

# **DHL Global Forwarding Terms and Conditions of Warehousing**

## **§1 ACCEPTANCE**

- (a) By accepting DHL Global Forwarding's ("DHL") quotation in writing or by tendering goods to DHL for storage, Customer shall be subject to all of the terms and conditions set forth below (the "Agreement").
- (b) DHL may refuse to accept any such goods in its sole discretion. If DHL accepts such goods, Customer agrees to pay DHL's then prevailing rates and charges as may be assigned and invoiced by DHL and to all terms of this Agreement.

## **§2 SHIPPING**

Customer agrees not to ship goods to DHL as the named consignee. If, in violation of this Agreement, goods are shipped to DHL as named consignee, Customer agrees to notify carrier in writing prior to such shipment, with copy of such notice to DHL, that DHL named as consignee is a warehouseman and has no beneficial title or interest in such property and Customer further agrees to indemnify and hold harmless DHL from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention or charges of any nature, in connection with goods so shipped. Customer further agrees that, if it fails to notify carrier as required by the preceding sentence, DHL shall have the right to refuse such goods and shall not be liable or responsible for any loss, injury or damage of any nature to, or related to, such goods.

## **§3 TENDER FOR STORAGE**

All goods for storage shall be delivered at the warehouse properly marked and packaged for handling. Customer 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.

## **§4 STORAGE PERIOD AND CHARGES**

- (a) All charges for storage are per package or other agreed unit per month.
- (b) Storage charges become applicable upon the date that DHL accepts care, custody and control of the goods, regardless of unloading date or date of issue of any warehouse receipt.
- (c) Except as otherwise agreed in writing between the parties, a full month's storage charge will apply on all goods received between the first and the last day, inclusive, of a calendar month, and a full month's storage charge will apply to all goods in storage on the first day of the next and succeeding calendar months. All storage charges are due and payable on the first day of storage for the initial month and thereafter on the first day of the calendar month.

## **§5 TERMS OF PAYMENT**

- (a) Unless otherwise agreed in writing between the parties, all invoices are due net fifteen (15) days from the date of DHL's invoice.

(b) If Customer disputes any portion of DHL's invoice, it shall pay the undisputed portion of the invoice and notify DHL in writing within 15 days from the original date of the invoice the amount of the invoice that is disputed and the reason for the dispute after which both parties shall endeavor to resolve the disputed portion of the invoice.

(c) Any undisputed amounts that remain unpaid thirty (30) days from the date of invoice will bear interest in the amount of one and one half percent (1.5%) of the unpaid balance calculated monthly. Customer shall be liable for all reasonable attorneys' fees and expenses or collection costs (including contingent attorney fees or collection costs), as applicable, plus all consultant and experts' fees and expenses, court costs, and attendant collection costs arising from or related to failure to pay, when due, any and all amounts owing hereunder.

(d) All payments to be made by Customer to DHL shall be made without offset, and in the event any sum is not paid by the due date, DHL shall, without prejudice to any other right or remedy, be automatically entitled to suspend the provision of services.

(e) Customer must bring all claims for overpayment or duplicate payment against DHL within one hundred eighty (180) days of the date of invoice otherwise such claims shall be considered waived and DHL shall have no liability thereafter as it relates to such claims.

#### **§6 TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS**

(a) Instructions to transfer goods on the books of DHL are not effective until delivered to and accepted in writing by DHL, and all charges up to the time transfer is made are chargeable to Customer of record. 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, a new storage date is established on the date of transfer as determined by DHL's records.

(b) DHL reserves the right to move, at its expense, fourteen (14) days after written notice is sent to Customer, any goods in storage from the warehouse in which they may be stored to any of its other warehouses. DHL will store the goods at, and may without notice move the goods within and between, any one or more of the warehouse buildings which comprises the same warehouse complex.

(c) DHL may, upon written notice to Customer, require the removal of any goods by the end of the succeeding storage month. If goods are not removed before the end of the succeeding storage month, DHL may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods.

(d) If DHL in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of DHL's lien before the end of the succeeding storage month, DHL may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods.

(e) If as a result of a quality or condition of the goods of which DHL had no notice at the time of deposit that the goods are a hazard to other property or to the warehouse or to persons, DHL may (i) require Customer to pick up the goods from the warehouse immediately; (ii) sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest

in the goods; or (iii) dispose of the goods in any lawful manner and shall incur no liability by reason of such disposition. Pending such disposition, sale or return of the goods, DHL may remove the goods from the warehouse and shall incur no liability by reason of such removal.

