an additional charge to the monthly storage or other applicable rate.

- (e) Where loss or injury occurs to stored goods, for which the warehouseman is not liable, the storer shall 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 injury to the goods.
- (f) The warehouseman shall not, in any event, be liable for any claim of any type whatsoever with respect to the stored goods unless such claims is presented in writing within a reasonable time, not exceeding 30 days after the storer learns of, or, in the exercise of reasonable care, should have learned of the loss, damage or destruction of said goods.

General – Section 10

- (a) All incoming shipments should be consigned to the storer, c/o the warehouseman, freight prepaid. The warehouseman reserves the right to refuse acceptance of any goods improperly consigned or shipped freight collect and shall not be liable or responsible for any loss, injury or damage of any nature to or related to, such goods.
- (b) If a checker is not furnished by the storer or transportation company, the warehouseman’s load or unload count shall be conclusively deemed to be correct.
- (c) The warehouseman shall have no responsibility for errors resulting from the corruption of electronically transmitted data, or from verbal or telephoned shipping instructions, unless written confirmation of such instructions is received not less than twenty four hours prior to the shipment of the goods.
- (d) When errors in shipment occur, any liability of the warehouseman shall be strictly limited to the transportation costs involved to rectify any such error, and shall not, under any circumstances, include liability for damages due to the acceptance or use of said goods.
- (e) The warehouseman shall not be responsible for delays in loading nor unloading railway cars, trailers or other containers, nor for demurrage charges or other time penalties arising from any delay which cannot reasonably be avoided by the company in the normal course of its business.
- (f) A charge, in addition to regular rates, will be made for merchandise in bond pursuant to the Customs Bonded and Sufferance Warehouse Regulations of the Government of Canada.
- (g) Warehouseman shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods unless storer establishes such loss occurred because of warehouseman’s failure to exercise the care required of warehouseman under Section 9 above.
- (h) Storer represents and warrants that depositor is lawfully possessed of the goods and has the right and authority to store them with the warehouseman. Storer agrees to indemnify and hold harmless the warehouseman from all loss, cost and expense (including reasonable lawyers’ fees) which warehouseman pays or incurs as a result of any dispute or litigation, whether instituted by warehouseman or others, respecting storer’s right, title or interest in the goods. Such amounts shall be charges in relation to the goods and subject to warehouseman’s lien.
- (i) Warehouseman shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind.
- (j) If any provision of this receipt, or any applicable 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. Warehouseman’s failure to require strict compliance with any provision of the receipt shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provisions of this warehouse receipt. The provisions of this warehouse receipt shall be binding upon the storer’s heirs, executors, and, cannot be modified except in writing signed by the warehouseman.
- (k) The Parties agree that these Terms and Conditions shall be governed by the law of the Province within Canada, in which the Warehouse Facility is located. By accepting the services provided under these Terms and Conditions, the storer irrevocably attorns to the exclusive jurisdiction of the Courts of that Province.
- (l) Documents, including this receipt, may be issued either in physical or electronic form at the option of the Parties.