



# **EMPIRE CONTAINER FREIGHT STATION, INC.**

## **TERMS AND CONDITIONS**

### **I. DEFINITIONS**

- (a) “EMPIRE” refers to Empire CFS, Inc. and their employees, agents or authorized representatives.
- (b) “Customer” refers to the cargo owner and any party who has engaged the services of EMPIRE, and their employees, agents or representatives and the cargo owner.
- (c) “T&C” refers to these terms and conditions, which constitutes an agreement between EMPIRE and Customer.

### **II. ACCEPTANCE**

The act of tendering goods described herein for storage or other services, including but not limited to warehousing, import, export, outturn or transport by EMPIRE shall constitute acceptance by the customer of the terms and conditions set forth herein.

### **III. SHIPPING TO EMPIRE**

Customer agrees not to ship goods to EMPIRE as the named consignee. If, in violation of this agreement, goods are shipped to EMPIRE as named consignee, Customer agrees to notify carrier, with copy of such notice to EMPIRE, that EMPIRE is a warehouse and has no beneficial title or interest in such property. Customer further agrees to indemnify and hold harmless EMPIRE 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 its carrier as required by the preceding sentence, EMPIRE shall have the right to refuse such goods and shall not be liable for or responsible for any loss, injury, or damage of any nature to or related to such goods.

### **IV. TENDER OF GOODS TO EMPIRE**

All goods shall be delivered to EMPIRE marked and packaged for handling. The 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.

### **V. STORAGE PERIOD AND CHARGES**

Storage charges are billed in advance on the first day of each month. All other charges will be billed in accordance with the customary practice of EMPIRE.

## **VI. TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS**

- (a) Instructions to transfer goods on the books of EMPIRE are not effective until delivered to and received by EMPIRE, and all charges up to the time transfer is made are chargeable to the Customer of record. If a transfer involves rehandling the goods, such rehandling will be subject to a charge at EMPIRE standard rates.
- (b) EMPIRE reserves the right to move, at its expense, 14 days after notice is sent by mail, or facsimile or electronic mail to the Customer of record, any goods in storage from the warehouse in which they may be stored to any other of its warehouses. EMPIRE will store the goods at and may without notice move the goods within and between, any one or more of the warehouse buildings which comprise its warehouse complex.
- (c) If as a result of a quality or condition of the goods which EMPIRE was not placed on written notice of at the time the goods were tendered to EMPIRE, the goods are determined by EMPIRE to be a hazard to other property or to the warehouse or to persons, EMPIRE 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. The sale will not occur until at least fifteen (15) days after notice to Customer, unless the goods are perishable. If the goods are perishable the sale may occur immediately upon notice to the Customer. If EMPIRE, after a reasonable effort is unable to sell the goods, or can not complete a sale, it may dispose of them in any lawful manner and shall incur no liability by reason of such disposition. Pending such disposition, sale, or return of the goods, EMPIRE may remove the goods from the warehouse and shall incur no liability by reason of such removal.
- (d) Customer agrees that when EMPIRE releases goods to Customer or its authorized representative, including any common carrier or bailee engaged by Customer, that EMPIRE will have no further obligation or responsibility to Customer or for the goods. A signed receipt to EMPIRE without exception as to loss or damage shall be conclusive evidence that the goods were not lost or damaged while in the possession of EMPIRE.

## **VII. 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 at the agreed upon rates. Additional expenses incurred by EMPIRE in receiving and handling damaged goods, and additional expense in unloading from or loading into cars or trailers or other containers not at warehouse door will be charged to the Customer at the customary rates of EMPIRE.
- (c) EMPIRE 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 unless EMPIRE has failed to exercise reasonable care.

## **VIII. DELIVERY REQUIREMENTS**

- (a) No goods shall be delivered or transferred except upon receipt by EMPIRE of complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, Email, or similar communication. However, when no negotiable receipt is outstanding, goods may be delivered upon instruction by telephone in accordance with a prior written authorization, but EMPIRE shall not be responsible for loss or error occasioned thereby.
- (b) When Customer requests goods from the warehouse, a reasonable time shall be given EMPIRE to carry out the applicable instructions, and if unable to do so because of acts of God, war, public enemies, seizure under legal process, riots and civil commotion, or any reason beyond EMPIRE's control, or because of loss or destruction of goods for which EMPIRE is not liable, or because of any other excuse provided by law, then EMPIRE shall not be liable for failure to carry out such instructions.

## **IX. EXTRA SERVICES (SPECIAL SERVICES)**

Warehouse labor required for services other than ordinary handling and storage will be charged to the Customer at the customary rates of EMPIRE.

