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# LEMAN USA Terms and Conditions Warehousing Warehousing Services Agreement

All warehousing, handling, pick and pack, and related services provided by Leman USA, Inc. (hereinafter "Leman USA") to the "Customer" will be subject to the terms and conditions set forth herein.

## 1. Interpretation.

For purposes of interpreting these Terms and Conditions for Warehousing under Article 7 of the Uniform Commercial Code, or any State's adaptation thereof, "Leman USA" shall be the "Warehouse keeper". For purposes of interpreting these Terms and Conditions for Warehousing, the use of the phrase "Terms and Conditions for Warehousing" shall refer to both the terms and conditions set forth in this document, and the terms and conditions of any agreement or contract into which these Terms and Conditions for Warehousing are incorporated by reference. The term "Facility" as used herein shall mean any warehouse facility of Leman USA, whether owned, rented or otherwise made available to Leman USA. Customer may review and inspect any Facility where its Goods will be warehoused upon reasonable written request to Leman USA. The term "net sales" as used in any document into which these Terms and Conditions for Warehousing are incorporated by reference, including, without limitation, fee proposals and billings, shall mean the total value of Customers goods shipped by Leman USA, less any returns, credits or penalties caused by an act or omission of Leman USA.

## 2. Acceptance.

The incorporation of these Terms and Conditions for Warehousing into any agreement between Customer and Leman USA, Inc., or the act of tendering Goods described herein for storage or other services by Leman USA shall constitute acceptance by Customer of the terms and conditions set forth herein. Any goods accepted by Leman USA shall constitute Goods under these Terms and Conditions for Warehousing.

## 3. Shipments to Warehouse.

Customer agrees that all Goods shipped to Leman USA not using Leman's freight forwarding services shall identify Customer on the bill of lading or other contracts of carriage as the named consignee, in care of Leman USA, and shall not identify Leman USA as the consignee. If, in violation of these Terms and Conditions for Warehousing, Goods are shipped to Leman USA as named consignee on the bill of lading or other contract of carriage, Customer agrees to immediately notify carrier in writing, with copy of such notice to Leman USA, that Leman USA named as consignee is the "in care of party" only and has no beneficial title or interest in the Goods. Furthermore, Leman USA shall have the right to refuse such Goods and shall not be liable for any loss, mis-consignment, or damage of any nature to, or related to, such Goods. Whether Leman USA accepts or refuses Goods shipped in violation of this provision, Customer agrees to indemnify and hold Leman USA harmless from all claims for transportation, storage, handling and other charges relating to such Goods, including undercharges, rail demurrage, truck/intermodal detention and other charges of any nature whatsoever.

## 4. Tender of Goods.

All Goods shall be delivered at the Facility properly marked and packaged for storage and 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. Customer is required to ensure that all transportation carriers utilized for delivery of Goods to Warehouse for storage shall schedule delivery appointments with Warehouse 24 hours prior to delivery of Goods. Customer recognizes that failure on the part of Customer to schedule delivery appointments may result in delays in the unloading and receipt of products tendered for storage.

## 5. Storage Period and Charges.

(a) Unless otherwise agreed in writing, all charges for storage are per package or other agreed unit per month.

(b) The storage month begins on the date that Lemman USA accepts care, custody, and control of the Goods at its Facility, regardless of unloading date or date of issue of warehouse receipt.

(c) When mutually agreed in writing by the Lemman USA and the Customer, a storage month shall extend from a date in one calendar month to, but not including, the same date of the next and all succeeding months. All storage charges are due and payable on the first day of the storage month.

## 6. Transfer or Removal of Goods on the books of Lemman USA.

(a) Instructions by Customer to transfer Goods are not effective until delivered to and accepted by Lemman USA, and all charges up to the time transfer is made are chargeable to the Customer. 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 through issuance of a new warehouse receipt, a new storage date is established on the date of transfer.

(b) Lemman USA reserves the right to move, at its expense, any Goods in storage within a Facility or from the Facility in which they may be stored to any other of Lemman USA's Facilities.

