



## Warehousing Standard Terms and Conditions

Capitalized terms used, but not otherwise defined herein, shall have the meaning ascribed to such terms in Section 21.

These Warehousing Standard Terms and Conditions (these "Terms") as well as the terms and conditions of any Warehousing Agreement between the Company and Customer (a "Warehousing Agreement") or, in the absence of a Warehousing Agreement, any Company-provided rate quote/confirmation (the "Quote"), if any, apply to the provision or arrangement, as applicable, of any Services by the Company. Customer accepts these Terms and forms a contract by doing any of the following: (a) signing or otherwise accepting a Quote or Warehousing Agreement, (b) delivering or causing to be delivered to the Company any Goods; (c) accepting these Terms in writing; (c) paying the Company any fees with respect to Services or (d) any other conduct that recognizes the existence of a contract with respect to Services. Any additional or different terms proposed by Customer, whether in Customer's purchase order, request for proposal or quotation conditions (however they may be called), acknowledgement or otherwise, shall be deemed for information purposes only and shall not be given any force or effect, notwithstanding anything contained therein.

The Company may change these Terms at any time without prior notice to Customer. The changed Terms shall be in effect immediately. The version of these Terms in effect on the date a shipment is tendered to the Company will apply. The current version of these Terms may be found at: <https://nipponexpressusa.com/customer-care/downloads/>.

1. **Storage Location.** The Goods will be stored at a Facility. However, the Company may move, upon five (5) days' prior notice to Customer, any Goods in storage from any Facility to any of the other warehouses belonging to or operated by the Company, or, with Customer's approval (not to be unreasonably withheld or delayed) belonging to or operated by a third party. The Company may, without notice, move the Goods within the Facility in which the Goods are stored at any time.

2. **Goods; Storage Conditions.** The Company shall perform Services for only the types of Goods that it has agreed in writing with Customer to provide Services. The Company may, at its discretion, reject or require the Customer to remove at Customer's sole cost and expense Goods that are not the type of Goods for which the Company has agreed in writing to provide Services. Goods will generally be stored "as received," but palletized Goods may be broken down to facilitate storage in the Company's sole discretion. Regardless of the commodity type, the Goods will be stored under general warehousing conditions. Unless the Company expressly agrees in a writing executed by it, the Goods will not be stored in a temperature or humidity-controlled environment.

3. **Tender for Storage.**

3.1. All Goods for storage must be delivered to the Facility properly marked and packaged for handling. The Company may, at its discretion, reject or require the Customer to remove Goods that are not properly packaged and labeled for ordinary storage, handling, and transportation. Prior to such delivery, Customer shall furnish shipping documents indicating quantity, marks, and item numbers of the Goods, as well as the class of storage and other services desired.

3.2. Goods may be delivered to the Facility only during normal business hours (9:00 a.m. to 5:00 p.m., Monday through Friday or as otherwise notified by the Company), unless the Company has agreed otherwise in writing and then subject to additional charges with respect thereto.

3.3. Customer will ensure that all Goods shipped to any Facility identify Customer on the Bill of Lading or other contract of carriage as the named consignee, in care of the Company and Goods shall not be shipped to the Company as named consignee. In the event that the Goods are shipped to the Company as named consignee, (a) the Company may reject the Goods and refuse delivery without liability or obligation and Customer shall be responsible for any costs associated with such rejection, and (b) Customer shall immediately notify the Carrier in writing, with a copy of such notice to the Company, that the Company named as consignee is the "in care of party" only and has no beneficial title or interest in the Goods and is not responsible for any amounts owing with respect to the Goods. If the Company accepts delivery, it shall be understood that the Company has no beneficial title or interest in such property. Whether the Company accepts or refuses Goods shipped in violation of this Section 3, Customer agrees to indemnify and hold the Company harmless from all Claims for transportation, storage, handling and other charges relating to such Goods, including undercharges, rail demurrage, driver, truck or intermodal equipment detention and other charges of any nature whatsoever.

3.4. With respect to any Goods that are imported, Customer will be importer of record and will be solely responsible for all duties, taxes and fees with respect to such imported Goods.

3.5. Unless the Company has failed to exercise reasonable care and diligence in accordance with industry standards, it shall not be responsible for any delays in unloading inbound containers or trailers, nor for delays in obtaining containers for outbound shipments.

