

ELITE COLD STORAGE, CONTRACT TERMS AND CONDITIONS

SECTION 1 - DEFINITIONS

As used in this Warehouse Receipt ("RECEIPT") or Contract and Rate Quotation ("RATE QUOTATION") the following terms have the following meanings:

(a) CONTRACT. COMPANY'S RECEIPT or RATE QUOTATION containing these Contract Terms and Conditions.

(b) STORER. The person, firm, corporation or other entity for whom the GOODS described herein are stored and to whom this CONTRACT is issued and anyone else claiming an interest in the GOODS.

(c) COMPANY. Elite Cold Storage, LLC. As used in Sections 9 and 10 COMPANY includes officers, directors, employees and agents of COMPANY while acting within the scope and course of their employment.

(d) WAREHOUSE. COMPANY'S warehouse complex identified on the front side of this CONTRACT.

(e) GOODS. The personal property and any portion thereof described herein which COMPANY has agreed to receive, handle and/or store pursuant to this CONTRACT.

SECTION 2 - TENDER FOR STORAGE

(a) STORER agrees that all GOODS for storage shall be delivered at the WAREHOUSE properly marked and packed for handling.

(b) STORER shall furnish, at or prior to 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 COMPANY and at the applicable storage rate.

(c) STORER will provide COMPANY with accurate and complete information concerning the GOODS sufficient to allow COMPANY to comply with all laws and regulations concerning the storage, handling and transportation of the GOODS and will indemnify and hold COMPANY harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) as a result of STORER'S failure to do so.

(d) Receipt and delivery of the GOODS shall be made without sorting except by special arrangement which may be subject to a charge.

(e) Unless otherwise agreed to in writing, COMPANY shall store and deliver GOODS only in the packages in which they are originally received and shall not segregate GOODS by production code date.

(f) STORER agrees that all GOODS shipped to COMPANY shall identify STORER on the bill of lading or other contract of carriage as the consignee, in care of COMPANY, and shall not identify COMPANY as the consignee. If, contrary to this requirement, GOODS are shipped to COMPANY as consignee, STORER shall indemnify and hold COMPANY harmless from all claims for transportation, demurrage, detention, storage, handling and other charges relating to such GOODS.

SECTION 3 - TERMINATION OF STORAGE

(a) COMPANY may, upon written notice, terminate this CONTRACT and require the removal of the GOODS, or any portion thereof, from the WAREHOUSE within a stated period, not less than 30 days after such notification. If said GOODS are not so removed, COMPANY 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 COMPANY, GOODS may be about to deteriorate or decline in value to less than the amount of COMPANY'S lien, or may constitute a hazard to other property or to the WAREHOUSE or persons, the GOODS may be removed or disposed of by COMPANY as permitted by law. All charges related thereto shall be paid by STORER.

SECTION 4 - STORAGE LOCATION

(a) The GOODS shall be stored, at COMPANY'S discretion, at any one or more buildings at the WAREHOUSE. The identification of any specific location within the WAREHOUSE does not guarantee that the GOODS shall be stored there.

(b) Unless otherwise agreed in writing, COMPANY may, at any time, at its expense, and without notice to STORER, remove any GOODS from any room or area of the WAREHOUSE to any other room or area thereof.

(c) Upon ten days written notice to STORER, COMPANY may, at its expense, remove the GOODS to any other warehouse operated by COMPANY.

SECTION 5- STORAGE CHARGES

(a) Storage charges commence upon the date that COMPANY accepts custody of the GOODS, regardless of unloading date or date the RECEIPT is issued. Unless COMPANY specifies otherwise, storage charges shall be computed separately for each lot on one of the following bases:

(b) 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.

(c) 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 on each successive storage month on all GOODS then remaining in storage.

(d) COMPANY'S storage and other charges are set forth in the RATE QUOTATION or other document issued by COMPANY to STORER and/or COMPANY's tariff, are incorporated herein by reference and may be increased on 30 days notice.

(e) Unless COMPANY specifies otherwise, all storage charges are fully earned and are due and payable on the 1st day of storage for the initial month and thereafter on the 1st day of each storage month.

(f) Rates quoted by weight will, unless otherwise specified, be computed on gross weight.

SECTION 6 - HANDLING CHARGES

(a) Unless otherwise specified, handling charges cover only the ordinary labor and duties incidental to receiving and delivering unitized GOODS on pallets at the WAREHOUSE dock during COMPANY'S normal business 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 COMPANY other than as specified in Section 6(a), at COMPANY'S then current rates which are available upon request.