## **§7 HANDLING**

- (a) The handling charge covers the ordinary labor involved in receiving goods at warehouse door, placing goods in storage, and returning goods to warehouse door.
- (b) Unless otherwise agreed, labor for unloading and loading goods will be subject to a charge. Additional expenses incurred by DHL in receiving and handling damaged goods and additional expense in unloading from or loading into cars or other vehicles not at warehouse door will be charged to Customer.
- (c) Labor and materials used in loading rail cars or other vehicles are chargeable to Customer.
- (d) When goods are ordered out in quantities less than in which received, DHL may make an additional charge for each order or each item of an order.
- (e) DHL shall not be liable for demurrage or detention, delays in unloading inbound cars, trailers or other containers, or delays in obtaining and loading cars, trailers or other containers for outbound shipment.
- (f) When goods are ordered out a reasonable time shall be given to DHL to carry out such instructions.

## **§8 DELIVERY REQUIREMENTS**

- (a) No goods shall be delivered or transferred except upon receipt by DHL of complete written instructions relating to the handling and storage of such goods. If DHL receives goods without such complete written instructions, DHL may refuse to accept such goods or store them in accordance with DHL's standard processes and procedures. DHL shall have no liability when relying on the information contained in any communication received nor shall it have any liability when DHL follows its standard processes and procedures in the event no such written instructions are received.
- (b) When a negotiable receipt has been issued no goods covered by that receipt shall be delivered, or transferred on the books of DHL, unless all receipts, properly endorsed, is surrendered for cancellation, or for endorsement of partial delivery thereon. If a negotiable receipt is lost or destroyed, delivery of goods may be made only upon order of a court of competent jurisdiction and the posting of security approved by the court as provided by law.

## **§9 EXTRA SERVICES**

- (a) Warehouse labor required for services other than ordinary handling and storage will be charged to Customer.
- (b) Special services requested by Customer, including but not limited to, compiling of special stock statements; reporting marked weights, serial numbers or other data from packages; physical check of goods; and handling transit billing will be subject to a charge.
- (c) Dunnage, bracing, packing materials or other special supplies, may be provided for Customer at a charge.

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

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

#### **§10 LIABILITY AND LIMITATION OF DAMAGES**

(a) DHL shall not be liable for any loss or injury to goods stored however caused unless such loss or injury resulted from the failure by DHL to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances and DHL is not liable for damages which could not have been avoided by the exercise of such care.

(b) Goods are not insured by DHL against loss or injury however caused.

(c) Subject to any shrinkage allowances, Customer declares that damages are limited to the lesser of: (i) \$0.50 per pound of lost or damaged goods; or (ii) the replacement value of the lost or damaged goods. Notwithstanding anything in this Agreement to the contrary, Customer hereby waives and releases, for itself and its insurers, any and all rights of recovery, claim, action or cause of action, against DHL, its agents, contractors, officers or employees for loss or damage to the goods that exceeds the liability limits set forth above, and Customer covenants that no insurer shall hold any right of subrogation against DHL. The failure of Customer to secure an appropriate clause in or endorsement to its respective insurance coverage that waives the right of subrogation as provided for above shall not in any manner affect the intended waiver and release, and if Customer's insurance company seeks subrogation against DHL because of the absence of such a waiver and release, Customer shall defend, indemnify and hold DHL harmless from and against such subrogation claim.

(d) Where loss or injury occurs to stored goods, for which DHL is not liable, Customer shall be responsible for the cost of removing and disposing of such goods and the cost of any environmental clean-up and site remediation resulting from the loss or injury to the goods.

#### **§11 NOTICE OF CLAIM AND FILING OF SUIT**

(a) Claims by Customer and all other persons must be presented in writing to DHL within a reasonable time, and in no event longer than either (i) sixty (60) days after the goods have left DHL's care, custody or control, or (ii) sixty (60) days after Customer is notified by DHL that loss or injury to part or all of the goods has occurred, whichever time is shorter.