3.6. If the Company is unable to carry out Customer's instructions because of force majeure events or other causes beyond its reasonable control, the Goods will continue to be subject regular storage charges.

4. **Hazardous Materials.** Unless the Company expressly agrees in writing, the Company will not accept any type of Hazardous, Dangerous or Regulated Goods. Customer shall not tender any such Hazardous, Dangerous or Regulated Goods to the Company. When any Hazardous, Dangerous or Regulated Goods are tendered to the Company pursuant to an express agreement, Customer shall provide the Company with a complete and accurate description of such Hazardous, Dangerous or Regulated Goods, as well as all information and instruction necessary for the safe storage, handling, and/or transportation of such Goods. All Hazardous, Dangerous or Regulated Goods must be properly packaged and labeled by Customer for ordinary storage, handling and transportation, in accordance with industry standards and applicable laws and regulations. Any Hazardous, Dangerous or Regulated Goods delivered to the Company in violation of this Section may be rejected or discarded at the Company's discretion, at Customer's expense. Customer shall indemnify, defend, and hold harmless the Company from and against all Claims related to or arising out of Customer's noncompliance with any applicable laws and regulations, or breach of this Agreement. Goods which, in the opinion of the Company or the Carrier or other person who has custody or possession thereof, are or may become dangerous and present a hazard or become a nuisance (due to leakage, odors, appearance or other reasons) may at any time or place be unloaded, destroyed, stored, disposed of or rendered harmless at the expense of Customer and without liability on the part of the Company. The Company is not responsible for reviewing any shipping instructions provided by Customer for classifying commodities to a hazardous materials class or for verifying whether the commodity is subject to any hazardous materials regulation or is properly classified.

5. **Storage Charges.**

5.1. Customer shall pay the storage charges and service fees at the rates set forth in the Warehousing

Agreement or Quote or otherwise designated by the Company without offset for disputed claims. All Goods are stored on a month-to-month basis. All charges for storage are per package, or other unit specified in the Quote or otherwise by the Company, in each case per month. The Company may, upon thirty (30) days' written notice to Customer, revise its rates during the time the Goods are in storage.

5.2. Notwithstanding the above, (a) a full month's storage charge will apply to all Goods received between the first and the 15th, inclusive, of a calendar month; (b) one-half month's storage charge will apply to all Goods received between the 16th and last day, inclusive, of a calendar month; and (c) a full month's storage charge will apply to all Goods in storage on the first day of a calendar month. Standard services are limited to the ordinary labor involved in receiving tendered Goods at the warehouse door, placing the Goods in storage, and returning the Goods (that are to be dispatched from the Facility) to warehouse door. Handling charges do not include unloading or loading of vehicles or containers, unless so specified.

5.3. Additional charges apply to other specified services at the rates set forth in Warehousing Agreement or the Quote, as applicable, and will be separately billed as such services are performed. Labor provided by the Company that is required for work other than ordinary Services will be charged to Customer at the Company's then current standard hourly labor rate or such other charges established in writing by Customer and the Company. Such special services requested by Customer, including 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. Any physical inventory work, including an annual or quarterly physical inventory, will be completed at Customer's request and expense at an hourly labor rate. Such hourly labor rate will be established by mutual agreement. Dunnage, bracing, packing materials or other special supplies may be provided for Customer at a charge in addition to the Company's cost.

5.4. A charge in addition to regular rates will be made for merchandise in bond. Where a warehouse receipt covers Goods in U.S. Customs bond, the Company will have no liability for Goods seized or removed by U.S. Customs.

5.5. All charges are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer is subject to and shall pay the minimum handling charge per lot and a minimum storage charge per lot per month as specified in the Quote or Warehousing Agreement.

6. **Payment Terms.** Customer shall pay all charges due within thirty (30) days from the date of the Company's invoice. Customer shall make all payments hereunder by wire transfer and in US dollars. Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest legal rate, whichever is lower, calculated and compounded daily from the date due until paid in full. Customer shall reimburse the Company for all costs incurred in collecting any amounts due hereunder, including, without limitation, attorneys' fees and expenses. In addition to all other remedies available under this Agreement or at law, the Company shall be entitled to suspend the release of any Goods or cease performance of any Services if Customer fails to pay any amounts when due hereunder. Customer may not withhold payment of any amounts due and payable by reason of any claim or dispute with the Company. In addition, the Company may require prepayment or enforcement of a general warehouse lien for services due and future services when notice of termination is received.