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

(d) Delivery by COMPANY of less than all units of any lot shall be made without subsequent sorting except by special arrangement which may be subject to an additional charge.

SECTION 7 - TRANSFER; DELIVERY

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

(b) STORER may authorize COMPANY in writing to accept telephone orders for delivery. In such case, delivery by COMPANY pursuant to telephone order shall be at STORER'S risk.

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

(d) If COMPANY is unable, due to any cause beyond its control, to effect delivery before expiration of the then current storage period, the GOODS may, at COMPANY'S discretion, be subject to storage charges for each succeeding storage period.

(e) All instructions and requests for delivery and/or transfer of GOODS are received subject to satisfaction of all charges, liens and security interests of COMPANY. Upon termination of the storage relationship for any reason, COMPANY may refuse to deliver the GOODS until it has been fully paid for all charges then due it regardless of the payment terms otherwise applicable to such charges.

(f) COMPANY may require, as a condition to delivery, a statement from STORER holding COMPANY harmless from claims of others asserting rights to the GOODS. COMPANY may also exercise any other remedy available to it under the law to resolve conflicting claims to the GOODS. All costs, charges and expenses, including reasonable attorneys' fees, incurred by COMPANY relating in any way to COMPANY'S activities referred to in this Section 7(f) shall be charged to STORER and shall be considered charges with respect to the GOODS and subject to Company's general warehouse lien.

SECTION 8 - OTHER SERVICES AND CHARGES

(a) Other services rendered in the interest of STORER or the GOODS are chargeable to STORER.

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

(c) STORER may, subject to reasonable limitations, inspect the GOODS when accompanied by an employee of COMPANY 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 and for clean-up and disposal of damaged and destroyed Goods. When such costs are attributable both to GOODS of STORER and property of others, said costs shall be apportioned among STORER and others on a pro rata basis as determined by COMPANY

(e) COMPANY 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 COMPANY in unloading railcars or trucks containing damaged GOODS are chargeable to STORER.

(g) COMPANY shall not be responsible for detention or demurrage charges or delays in loading or unloading unless such detention or demurrage charge or delay was caused solely by COMPANY'S negligence.

(h) An additional charge will be made for bonded storage.

(i) COMPANY may assess an additional charge when GOODS, designated for cooler or freezer storage, are received at temperatures more than five degrees Fahrenheit above the applicable room temperature. COMPANY 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.

(k) STORER agrees to pay COMPANY all costs, charges and expenses including reasonable attorney's fees ("EXPENSES") incurred by COMPANY in connection with the storage, handling and/or disposition of the GOODS, including without limitation, such EXPENSES relating to lawsuits (including Bankruptcy proceedings) involving in any way said GOODS and/or STORER's performance under this CONTRACT. All such EXPENSES shall constitute charges with respect to the GOODS and subject to COMPANY'S general warehouse lien.

(l) STORER shall reimburse COMPANY for the cost of all pallets supplied by COMPANY.

(m) COMPANY may charge STORER an energy surcharge in the event of an increase in COMPANY'S energy costs by providing STORER with no less than 30 days prior notice of such surcharge.

SECTION 9 - LIABILITY AND LIMITATION OF DAMAGES

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

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

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

(d) IN THE EVENT OF LOSS OR DESTRUCTION OF OR DAMAGE TO GOODS FOR WHICH COMPANY IS LEGALLY LIABLE, STORER DECLARES THAT COMPANY'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 DESTROYED GOODS TOGETHER WITH

TRANSPORTATION COSTS TO WAREHOUSE, (2) THE FAIR MARKET VALUE OF THE LOST, DAMAGED, AND DESTROYED GOODS ON THE DATE STORER IS NOTIFIED OF SUCH LOSS, DAMAGE AND DESTRUCTION, (3) 50 TIMES THE MONTHLY STORAGE CHARGE APPLICABLE TO SUCH LOST, DAMAGED AND DESTROYED GOODS, (4) \$0.50 PER POUND FOR SAID LOST, DAMAGED, AND DESTROYED GOODS. PROVIDED, HOWEVER THAT WITHIN A REASONABLE TIME AFTER RECEIPT OF THIS CONTRACT, STORER MAY REQUEST, IN WRITING, AN INCREASE IN COMPANY'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 OR DESTRUCTION OF OR DAMAGE TO ANY PORTION OF THE GOODS HAS OCCURRED.

