

General Terms and Conditions of Warehouse Receipt

Del Corona & Scardigli U.S.A. INC. and Affiliates

CONTRACT TERMS AND CONDITIONS

SECTION 1 - DEFINITIONS

As used in this warehouse receipt ("Warehouse Receipt") the following terms have the following meanings:

- (a) STORER. The person, firm, corporation or other entity for whom the GOODS described herein are stored and to whom this Warehouse Receipt is issued and anyone else claiming an interest in the GOODS.
- (b) WAREHOUSE. Del Corona & Scardigli U.S.A OR ANY OF ITS INDIVIDUAL AFFILIATED ENTITIES OR MANAGERS and THIRD PARTY VENDORS THAT MAY PROVIDE SERVICES TO STORERS. As used in Sections 9 and 10 hereof WAREHOUSE includes (a) officers, directors, managers, employees and agents of the WAREHOUSE and (b) in instances where WAREHOUSE manages a warehouse for a third-party owner, such third-party owner, in each case, while acting within the scope and course of their duties.
- (c) LOT. Unit or units of GOODS which are separately identified by the WAREHOUSE.
- (d) ADVANCE. All sums due or claimed to be due to WAREHOUSE from STORER or others relating to the GOODS regardless of the source, whether liquidated or not, including but not limited to loans, disbursements, charges made for or on account of STORER or GOODS, necessary for preservation of GOODS or reasonably incurred in their sale pursuant to law.
- (e) GOODS. The personal property and/or any portion thereof which is described herein and/or which WAREHOUSE has agreed to receive and/or store pursuant to this Warehouse Receipt.

SECTION 2 - TENDER FOR STORAGE

- (a) All GOODS for storage shall be delivered at the warehouse properly marked and packed for handling.
- (b) 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 desired. Otherwise the GOODS may be stored in bulk or assorted lots in freezer, cooler or general storage at the discretion of the WAREHOUSE and charges for such storage will be made at the applicable storage rate.
- (c) STORER will provide WAREHOUSE with accurate and complete information concerning the GOODS sufficient to allow WAREHOUSE to comply with all laws and regulations concerning the storage, handling and transportation of the GOODS. Without limiting the foregoing, STORER is solely responsible for determining and providing the weight of the GOODS unless such services are expressly stated and quoted in the Agreement. STORER warrants that the GOODS it tenders for storage are not infested with pests or bacteria and that the GOODS do not otherwise present a danger to persons or other goods under normal storage and handling conditions. STORER further warrants that the GOODS are not adulterated or misbranded under the provisions of any applicable federal, state or local law or regulation. STORER will indemnify, defend and hold WAREHOUSE harmless from all liabilities, suits, claims, losses, costs and expenses (including reasonable attorneys' fees) arising from STORER's failure to comply with this section. (d) Receipt and delivery of all or any units of a LOT shall be made without subsequent sorting except by special arrangement and subject to a charge.
- (e) WAREHOUSE shall store and deliver GOODS only in the packages in which they are originally received unless otherwise agreed to in writing.
- (f) Unless STORER shall have given, at or prior to delivery of the GOODS, written instructions to the contrary, WAREHOUSE, in its discretion, may commingle and store in bulk different lots of fungible GOODS, whether or not owned by the same STORER.
- (g) WAREHOUSE shall not be responsible for segregating GOODS by production code date unless specifically agreed to in writing.
- (h) STORER agrees that all GOODS shipped to or from WAREHOUSE shall not identify WAREHOUSE as the consignee or shipper on any bill of lading or contract of carriage. If, contrary to this requirement, WAREHOUSE is listed as shipper or consignee, STORER shall indemnify and hold WAREHOUSE harmless from all claims for transportation, storage, handling and other charges relating to such designation.
- (i) WAREHOUSE shall not be responsible for normal product deterioration that results from extended storage.

SECTION 3 - TERMINATION OF STORAGE

- (a) WAREHOUSE may, upon written notice, as required by law, require the removal of the GOODS, or any portion thereof, from the warehouse upon the payment of all charges attributable to said GOODS within a stated period, not less than 30 days after such notification. If said GOODS are not so removed, WAREHOUSE may sell them as provided by law and shall be entitled to exercise any other rights it has under the law with respect to said GOODS.
- (b) If, in the opinion of WAREHOUSE, GOODS may be about to deteriorate or decline in value to less than the amount of WAREHOUSE'S lien thereon, or may constitute a hazard to other property or to the warehouse or persons, the GOODS may be removed or disposed of by WAREHOUSE as permitted by law. All charges related to said removal shall be paid by STORER.