(b) No action may be maintained by Customer or others against DHL for loss or injury to the goods stored unless timely written claim has been given as provided in paragraph (a) of this section and unless such action is commenced either within nine (9) months after the goods have left DHL's care, custody or control, or within nine (9) months after Customer is notified that loss or injury to part or all of the goods has occurred, whichever time is shorter.

#### **§12 CONSEQUENTIAL DAMAGES EXCLUSION**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIABLE TO THE OTHER FOR ANY LOSS OF PROFIT, LOSS

OF SALES, LOSS OF BUSINESS, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF REPUTATION, PUNITIVE OR EXEMPLARY DAMAGES, OR THIRD PARTY CLAIMS (IN EACH CASE WHETHER DIRECT OR INDIRECT) OR FOR ANY INDIRECT OR CONSEQUENTIAL LOSS EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF THE SAME, AND WITHOUT REGARD TO THE NATURE OF THE CLAIM OR THE UNDERLYING THEORY OR CAUSE OF ACTION (WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR DIRECT DAMAGE TO THE OTHER OR DAMAGE CLAIMED AS A RESULT OF AN INDEMNIFIED CLAIM); PROVIDED HOWEVER, THE PROVISIONS OF THIS §12 SHALL NOT APPLY TO DAMAGES ARISING FROM THIRD PARTY CLAIMS FOR PERSONAL INJURIES OR DEATH TO THE EXTENT CAUSED BY A PARTY'S NEGLIGENCE OR ANY GOVERNMENT FINES OR PENALTIES ARISING OUT OF A PARTY'S VIOLATION OF APPLICABLE LAW.

### **§13 MYSTERIOUS DISAPPEARANCE**

DHL shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods unless Customer establishes such loss occurred because of DHL's failure to exercise the care required of DHL under §10 above. Any presumption of conversion imposed by law shall not apply to such loss and a claim by Customer of conversion must be established by affirmative evidence that DHL converted the goods to DHL's own use.

### **§14 RIGHT TO STORE GOODS**

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

### **§15 ACCURATE INFORMATION**

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

### **§16 SEVERABILITY, WAIVER, CONTRA PROFERENTEM AND FORCE MAJEURE**

- (a) If any provision of this Agreement, or any application thereof, should be construed or held to be void, invalid or unenforceable, by order, decree or judgment of a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect.
- (b) Either party's failure to require strict compliance with any provision of this Agreement shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of this Agreement.
- (c) In the event of a dispute between any of the parties hereto over the meaning of this Agreement, both parties shall be deemed to have been the drafter hereof, and any applicable law that states that contracts are construed against the drafter shall not apply.

(d) Except for Customer's payment obligations hereunder, neither party will be liable for delays in any of its performance hereunder due, directly or indirectly, to causes (whether or not foreseeable) beyond its reasonable control, including without limitation, acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots, civil commotions, acts of terrorism, fire, explosion, flood, criminal acts, computer viruses, third party cyber-attacks or other information security related threats, severe weather conditions, epidemic or pandemic (each a "Force Majeure Event"). Goods remaining in storage during a Force Majeure Event will continue to be subject to regular storage charges. If, by reason of a Force Majeure Event, DHL can only fulfill its obligations by incurring additional costs, then such additional costs shall be agreed to by the parties; provided however, DHL shall not be obligated to continue to perform the services if such costs are not agreed to.

#### **§17 INDEMNIFICATION**

(a) DHL shall indemnify, defend and hold Customer harmless from and against all losses, costs and expenses, including reasonable attorneys' fees, incurred by Customer as a result of or in connection with a third party claim to the extent resulting from (i) bodily injury, death or damage to tangible property (excluding loss or damage to goods which is governed by §10 above) to the extent caused by DHL's negligence or (ii) DHL's violation of applicable law.

(b) Customer shall indemnify, defend and hold DHL harmless from and against all losses, costs and expenses, including reasonable attorneys' fees, incurred by DHL as a result of or in connection with a third party claim to the extent resulting from (i) bodily injury, death or damage to tangible property caused by Customer's negligent acts or omissions; or (ii) Customer's violation of applicable law.

(c) These agreements to indemnify: (i) are expressly conditioned upon receipt of prompt written notice of all such claims by the party from whom indemnification is requested and the full cooperation in the defense of all such claims by the party requesting indemnification, which defense shall be exclusively controlled by the party from whom indemnification is requested; and (ii) shall not extend to claims that have been settled or otherwise compromised by the party seeking indemnification prior to having requested indemnification for such claim; and (iii) shall survive any termination or expiration of this Agreement.