(c) Lemman USA may, upon written notice of not less than 30 days to the Customer and any other person known by Lemman USA to claim an interest in the Goods, require the removal of any Goods. Such notice shall be given to the last known place of business of the person to be notified. If Goods are not removed before the end of the notice period, Lemman USA may sell them in accordance with applicable law.

(d) If Lemman USA in good faith believes that Goods are about to deteriorate or decline in value to less than the amount of Lemman USA's lien before the end of the 30-day notice period referred to in Section 6(c), Lemman USA 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.

(e) If as a result of a quality or condition of the Goods of which Lemman USA had no notice at the time of deposit, the Goods are a hazard to other property or to the Facility or to persons, Lemman USA 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. If Lemman USA after a reasonable effort is unable to sell the Goods 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, Lemman USA may remove the Goods from the Facility and shall incur no liability by reason of such removal.

## 7. Handling.

(a) The handling charge, if any, covers the ordinary labor involved in receiving Goods at warehouse door, placing Goods in storage, and returning Goods to warehouse door. Handling charges are due and payable on receipt of Goods.

(b) Unless otherwise agreed in writing, labor for unloading and loading Goods will be subject to a charge. Additional expenses incurred by Lemman USA 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 the Customer.

(c) Labor and materials used in loading rail cars or other vehicles are chargeable to the Customer.

(d) When Goods are ordered out in quantities less than in which received, Lemman USA may make an additional charge for each order or each item of an order.

(e) Lemman USA shall not be liable for any demurrage or detention, any delays in unloading inbound cars, trailers or other containers, or any delays in obtaining and loading cars, trailers or other containers for outbound shipment unless Lemman USA has failed to exercise reasonable care.

## 8. Delivery Requirements.

(a) Except where Customer has engaged Lemman's services with respect to order fulfillment, no Goods shall be delivered or transferred except upon receipt by Lemman USA of Customer's complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, E-Mail or similar communication, provided Lemman USA has no liability when relying on the information contained in the communication as received. Goods may be delivered upon instruction by telephone in accordance with Customer's prior written authorization, but Lemman USA shall not be responsible for loss or error occasioned thereby. Where Customer has engaged Lemman USA's services with respect to order fulfillment, then Goods may be delivered or transferred as set forth in the order or orders received.

(b) When Goods are ordered out by Customer, or by a customer of Customer where Customer has engaged Lemman's services with respect to order fulfillment, a reasonable time shall be given to Lemman

USA to carry out delivery instructions, and if it is unable because of acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots or civil commotions, or any reason beyond Leman USA's control, or because of loss of or damage to Goods for which Leman USA is not liable, or because of any other excuse provided by law, Leman USA shall not be liable for failure to carry out such instructions and Goods remaining in storage will continue to be subject to regular storage charges.

#### 9. Extra Services (Special Services).

- (a) Leman USA 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 the Customer at a charge in addition to Leman USA's cost.
- (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, overnight delivery, or telephone may 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. Bonded Storage.

- (a) A charge in addition to regular rates will be made for goods in bond.
- (b) Where a warehouse receipt covers Goods in U.S. Customs bond, Leman USA shall have no liability for Goods seized or removed by U.S. Customs.

#### 11. Minimum Charges.

- (a) A minimum handling charge per lot and a minimum storage charge per lot per month will be made. When a warehouse receipt covers more than one lot or when a lot is in assortment, a minimum charge per mark, brand, or variety will be made.
- (b) A minimum monthly charge to one account for storage and/or handling will be made. This charge will apply also to each account when one Customer has several accounts, each requiring separate records and billing.