SECTION 4 - STORAGE LOCATION

- (a) The GOODS shall be stored at WAREHOUSE'S discretion at any one or more buildings at WAREHOUSE'S warehouse complex identified on the front side of this Warehouse Receipt. The identification of any specific location within WAREHOUSE'S warehouse complex does not guarantee that the GOODS shall be stored therein.
- (b) Subject to any contrary written instructions given by STORER, WAREHOUSE may, at any time, at its expense, and without notice to STORER, remove any GOODS from any room or area of the warehouse complex to any other room or area thereof.
- (c) Upon ten (10) days written notice to the STORER, WAREHOUSE may, at its expense, remove the GOODS to any other warehouse complex operated by WAREHOUSE.

SECTION 5- STORAGE CHARGES

- (a) Storage charges commence upon the date that WAREHOUSE accepts care, custody and control of the GOODS, regardless of unloading date or date warehouse receipt is issued. Unless WAREHOUSE specifies otherwise, charges shall be computed separately for each LOT on one of the following optional bases:
 - (i) If storage rates are quoted on a "SPLIT MONTH BASIS" the storage month shall be a calendar month. A full month's storage charge will apply to all GOODS received between the 1st and 15th, inclusive, of a calendar month. One half month's storage charge will apply on all

GOODS received between the 16th and last day, inclusive, of a calendar month. A full month's storage charge shall apply on the 1st day of the next calendar month and each month thereafter on all GOODS then remaining in storage; or

(ii) If storage rates are quoted on an "ANNIVERSARY BASIS" the storage month shall extend from date of receipt in one calendar month to, but not including, the same date of the next month. If there is no corresponding date in the next month, the storage month shall end on the last day of said next month. A full month's storage charge shall apply on receipt of GOODS and an additional monthly storage charge shall apply to each successive storage month on all GOODS then remaining in storage.

(b) Charges shall be applicable as set forth in the rate quotation or other document issued by WAREHOUSE to STORER and/or in WAREHOUSE'S tariff.

(c) Unless WAREHOUSE specifies otherwise all storage charges are due and payable on the 1st day of storage for the initial month and thereafter on the 1st day of each calendar month.

(d) Rates quoted by weight will, unless otherwise specified, be computed on gross weight and 2,000 pounds shall constitute a ton.

SECTION 6 - HANDLING CHARGES

(a) Unless otherwise specified or elected by WAREHOUSE, handling charges cover only the ordinary labor and duties incidental to receiving and delivering unitized GOODS on pallets at the warehouse dock during normal warehouse hours but do not include loading and unloading.

(b) Unless otherwise specified, a charge in addition to the regular handling charges will be made for any work performed by WAREHOUSE other than specified in Section 6(a) at rates which are in effect from time to time, a copy of which rates are available upon request.

(c) When GOODS are ordered out in quantities less than in which received, the WAREHOUSE may make an additional charge for each order or each item of an order.

(d) Delivery by the WAREHOUSE of less than all units of any LOT or of less than all the fungible GOODS stored for STORER shall be made without subsequent sorting except by arrangement and subject to an additional charge.

SECTION 7 - TRANSFER OF TITLE; DELIVERY

(a) Instructions by STORER to transfer GOODS to the account of another are not effective until delivered to and accepted by WAREHOUSE. Charges will be made for each such transfer and for any re-handling of GOODS deemed by WAREHOUSE to be required thereby. WAREHOUSE reserves the right not to deliver or transfer GOODS to or for the account of others except upon receipt of written instructions properly signed by STORER.

(b) STORER may furnish written instructions authorizing WAREHOUSE to accept telephone orders for delivery. In such case, (1) WAREHOUSE may require that each telephone order be confirmed by STORER in writing within 24 hours, and (2) acceptance by WAREHOUSE of any telephone order shall be at the risk of STORER. WAREHOUSE will not be liable for any loss resulting from delivery made pursuant to telephone order, whether or not so authorized, unless caused by WAREHOUSE's gross negligence or willful misconduct.

(c) WAREHOUSE shall have a reasonable time to make delivery after GOODS are ordered out and shall have a minimum of 10 business days after receipt of a delivery order in which to locate any misplaced GOODS.

(d) If WAREHOUSE has exercised reasonable care and is unable, due to causes beyond its control, to effect delivery before expiration of the current storage period, the GOODS will be subject to storage charges for each succeeding storage period.

(e) All instructions and requests for delivery of GOODS or transfer of title are received subject to satisfaction of all charges, liens and security interests of WAREHOUSE with respect to the GOODS whether for accrued charges or ADVANCES or otherwise.