(e) COMPANY'S liability referred to in Section 9(d) shall be STORER'S exclusive remedy for any claim or cause of action whatsoever relating to loss or destruction of or damage to GOODS. STORER waives any right to rely upon any presumption of conversion imposed by law.

(f) In no event shall STORER be entitled to recover any incidental, special, punitive, or consequential damages of any type or description.

(g) If COMPANY negligently misships GOODS, COMPANY, at its option, shall pay the reasonable transportation charges to return the misshipped GOODS to the WAREHOUSE or the value of the misshipped GOODS based upon Section 9(d). COMPANY shall have no liability whatsoever for any damages due to the consignee's acceptance or use of the GOODS.

SECTION 10 - NOTICE OF CLAIM; FILING OF SUIT

(a) COMPANY shall not be liable for any claim of any type whatsoever including, without limitation, any claim for loss or destruction of or damage to GOODS unless such claim is presented, in writing, within a reasonable time, not exceeding the earlier of (1) 60 days after delivery of GOODS by COMPANY or (2) 60 days after STORER learned or, in the exercise of reasonable care, should have learned of such loss or destruction of or damage to the GOODS or the basis for any other claim against COMPANY.

(b) As a condition precedent to filing any lawsuit or other action, STORER shall provide COMPANY with a reasonable opportunity to inspect the GOODS which are the basis of STORER'S claim.

(c) NO LAWSUIT OR OTHER ACTION MAY BE MAINTAINED BY STORER OR OTHERS AGAINST COMPANY UNLESS A TIMELY WRITTEN CLAIM HAS BEEN MADE AS PROVIDED IN SECTION 10(a) AND UNLESS STORER HAS PROVIDED COMPANY WITH A REASONABLE OPPORTUNITY TO INSPECT THE GOODS AS PROVIDED IN SECTION 10(b) AND UNLESS SUCH LAWSUIT OR OTHER ACTION IS COMMENCED WITHIN THE EARLIER OF (1) NINE (9) MONTHS AFTER DELIVERY OF GOODS BY COMPANY OR (2) NINE (9) MONTHS AFTER STORER LEARNED OR, IN THE EXERCISE OF REASONABLE CARE, SHOULD HAVE LEARNED OF THE LOSS OR DESTRUCTION OF OR DAMAGE TO THE GOODS OR THE BASIS FOR ANY OTHER CLAIM AGAINST COMPANY.

(d) Any lawsuit or other action against COMPANY must be brought in the state or federal court in Morris County, New Jersey and will be governed by the laws of the State of New Jersey other than its conflict of law principles.

SECTION 11 - INSURANCE

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

SECTION 12 - LIEN

COMPANY 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 COMPANY in relation to the GOODS and for expenses necessary for the preservation of the GOODS or reasonably incurred in their sale pursuant to law. COMPANY further claims a general warehouse lien on the GOODS for all other such charges, advances and expenses due Company or any related entity from STORER for property stored by STORER in any warehouse owned or operated by COMPANY or any related entity wherever located. COMPANY reserves the right to require advance payment of all charges prior to releasing GOODS regardless of otherwise applicable payment terms.

SECTION 13 - WAIVER - SEVERABILITY

(a) COMPANY'S failure to insist upon strict compliance with any provision of this CONTRACT shall not constitute a waiver of or estoppel to later demand strict compliance with said provision or to insist upon strict compliance with all other provisions of this CONTRACT.

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

SECTION 14 - AUTHORITY

STORER represents and warrants that it is either (a) the lawful owner of the GOODS which are not subject to any lien or security interest of others; or (b) the authorized agent of the lawful owner or any holder of a lien or security interest and has full power and authority to enter into the agreements incorporated into this CONTRACT. STORER agrees to indemnify and hold COMPANY harmless of and from all loss, cost and expense (including reasonable attorneys' fees) which COMPANY pays or incurs as a result of any dispute or litigation respecting STORER'S representations and/or warranties stated in this Section 14. Such amounts shall be considered charges with respect to the GOODS and subject to Company's general warehouse lien.

SECTION 15 – NOTICES

All written notices required herein may be transmitted by any commercially reasonable means of communication and directed to COMPANY 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 15 within five days of transmittal.

SECTION 16 - ENTIRE AGREEMENT

This CONTRACT constitutes the entire agreement between COMPANY 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 COMPANY and STORER.