## **X. LIABILITY AND LIMITATION OF DAMAGES**

- (a) In consideration of the rate charged, it is agreed that the liability of EMPIRE shall be that of an ordinary bailee. EMPIRE shall undertake to exercise reasonable care in the storage, transport and handling of the goods. EMPIRE is not an insurer of the goods and will be liable only for loss or damage caused by the failure to exercise reasonable care in the storage, transport and handling of the goods. Customer acknowledges that it should maintain its own insurance on its goods for loss or damage while in the possession of EMPIRE.

If EMPIRE fails, for any reason, to exercise reasonable care in the transport, storage or handling of the goods, Customer agrees that the liability of EMPIRE shall be limited to \$0.10 per pound or \$500.00 per shipment, whichever is less, unless the excess value is declared in writing and such charges are paid by Customer before the freight or goods are received by EMPIRE.

The filing of a claim does not relieve the claimant party for payment of invoice due. Invoice payment is necessary to process a claim. Claim amount may not be offset from any invoices owed or due to EMPIRE against claims for any loss, damage, delay, mis-delivery or non-delivery.

- (b) Where damage occurs to goods, for which the EMPIRE is not liable, the Customer shall be responsible for the cost of removing and disposing of such goods and the cost of any environmental cleanup and site remediation resulting from the loss or injury of goods.

## **XI. NOTICE OF CLAIM AND FILING OF SUIT**

- (a) Claims by the Customer and all other persons must be presented in writing to EMPIRE within a reasonable time, and in no event longer than 30 days after receipt or delivery of the goods or notification to the Customer that loss or damage to part or all of the goods has occurred, whichever time is shorter. after delivery of the goods by the EMPIRE or 30 days after Customer of record or the last known holder of a negotiable warehouse receipt is notified by the EMPIRE 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 EMPIRE for loss or injury to the goods stored unless timely written claim has been made as provided in paragraph (a) of this Article XI and unless such action is commenced either within six months after date of delivery by EMPIRE or within six months after Customer or the last known holder of a negotiable warehouse receipt is notified that loss or injury to part or all of the goods has occurred, whichever time is shorter.
- (c) When goods have not been delivered, notice may be given of known loss or injury to the goods by electronic mail to Customer or to the last known holder of a negotiable warehouse receipt. Time limitations for presentation of claim in writing and maintaining of action after notice commence on the date of emailing of such notice by EMPIRE.

## **XII. LIABILITY FOR CONSEQUENTIAL DAMAGES**

EMPIRE shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind.

## **XIII. LIABILITY FOR MISSHIPMENT**

If EMPIRE negligently misships goods, through the sole fault of EMPIRE it shall pay the reasonable transportation charges to redeliver the goods, up to \$500. If the consignee fails to return the goods, EMPIRE's maximum liability shall be for the lost or damaged goods as specified in Section X above. In no event will EMPIRE be liable for any associated costs, damages, and chargeback's or expenses.

## **XIV. MYSTERIOUS DISAPPEARANCE**

EMPIRE 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 EMPIRE's failure to exercise the care required of EMPIRE under Section X above and merchandise shortages are more than 10% of goods received by EMPIRE. EMPIRE shall be entitled to offset any overage on other items which are held for the account of Customer. Customer agrees that no shortage will constitute conversion in the absence of evidence that the goods were actually converted by EMPIRE.

## **XV. RIGHT TO STORE GOODS**

Customer represents and warrants that Customer has lawful possession of the goods and has the right and authority to tender those goods to EMPIRE. Customer agrees to indemnify and hold harmless EMPIRE from all loss, cost and expense (including reasonable attorneys' fees) which EMPIRE pays or incurs as a result of any dispute or litigation, whether instituted by EMPIRE 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 EMPIRE's lien.

## **XVI. LIEN**

EMPIRE shall have a general warehouse lien for all lawful charges for storage and presentation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, forwarding, labor, weighing cooperating, and other charges and expense in relation to such goods, and for the balance on any accounts that may be due. EMPIRE reserves the right to require advance payment of all charges prior to shipment of goods.

## **XVII. ACCURATE INFORMATION**

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

## **XVIII. SEVERABILITY AND WAIVER**

- (a) If any provision of this receipt, 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 receipt shall not be affected thereby but shall remain in full force and effect.
- (b) EMPIRE's failure to require strict compliance with any provision of these terms and conditions shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of these terms and conditions.
- (c) These terms and conditions shall be binding upon the Customer's heirs, executors, successors and assigns; contain the sole agreement governing goods stored with the EMPIRE; and, cannot be modified except by a writing signed by EMPIRE.