(f) WAREHOUSE may require, as a condition precedent to delivery, a statement from STORER holding WAREHOUSE harmless from claims of others asserting a superior right to STORER to possession of the GOODS. Nothing herein shall preclude WAREHOUSE from exercising any other remedy available to it under the law to resolve conflicting claims to possession of the GOODS. All costs, including attorney's fees, incurred by WAREHOUSE relating in any way to WAREHOUSE'S activities referred to in SECTION 7(f) shall be charged to STORER and shall, for purposes of Section 12 below, be considered "charges present or future with respect to such GOODS" and shall attach as a lien on the GOODS.

(g) Unless otherwise agreed, the goods will be delivered to STORER at WAREHOUSE'S warehouse loading dock. STORER must arrange for transportation and loading.

SECTION 8 - OTHER SERVICES AND CHARGES

(a) Other services rendered in the interest of STORER or the GOODS are chargeable to STORER. If charges for such services are not listed in the agreement or rate quotation between STORER and WAREHOUSE, then such services will be charged pursuant to WAREHOUSE'S current published tariff.

(b) All ADVANCES are due and payable immediately. All charges are due and payable upon the date of invoice. All charges and ADVANCES not paid within 30 days from the due date are subject to an interest charge, from the date said charge or ADVANCE became due until paid, at the lesser of 1.5% per month or the maximum amount allowed by law.

(c) STORER may, subject to insurance regulations and reasonable limitations, inspect the GOODS when accompanied by an employee of WAREHOUSE whose time is chargeable to STORER.

(d) In the event of damage or threatened damage to the GOODS, STORER shall pay all reasonable and necessary costs of protecting and preserving the GOODS. When the costs of protecting and preserving stored property are attributable to more than one STORER, said costs shall be apportioned among all affected STORERS on a pro rata basis to be determined by the WAREHOUSE.

(e) WAREHOUSE shall supply dunnage, bracing and fastenings where it deems it appropriate on outbound shipments and the cost thereof is chargeable to STORER.

(f) Any additional costs incurred by WAREHOUSE in unloading cars or trucks containing damaged GOODS are chargeable to STORER.

(g) WAREHOUSE shall not be responsible for demurrage or detention charges, or for any delays in loading or unloading unless such charges or delays were caused solely by WAREHOUSE'S negligence. STORER agrees to indemnify and hold WAREHOUSE harmless from any and all claims for delays, undercharges, rail demurrage, truck/intermodal detention and any other similar charges relating to STORER'S GOODS, except to the extent such charges or delays were caused solely by WAREHOUSE'S negligence.

(h) A charge in addition to regular storage and handling rates will be made for bonded storage.

(i) WAREHOUSE may assess an additional charge when GOODS, designated for cooler or freezer storage, are received at temperatures more than 5 degrees Fahrenheit above the applicable storage room temperature; however WAREHOUSE shall not be responsible for blast freezing GOODS unless STORER specifically requests such services in writing.

(j) All storage, handling and other services may be subject to minimum charges that may change without notice.

(k) STORER agrees to pay WAREHOUSE all costs and ADVANCES including reasonable attorney's fees incurred by WAREHOUSE in connection with the storage, handling and/or disposition of the GOODS, including without limitation, such costs, ADVANCES, and/or fees relating to lawsuits (including Bankruptcy proceedings) involving in any way said GOODS and/or STORER'S performance under this agreement. All such costs, ADVANCES, and fees, for purposes of SECTION 12 below, shall constitute "charges present or future with respect to such GOODS".

SECTION 9 - LIABILITY AND LIMITATION OF DAMAGES

(a) WAREHOUSE shall not be liable for any loss, damage or destruction to GOODS, however caused, unless such loss, damage or destruction resulted from the WAREHOUSE'S failure to exercise such care in regard to the GOODS as a reasonably careful person would exercise under like circumstances. WAREHOUSE is not liable for damages which could not have been avoided by the exercise of such care

(b) WAREHOUSE and STORER agree that WAREHOUSE is not responsible for loss, damage, or destruction of GOODS caused by inherent qualities of the GOODS; for the deterioration or contamination of the GOODS; for improper packaging; insect and rodents and fumigation of the insect and rodents; or theft of the GOODS, unless such loss, damage, or destruction is caused by WAREHOUSE'S failure to exercise the care required of WAREHOUSE under Section 9(a).

(c) WAREHOUSE and STORER agree that WAREHOUSE'S duty of care referred to in Section 9(a) above does not extend to providing a sprinkler system at the warehouse complex or any portion thereof.