7. **Liability and Limitations of Damages.**

7.1. The Company's custody for the Goods and burden of risk or liability with respect thereto hereunder will not begin until after both of the following events have occurred: (1) the Trailer delivering the Goods into the Facility has been physically opened by the Company for purposes of transloading the Goods into another

Trailer or placing the Goods in the Facility for storage and (2) the Bill of Lading or delivery receipt for such inbound load has been signed by the Company. The Company's custody and liability for the Goods and burden of risk will end after the Goods have been loaded into the outbound Trailer, the Trailer has been sealed and the outbound carrier has been notified that the Goods are available for pick-up.

7.2. The Company's quoted rates are based on the "released value" of the cargo and do not include cargo insurance. The Customer is encouraged to purchase all-risk cargo insurance to cover the full value of its Goods. Customer is responsible for maintaining property insurance covering the Goods, both while warehoused and in transit, including loading and unloading and the Customer shall cause its insurer to waive all rights of subrogation against the Company and its insurers. Customer may consult an insurance broker to arrange insurance appropriate to Customer's needs or, as an alternative, where the Company agrees to do so, the Company may offer, for an additional cost and through its designated insurance broker, to arrange for cargo policies to be issued in Customer's name. Following the issuance of any such policy through their insurance underwriter, the Company will have no further duty regarding cargo insurance and no liability for loss of, delay of, or damage to the Goods during transport or storage, whether covered by insurance on the Goods or not, and whether such loss, delay or damage has been caused or contributed to by its negligence or breach of this Agreement, or otherwise. Any coverage on the Goods will be subject to the terms and conditions of the specific policy or policies procured. The Company is not liable if Customer, for any reason whatsoever, fails to recover a loss in whole or in part from the insurer under any applicable policy, even though the premium charged by the insurer may be different from the Company's charges to Customer. Where loss or damage occurs to tendered, stored or handled Goods for which the Company is not liable, Customer will 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 or damage to the Goods.

**7.3. THE COMPANY SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO THE GOODS, HOWEVER CAUSED, UNLESS SUCH LOSS OR DAMAGE RESULTED FROM THE FAILURE BY THE COMPANY TO EXERCISE THE LEVEL OF CARE WITH REGARD TO THE GOODS THAT A REASONABLY CAREFUL PERSON WOULD HAVE EXERCISED UNDER LIKE CIRCUMSTANCES. THE COMPANY IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.**

**7.4. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM LIABILITY, WHETHER THE CLAIM IS FOUNDED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, OF THE COMPANY FOR ANY LOSS OR DAMAGE TO GOODS IN ANY ONE OCCURRENCE WILL BE LIMITED TO THE APPLICABLE AMOUNTS SET FORTH BELOW.**

- (i) FOR LOSS OR DAMAGE IN CONNECTION WITH THE SERVICES, THE COMPANY'S MAXIMUM LIABILITY WILL BE LIMITED TO THE LEAST OF (1) THE ACTUAL COST TO REPAIR ANY DAMAGED GOODS (2) CUSTOMER'S LANDED COST OF ANY LOST GOODS OR DAMAGED GOODS THAT ARE NOT REPAIRABLE AND (3) 50 CENTS PER POUND FOR ANY LOST OR DAMAGED GOODS, NOT TO EXCEED \$5,000 PER OCCURRENCE.**
- (ii) FOR LOSS OR DAMAGE INCLUDING LOSS OR DAMAGE TO GOODS IN-TRANSIT OR OCCURRING IN CONNECTION WITH ANY OTHER SERVICES PROVIDED BY THE COMPANY, THE LESSER OF (1) THE AMOUNT OF THE FREIGHT CHARGES IMPOSED WITH RESPECT TO SUCH GOODS, (2) TWO THOUSAND (\$2,000.00) DOLLARS, (3) THE LIABILITY OF THE CARRIER UNDER THE APPLICABLE BILL OF LADING.**

PROVIDED THAT SUCH LIABILITY LIMITS MAY BE INCREASED UPON CUSTOMER'S WRITTEN REQUEST AND THE COMPANY'S ACCEPTANCE THEREOF IN WRITING ON PART OR ALL OF THE GOODS HEREUNDER IN WHICH EVENT AN ADDITIONAL MONTHLY CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION.