#### 12. LIABILITY AND LIMITATION OF DAMAGES.

- (a) LEMAN USA SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO GOODS TENDERED, STORED OR HANDLED HOWEVER CAUSED UNLESS SUCH LOSS OR DAMAGE RESULTED FROM THE FAILURE BY LEMAN USA TO EXERCISE SUCH CARE IN REGARD TO SUCH GOODS AS A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND LEMAN USA IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.
- (b) GOODS ARE NOT INSURED BY LEMAN USA AGAINST LOSS OR DAMAGE HOWEVER CAUSED.
- (c) CUSTOMER DECLARES THAT DAMAGES ARE LIMITED TO THE LESSER OF 50¢ PER POUND OR \$50.00 PER WAREHOUSE RECEIPT, PROVIDED, HOWEVER, THAT SUCH LIABILITY MAY AT THE TIME OF ACCEPTANCE OF THESE TERMS AND CONDITIONS FOR WAREHOUSING AS PROVIDED IN SECTION 1 BE INCREASED UPON CUSTOMER'S WRITTEN REQUEST ON PART OR ALL OF THE GOODS HEREUNDER IN WHICH EVENT AN ADDITIONAL MONTHLY CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION.
- (d) WHERE LOSS OR DAMAGE OCCURS TO TENDERED, STORED OR HANDLED GOODS, FOR WHICH LEMAN USA 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 DAMAGE TO THE GOODS.

#### 13. Chargebacks

When chargebacks and penalties occur, Leman USA will work with our Customer to reach an agreement that is equitable to both parties. If after investigating the chargeback or penalty with our Customer and their Client it is determined that chargeback was caused solely by Leman USA, Leman USA will reimburse our Customer for the actual chargeback cost (excluding consequential damages) up to a limit of \$50 per occurrence, infraction, non-compliance or violation, not to exceed \$500 annually. The foregoing is subject to the following exceptions:

- (a) Lemman USA will not be responsible for chargebacks associated with back ordered product, product not available for shipment in a timely manner or product in incorrectly marked boxes from the Customer or the Customer's supplier.
- (b) All ship-ready product, special labels and documents must be received at least 48 hours prior to shipment.
- (c) Lemman USA must be provided reasonable lead time for items requiring assembly or special packaging prior to order availability.
- (d) Lemman USA will not be responsible for chargebacks related to carrier performance, availability or scheduling.
- (e) Lemman USA will not be responsible for chargebacks for late shipments due to volume spikes over and above the forecasted level provided by the Customer or a party authorized by the Customer to provide the forecasted volumes.
- (f) Lemman USA will rely on our Customer's to keep Lemman USA abreast of the current shipping and chargeback policies of its Clients. Information will be provided to Lemman USA in the form of routing guides and compliance manuals. Customer should provide Lemman USA only those sections of the routing guide that are applicable to the services provided by Lemman USA. Lemman USA will not be responsible for chargebacks related to compliance policies of which our Customer has not informed Lemman USA.
- (g) All chargebacks must be provided to Lemman USA within ten (10) days of receipt by our Customer and within our Customers dispute policy timeframe, such that Lemman USA may have sufficient time to investigate and dispute the claim, if Lemman USA has a bona fide dispute.
- (h) All chargeback notifications must include all pertinent information, such as order number, purchase order number (if applicable), carrier appointment time (if applicable), Client receipt date and time, and details on the non-compliance or chargeback.

#### 14. Notice of Claim and Filing of Suit.

- (a) Claims by the Customer against Lemman for any loss or damage to goods must be presented in writing to Lemman USA within a reasonable time, and in no event any later than the earlier of: (i) 60 days after delivery of the Goods by Lemman USA, or (ii) 60 days after Customer is notified by Lemman USA that loss or damage to part or all of the Goods has occurred.
- (b) No lawsuit or other action may be maintained by the Customer against Lemman USA for loss or damage to the Goods unless timely written claim has been given as provided in paragraph (a) of this section and unless such lawsuit or other action is commenced by no later than the earlier of: (i) nine months after date of delivery by Lemman USA or (ii) nine months after Customer is notified that loss or damage to part or all of the Goods has occurred.
- (c) 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 Customer. Time limitations for presentation of claims in writing and maintaining of action after notice begin on the date of mailing of such notice by Lemman USA.
- (d) Any and all claims against Lemman USA unrelated to Goods must be filed and properly served on Company within six (6) months. It is Lemman's goal to promptly resolve any disputes between its customers, and prompt notification so that efforts at resolution can be undertaken and understood as necessary by both Lemman USA and its customers.