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

(e) **IN THE EVENT OF LOSS, DAMAGE OR DESTRUCTION TO GOODS FOR WHICH THE WAREHOUSE IS LEGALLY LIABLE, STORER DECLARES THAT WAREHOUSE'S LIABILITY SHALL BE LIMITED TO THE LESSER OF THE FOLLOWING:**

(1) THE ACTUAL COST TO STORER OF REPLACING, OR REPRODUCING THE LOST, DAMAGED, AND/OR DESTROYED GOODS TOGETHER WITH TRANSPORTATION COSTS TO WAREHOUSE;

(2) THE FAIR MARKET VALUE OF THE LOST, DAMAGED, AND/OR DESTROYED GOODS ON THE DATE STORER IS NOTIFIED OF LOSS, DAMAGE AND/OR DESTRUCTION;

(3) 50 TIMES THE MONTHLY STORAGE CHARGE APPLICABLE TO SUCH LOST, DAMAGED AND/OR DESTROYED GOODS; or

(4) \$0.50 PER POUND FOR SAID LOST, DAMAGED, AND/OR DESTROYED GOODS.

PROVIDED, HOWEVER, THAT WITHIN A REASONABLE TIME AFTER RECEIPT OF THIS WAREHOUSE RECEIPT, STORER MAY, UPON WRITTEN REQUEST INCREASE WAREHOUSE'S LIABILITY ON PART OR ALL OF THE GOODS IN WHICH CASE AN INCREASED CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION; FURTHER PROVIDED THAT NO SUCH REQUEST SHALL BE VALID UNLESS MADE BEFORE LOSS, DAMAGE OR DESTRUCTION TO ANY PORTION OF THE GOODS HAS OCCURRED.

(f) WAREHOUSE'S liability referred to in Section 9(e) shall be STORER'S exclusive remedy against WAREHOUSE for any claim or cause of action whatsoever relating to loss, damage or destruction of the GOODS.

(g) WAREHOUSE shall not be liable for loss of goods due to inventory shortage, misshipment and mysterious disappearance claims unless STORER establishes, with affirmative evidence, that such loss occurred because of WAREHOUSE'S failure to exercise the care required of WAREHOUSE under Section 9(a). Any presumption of conversion imposed by law shall not apply to such loss and a claim by STORER of conversion must be established by affirmative evidence that the WAREHOUSE converted the goods to the WAREHOUSE'S own use.

(h) In no event shall the WAREHOUSE be liable for incidental, special, punitive, or consequential damages, loss of profit, diminution in value, revenue or goodwill.

SECTION 10 - ARBITRATION AND NOTICE OF CLAIM

(a) In lieu of litigation, STORER and WAREHOUSE agree to submit any dispute that arises out of or is in any way connected to this Warehouse Receipt to binding arbitration administered by Judicial Arbitration and Mediation Service, Inc. and its Streamlined Arbitration Rules and Procedures then in force. The parties shall be bound by the arbitration decision and a party receiving an award may enter judgment upon the same in any federal or state court of competent jurisdiction in the applicable jurisdiction. The parties shall conduct any arbitration in the county where the warehouse facility is located, to the exclusion of all other places.

(b) WAREHOUSE shall not be liable for any claim of any type whatsoever for loss and/or destruction of and/or damage to and/or charges or invoices for GOODS unless such claim is presented, in writing, within a reasonable time, not exceeding the earlier of (i) 60 days after delivery of GOODS by WAREHOUSE or (ii) 60 days after STORER learns or, in the exercise of reasonable care, should have learned of such loss, destruction, damage or the basis for any other claim against WAREHOUSE.

(c) As a condition precedent to making any claim and/or commencing an arbitration, STORER shall provide WAREHOUSE with a reasonable opportunity to inspect the GOODS which are the basis of STORER'S claim.

(d) NO ARBITRATION MAY BE COMMENCED BY STORER OR OTHERS AGAINST WAREHOUSE WITH RESPECT TO THE GOODS UNLESS A TIMELY WRITTEN CLAIM HAS BEEN MADE AS PROVIDED IN PARAGRAPH (b) OF THIS SECTION AND UNLESS STORER HAS PROVIDED WAREHOUSE WITH A REASONABLE OPPORTUNITY TO INSPECT THE GOODS AS PROVIDED IN PARAGRAPH (c) OF THIS SECTION AND UNLESS SUCH ARBITRATION IS COMMENCED WITHIN NINE (9) MONTHS (OR TWO (2) YEARS IN THE STATE OF TEXAS ONLY) AFTER STORER LEARNS OR, IN THE EXERCISE OF REASONABLE CARE, SHOULD HAVE LEARNED OF THE LOSS AND/OR DESTRUCTION OF AND/OR DAMAGE TO THE GOODS OR THE BASIS FOR ANY OTHER CLAIM AGAINST WAREHOUSE.