7.5. Except as specifically provided in this Agreement, the Company makes no representation, nor offers any warranties of any kind regarding the Services provided hereunder.

**7.6. IN NO EVENT SHALL THE 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 THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY THE COMPANY, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

7.7. If the Company negligently mis-ships Goods, the Company shall pay the reasonable transportation charges incurred to return the mis-shipped Goods to the facility as the sole and exclusive remedy of the Customer; provided that the Customer has paid the original charges for the shipment. If the consignee fails to return the Goods, the Company's maximum liability shall be for the lost or damaged Goods as specified in Section 7.4 above, and the Company shall have no liability for damages due to the consignee's acceptance or use of the Goods whether such Goods be those of the Customer or another.

7.8. The Company will not be liable for any Claims to the extent arising out of or relating to: (a) the packaging, loading, unloading, blocking, bracing or securing of the Goods by any Person other than the Company; (b) the inherent vice or defect in the Goods, including rusting of metals, swelling of wood caused by humidity, moisture or condensation, deterioration of perishable products, or damages caused by heat or cold; (c) any force majeure events as described in these Terms; (d) an act, omission or default of Customer, including the consignor, the consignee, the beneficial owner of the Goods or other third party logistics provider; (e) shipments stopped and held in transit at Customer's request or by any Governmental Authority; (f) the violation of any applicable law or regulation by Customer or the Goods; (g) the lack of or insufficiency of or the defective condition of the packaging in which the Goods the goods are shipped; and (h) strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general. Customer will defend, indemnify and hold the Company harmless from any Claim for loss, damage or delay to Goods in excess of the liabilities assumed under, or the limitations contained in, these Terms or filed other than in accordance with these Terms.

7.9. If the Company has paid Customer for the loss of any Goods and the Goods are subsequently found, Customer shall provide the Company written notice thereof and shall immediately refund to the Company the amount previously paid for such lost Goods.

## **8. Notice of Claim and Filing of Suit.**

8.1. Claims by Customer and all other persons must be presented in writing to the Company within a reasonable time, and in no event any later than the earlier of: (i) 60 days after delivery of the Goods by the Company or (ii) 60 days after Customer is notified by the Company that loss or damage to part or all of the Goods has occurred.

8.2. No lawsuit or other action may be maintained by Customer or others against the Company for loss or damage to the Goods unless timely written claim has been given as provided in Section 8.1 and unless such lawsuit or other action is commenced by no later than the earlier of: (i) nine months after date of delivery by the Company or (ii) nine months after Customer is notified that loss or damage to part or all of the Goods has occurred.

8.3. When Goods have not been delivered, notice may be given of known loss or damage to the Goods by mailing of a letter via certified mail or overnight delivery to the Customer. Time limitations for presentation

of claim in writing and maintaining of action after notice begin on the date of mailing of such notice by the Company.

9. **Insurance.** As stated above, the Company's pricing for Services is premised upon the Company's limited liability. The Company does not insure the Goods for the benefit of Customer against any loss or damage, nor do the Company's storage rates include insurance unless so specified in writing. Customer must maintain its own insurance covering the full replacement value of the Goods for the entire period of storage. Where Customer procures such insurance, Customer's insurance shall be primary and not contributory, and Customer waives all rights of subrogation on behalf of its insurers for any loss or damage in excess of the Company's standard liability limits set forth in this Agreement.

10. **Warehouse Management System; Facility Receipts.** The Company may provide Customer access to the Company's Warehouse Inventory Management System and other Electronic Data Interchange Systems in connection with the Company's provision of Services (the "Company Systems"). Customer agrees to abide by the Company's use terms and technical and security requirements applicable to the Company Systems. No third-party access to the Company Systems is permitted without the Company's prior written consent. Any access granted to Customer may be revoked at any time, at the Company's sole discretion, and access will terminate automatically upon the termination of this Agreement. Since the parties intend to use the Company's WMS to track the movement of Goods from and to the Facility, Customer hereby waives the issuance of separate warehouse receipts for each lot of Goods deposited.