#### 15. No Liability for Consequential Damages.

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

#### 16. Liability for Shipping Errors.

If Lemman USA negligently misships Goods to the wrong address, Lemman USA shall pay the reasonable transportation charges incurred to return the misshipped Goods to the Facility. If the consignee fails to return the Goods, Lemman USA's maximum liability shall be for the lost or damaged Goods as specified in Section 12 above, and Lemman USA 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.

#### 17. Mysterious Disappearance.

Lemman USA shall be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods only if Customer establishes such loss occurred because of Lemman USA's failure to exercise the care required of Lemman USA under Section 12 above. A discrepancy rate of 1.0% is acceptable on the total inventory value at the time of any physical inventory count, not to exceed \$1,000 annually. Any missing merchandise over and above this rate according to Lemman USA's computer records

is payable by Lemman USA at the rate stated in Section 12 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 the Lemman USA converted the Goods to Lemman USA's own use.

#### 18. Right to Store Goods.

Customer represents and warrants that Customer is lawfully possessed of the Goods and has the right and authority to store the Goods with Lemman USA. Customer agrees to indemnify and hold harmless Lemman USA from all loss, cost and expense (including reasonable attorneys' fees) which Lemman USA pays or incurs as a result of any dispute or litigation, whether instituted by Lemman USA 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 Lemman USA's lien.

#### 19. Accurate Information.

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

#### 20. Severability and Waiver.

(a) If any provision of these Terms and Conditions for Warehousing, 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 these Terms and Conditions for Warehousing shall not be affected thereby but shall remain in full force and effect.

(b) Lemman USA's failure to require strict compliance with any provision of these Terms and Conditions for Warehousing shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of these Terms and Conditions for Warehousing.

(c) The provisions of these Terms and Conditions for Warehousing shall be binding upon the heirs, executors, successors and assigns of both Customer and Lemman USA; together with any agreement into which they have been incorporated by reference contain the sole agreement governing Goods tendered to the Lemman USA; and, cannot be modified except by a writing signed by Lemman USA and Customer.

#### 21. Lien.

Lemman USA shall have a general warehouse lien for all lawful charges for storage and preservation of the Goods; also, for all lawful claims for money advanced, interest, insurance, transportation, forwarding, 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. Lemman USA further claims a general warehouse lien for all such charges, advances and expenses with respect to any other Goods stored by the Customer in any other facility owned or operated by Lemman USA. In order to protect its lien, Lemman USA reserves the right to require advance payment of all charges prior to shipment of Goods.

#### 22. Documents of Title.

Documents of title, including warehouse receipts, may be issued either in physical or electronic form at the option of the parties.

#### 23. Governing Law and Jurisdiction.

These Terms and Conditions for Warehousing and the legal relationship between the parties hereto shall be governed by and construed in accordance with the substantive laws of the State of Wisconsin, notwithstanding its conflict of laws rules. Any lawsuit or other action involving any dispute, claim or controversy relating in any way to these Terms and Conditions for Warehousing shall be brought only in the Circuit Courts of Racine County, Wisconsin or the Federal District Court for the Eastern District of Wisconsin in Milwaukee, Wisconsin.

24. Payment.

Payment for all services rendered by Lemman USA on the behalf of Customer shall be due within thirty (30) days from the date of the invoice. Failure on the part of the Customer to tender payment for services in a timely manner shall result in the accrual of interest on any outstanding balances at a rate of 1.5% per month. In the event of problematic failure on the part of the Customer to tender prompt payment, Lemman USA reserves the right to immediately suspend services until such time as appropriate payment is made. Any grievance on the part of the Customer as it relates to any specific invoice must be filed in writing to Lemman USA within thirty (30) days of the date of the invoice to which Customer agrees to pay invoices as submitted without deduction or hold back.

All prices are quoted in USD

By using Lemman USA services as of, you accept this Agreement between the parties as of the date and year first above written.

**On behalf of customer**

**On behalf of LEMAN**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date/place)

\_\_\_\_\_  
(Date/place)