SECTION 11 - INSURANCE

GOODS are not insured by WAREHOUSE and the storage rates do not include insurance on the GOODS.

SECTION 12 - LIEN

WAREHOUSE shall have a general warehouse lien against the GOODS and on the proceeds thereof for all charges for storage, handling, transportation (including detention, demurrage and terminal charges), insurance, labor and other charges present or future with respect to the GOODS, ADVANCES or loans by WAREHOUSE in relation to the GOODS and for expenses necessary for preservation of the GOODS or reasonably incurred in their sale pursuant to law. WAREHOUSE further claims a general warehouse lien on the GOODS for all such charges,

ADVANCES and expenses in respect to any other property stored by STORER in any warehouse owned or operated by WAREHOUSE or its subsidiaries wherever located and whenever deposited and without regard to whether or not said other property is still in storage, including all sums owed to WAREHOUSE by STORER arising from any other transactions or obligations.

SECTION 13 – DATA

Notwithstanding anything to the contrary in this Warehouse Receipt or any other agreement between the parties, WAREHOUSE reserves the right to (i) use any STORER data to provide services to STORER, to improve existing services or create new services, or for WAREHOUSE's internal purposes and (ii) compile and analyze its collective STORER data and to prepare reports, studies, analyses and other work product resulting from such compilation and analysis on an anonymous basis (collectively, the "Data Derivations"). WAREHOUSE shall have exclusive ownership rights to, and the exclusive right to use such Data Derivations for any purpose; provided, however that WAREHOUSE shall not use STORER's name in connection with such Data Derivations or otherwise distribute Data Derivations which are identifiable as STORER's data without obtaining the prior consent of STORER.

SECTION 14 – FORCE MAJEURE

WAREHOUSE shall not be responsible for delays, failures, or omissions resulting from any cause that is beyond its reasonable control and is not due to its own negligence, including, but not limited to, war, warlike action by military force, riots, strikes, insurrections, rebellions, revolutions, fires, earthquakes, hurricanes, floods, storms, drought, lightning, epidemics, war, disorders, hostilities, interference by civil or military authorities, through acts that include, but are not limited to seizures, confiscations, or quarantine of property, labor disputes or controversies, transportation embargoes, fuel or energy shortages, power interruptions or failures, equipment malfunction or breakdown, or acts of God.

SECTION 15 - WAIVER - SEVERABILITY

(a) WAREHOUSE'S failure to insist upon strict compliance with any provision of this Warehouse Receipt shall not constitute a waiver or estoppel to later demand strict compliance thereof and shall not constitute a waiver or estoppel to insist upon strict compliance with all other provisions of this Warehouse Receipt.

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

SECTION 16 - AUTHORITY

STORER represents and warrants that it either (i) is the lawful owner of the GOODS which are not subject to any lien or security interest of others; or (ii) is the authorized agent of the lawful owner and/or any holder of a lien or security interest and has full power and authority to enter into the agreement incorporated into this Warehouse Receipt. STORER agrees to notify all parties acquiring any interest in the GOODS of the terms and conditions of this Warehouse Receipt and to obtain, as a condition of granting such an interest, the agreement of such parties to be bound by the terms and conditions of this Warehouse Receipt. STORER will indemnify, defend and hold WAREHOUSE harmless from all liabilities, suits, claims, losses, costs and expenses (including reasonable attorneys' fees) arising from STORER's failure to comply with this section.

SECTION 17 - NOTICES

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

SECTION 18 - ENTIRE AGREEMENT; SUCCESSORS AND ASSIGNS

This agreement shall constitute the entire agreement between WAREHOUSE and STORER relating to the GOODS and supersedes all existing agreements between them whether written or oral and shall not be changed, amended or modified except by written agreement signed by representatives of WAREHOUSE and STORER. Without limiting the foregoing, WAREHOUSE hereby reserves the right to transfer and/or assign (in whole or in part) the rights, duties and obligations of WAREHOUSE under this agreement to any affiliate of WAREHOUSE without the consent or approval of STORER. In the event of any such transfer and/or assignment (in whole or in part) to any such WAREHOUSE affiliate, WAREHOUSE may continue to collect and receive all or any portion of the amounts payable hereunder by STORER as agent for and on behalf of such affiliate-transferee/assignee and notify STORER thereof in writing.