11. **Termination.** These Terms shall apply to all Services. Either party may terminate the Services at any time without cause upon sixty (60) days' written notice. If either party defaults under this Agreement, the non-defaulting party may terminate this Agreement immediately upon written notice without prejudice to its right to seek appropriate damages from the defaulting party. The following events constitute defaults: (i) If either party fails to perform any covenant or meet any obligation under this Agreement and such failure continues for thirty (30) days after written notice of the default is provided to the defaulting party; or (ii) If Customer fails to pay any amount due hereunder within sixty (60) days whether or not a notice under "(i)" above is sent to the Customer. All rights and remedies accruing before termination and any terms which by their nature would survive same, shall survive any cancellation, termination or expiration of the Services. Notwithstanding any termination by the Customer, these Terms shall continue to apply during any period where Goods are under the custody or control of the Company as well as respect to any Services provided by the Company prior to termination.

12. **Force Majeure.** The Company shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of the Company including, without limitation, acts of God, flood, fire, earthquake, explosion, severe weather, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, disease outbreak (and efforts to mitigate), lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, equipment, labor, Trailers or telecommunication breakdown or power outage, however caused.

13. **Customer Representations and Warranties.** Customer represents, warrants and covenants to the Company that:

13.1. The Customer has all right, title and interest in and to, and is in lawful possession of, the Goods and has the right and authority to store the Goods with the Company.

13.2. The Customer has complied with, and shall comply with, all laws, rules and regulations applicable to the Customer, the Goods and/or the shipment thereof.

13.3. Customer agrees to indemnify and hold the Company harmless from all loss, cost and expense, including reasonable attorneys' fees, which the Company pays or incurs as a result of any dispute or litigation, whether instituted by the Company or others, respecting Customer's right, title or interest in the Goods.

14. **Inspection.** All Goods are subject to inspection by the Company and applicable government agencies. The Company may, but does not have the obligation to, open or inspect the Goods.

15. **Access.** Upon reasonable notice and subject to such conditions as may be required by the Company, including, safety and security rules, and the Customer having paid all amounts owing to the Company in full, the Company will permit the Customer reasonable access to inspect the Goods in storage during normal business hours.

16. **Right of Detention and Lien; Right to Sell Goods; Removal.**

16.1. All Goods (and documentation with respect thereto) shall be subject to a particular and general lien and right of detention in favor of the Company for all monies owing either in respect of such Goods, or for any particular or general balance or other monies owed, whether then due or not, by Customer, consignor, consignee, or owner of the Goods to the Company, including, without limitations, for charges for storage and preservation of the Goods, Claims for money advanced on behalf of Customer, 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 and whether the Goods are located at the Facility or any other location owned or controlled, directly or indirectly, by the Company. In order to protect its lien, the Company reserves the right to require advance payment of all charges prior to shipment of Goods.

16.2. The Company may, upon written notice of not less than 30 days to Customer, require the removal of any Goods from the Facility. If Goods are not removed before the end of the notice period, the Company may sell them in accordance with applicable law. If the Company in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of the Company's lien before the end of such 30-day notice period, the Company 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. While the Goods remain stored at a Facility, Customer shall be liable to pay storage rates designated by the Company.

16.3. Upon any termination of the Services, Customer will cause all Goods to be removed from the Facility before the termination effective date; provided however, that the Company may require that all outstanding amounts owed to any member of the NX Group be paid before it permits the release of any remaining Goods from the Facility.

17. **Confidentiality.** For the duration of this Agreement and two (2) years thereafter, each party shall keep confidential and not use or disclose except to the extent necessary to perform its obligations, all information it learns about the other party's business under this Agreement ("Confidential Information"), which is identified as being proprietary and confidential, or which it should reasonably know is proprietary information of the other party; provided that this Section 17 does not apply to information that (a) is or has been lawfully disclosed to party receiving the information ("Receiving Party") by a third party not known by the Receiving Party to be under an obligation of confidentiality to party disclosing the information hereunder ("Disclosing Party"); (b) is known to or was in possession of the Receiving Party prior to the time of its receipt from the Disclosing Party; (c) was or is independently

developed by the Receiving Party without reference to, and totally independent from, the Confidential Information; or (d) was in the public domain at the time of the disclosure, or becomes generally known/available to the public (other than as a result of the breach of this Section 17). Notwithstanding the foregoing, Receiving Party may disclose Confidential Information without liability to the extent required by law, rule, regulation, international convention or treaty or requested or required by a governmental authority (collectively, "Legal Requirements"). Receiving Party shall, to the extent practicable and not prohibited, give Disclosing Party written notice of any disclosure required by Legal Requirement and shall reasonably cooperate in good faith (at the sole cost and expense of Disclosing Party) within any reasonable and lawful actions which Disclosing Party takes to resist such disclosure, limit the information to be disclosed or limit the extent to which the information so disclosed may be used or made available to third parties.