#### **§18 LIEN**

DHL shall have a general lien for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing cooperating, and other charges and expenses in relation to such goods, and for the balance on any other accounts that may be due. DHL further claims a general lien for all such charges, advances and expenses with respect to any other goods stored by the Customer in any other facility owned, operated or subcontracted by DHL. This lien shall also secure payment to DHL for all expenses incurred for collecting and enforcing this lien or any other collection efforts. If any such outstanding charges are not paid within thirty (30) days of DHL's written demand for payment, DHL may sell such goods at public or private sale without advertisement.

#### **§19 ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO THIS AGREEMENT**

Nothing entered hereon shall be construed to extend DHL's liability beyond the standard of care specified in §10 above. Any transportation or freight forwarding services for goods being stored or

handled under this Agreement will be subject to the then applicable DHL air waybill, ocean bill of lading, domestic waybill or other transportation document issued by DHL (each a “DHL Transport Document”) while the goods are in transit. Any other services provided by DHL that are not covered by an applicable DHL Transport Document will be subject to the National Customs Brokers & Forwarders Association of America, Inc. (NCBFAA) Terms and Conditions of Service as adopted by DHL.

## **§20 HAZARDOUS SUBSTANCES**

Customer warrants that it shall not tender or cause to be tendered to DHL under this Agreement any goods which may pose a hazard to health or property or which are inherently dangerous or which require special treatment under any government order or regulation, or which may, in the exercise of reasonable care, require special handling or precautions (collectively “Hazardous Material”) without notifying DHL in writing of the existence of such Hazardous Material and calling to DHL’s attention their hazardous nature prior to such tender. DHL shall have no obligation to accept such Hazardous Material for handling and shall have the right, in its sole discretion, to refuse to perform any services with respect to such Hazardous Material. In the event that DHL, in its sole discretion, should decide to handle such Hazardous Material, Customer shall ensure such Hazardous Materials are properly packaged, labeled and accompanied by their applicable safety data sheets. Handling Hazardous Materials may require payment by Customer to DHL of a premium, which premium shall be agreed to by the parties before such handling by DHL. Additionally, Customer shall indemnify and hold harmless DHL from any and all fines, penalties, damages, claims or suits (including costs and attorney fees) arising out of Customer’s failure to fulfill its obligations under this §20.

## **§21 NOTICES**

All notices given pursuant to this Agreement shall be in writing and shall be accomplished by personal delivery, certified mail (R.R.R.), or overnight courier. Any such notice shall be treated as having been given on the date of actual receipt. All notices sent to Customer shall be sent to Customer’s last known address on file with DHL while all notices sent to DHL shall be sent to Air Express International USA, Inc. d/b/a DHL Global Forwarding, 1210 South Pine Island Road, Plantation, FL 33324, Attention: Legal Department.

## **§22 TRADE NAMES/TRADEMARKS**

Each Party acknowledges the validity of the other Party’s trade names and trademarks, and that it shall have no right to, or interest in any such trade names and trademarks owned, used or claimed now or in the future by the other Party, its parent, affiliates and/or any subsidiaries.

## **§23 ASSIGNMENT**

Neither Party shall assign, sell, transfer, delegate or otherwise dispose of, whether voluntarily or involuntarily, this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided, however, either Party may assign, sell, transfer, delegate or otherwise dispose of this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party solely to a subsidiary or an affiliate in connection with a merger, consolidation, corporate reorganization or sale of all or substantially all of such Party's assets. Any purported assignment, sale, transfer, delegation or other disposition by a Party, except as permitted

herein, shall be null and void. The provisions of this Agreement shall be binding upon Customer's heirs, executors, successors and permitted assignees.

**§24 GOVERNING LAW**

This Agreement shall in all respects be governed by and interpreted in accordance with the laws of the State of Florida, exclusive of its choice of law and conflict of law jurisprudence.

**§25 ENTIRE AGREEMENT**

This Agreement is intended by the Parties to be the final, total and exclusive expression of their mutual relationship with respect to the services contemplated hereunder. The Parties shall not be bound by any representations, promises, inducements or agreements, verbal or written, prior or contemporaneous, not expressly set forth or referenced in this Agreement.