18. **Notice.** All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given or made when (a) delivered personally to the recipient, (b) telecopied to the recipient, or delivered by means of electronic mail (with hard copy sent to the recipient by reputable overnight courier service (charges prepaid) that same day) if telecopied/mailed before 5:00 p.m. Chicago, Illinois time on a business day, and otherwise on the next business day, or (c) one business day after being sent to the recipient by reputable overnight courier service (charges prepaid). All notices and other communications required to or permitted to be given in connection with this Agreement shall be in writing and shall be delivered personally, or by courier or certified mail, to the following addresses (or such other address as designated in writing by notice from a party to the other party):

<p>If to the Company:  NIPPON EXPRESS U.S.A., INC.  To address of the Facility  Attention: General Manager</p> <p>With a copy to (which shall not constitute notice):  NIPPON EXPRESS U.S.A., INC.  800 N. IL Route 83  Wood Dale, IL 60191  Attention: General Counsel</p>	<p>If to Customer:  To the address below Customer's signature on the signature page to the Warehousing Agreement, or if no Warehousing Agreement, in the Company's records</p>
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19. **Governing Law and Arbitration.** This Agreement and the rights and obligations of the parties hereunder shall be interpreted and enforced in accordance with the substantive laws of the state where the Facility is located. All lawsuits arising out of or relating to this Agreement must be brought in the state or federal district courts having geographic jurisdiction over the Facility.

20. **Miscellaneous.** The entire understanding between the parties is set forth herein and in Warehousing Agreement or the Quote, as applicable, and supersedes all prior discussions and agreements between the parties relating to the subject matter hereto. No waiver, amendment or modification of any provisions of this Agreement will be binding upon the Company unless in a writing executed by the Company. These Terms may be amended by the Company by posting a revised version at <https://nipponexpressusa.com/customer-care/downloads/>. Any party's failure to strictly enforce any provision of this Agreement will not be construed as a waiver or as excusing the other party from future performance. If any provision of these Terms is held to be unenforceable for any reason, that provision will be rendered ineffective without invalidating the remaining provisions of these Terms. The use in these Terms of the word "including" means "including, without limitation." The language used in these Terms has been chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party. Neither party may assign its rights or obligations under these Terms without the other party's prior written consent.



21. **Definitions**

"Affiliate" of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise.

"Claims" mean any and all liabilities, claims, losses, suits, actions, costs, fines, penalties, expenses (including attorney's, paralegal's and expert witness' fees, and other costs of defense, investigation and settlement), judgments, or demands on account or damage of any kind whatsoever, including but not limited to personal injury, property damage, cargo damage, environmental damage, or any combination thereof, suffered or claimed to have been suffered by any person or entity as well as the costs of enforcing indemnification obligations and costs of containment, cleanup and remediation of spills, releases or other environmental contamination.

"Company" means Nippon Express U.S.A, Inc., or its successors by merger or otherwise.

"Customer" means the person or entity at whose request, for whose benefit, or on whose behalf the Company provides any Services, including any third-party logistics provider, shipper, consignor, consignee, beneficial cargo owner, or any agent acting on behalf of such person or entity.

"Facility" means a warehouse facility operated by the Company or other warehouse facility contracted by a Company to provide storage, handling, transloading or warehousing services for Customer.

"Goods" means the cargo or goods for which the Company is providing other Services and includes packaging, pallets, packing materials, crates, containers, and any related equipment.

"Hazardous, Dangerous or Regulated Goods" means any hazardous materials, dangerous goods, or products or substances regulated by the U.S. government.

"NX Group" means Nippon Express U.S.A, Inc., Nippon Express Co. Ltd., Nippon Express Holdings, Inc. and all of their Affiliates.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, association or other entity or a governmental entity.

"Services" means all storage, handling, transloading and warehousing services provided by the Company to the Customer.

"Trailer" means a container and chassis, van or a trailer used for the rail, highway or ocean transportation of Goods.