



EXPLANATORY NARRATIVE OF THE 2008 AMENDED AMERICAN VERSION OF THE STANDARD TERMS AND CONDITIONS FOR MERCHANDISE WAREHOUSES

IWLA's Insurance and Legal Affairs Committee, chaired by Arthur Barrett, has prepared the Standard Terms and Conditions for Merchandise Warehouses for exclusive use by IWLA members.

I. CHANGES TO THE STANDARD TERMS AND CONDITIONS FOR MERCHANDISE WAREHOUSES

The Committee draws members' attention to the following emendations to the January 1998 version of the document, as now revised and promulgated by IWLA in November 2008.

ACCEPTANCE – Sec. 1

Created defined terms for Warehouse, Depositor, Facility, Goods, and Contract. Revised the language to make the document appropriate for attachment to the Rate Quote Form or Warehouse Receipt or both.

SHIPMENTS TO AND FROM WAREHOUSE – Sec. 2

Adopted recommendations from the IWLA Rail Council to offer additional protection against claims for demurrage and detention.

TENDER OF GOODS – Sec. 3

Because this is a storage agreement (e.g., to be attached to warehouse receipt), we changed "handling" to "storage and handling".

STORAGE PERIOD AND CHARGES – Sec. 4

Minor clean-up.

TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS – Sec. 5

§5(a) Throughout the document we changed "Depositor of record" to "Depositor" ("of record" was in contemplation to negotiable warehouse receipts, and all such references to negotiable receipts have been removed from this version).

§5(b) Warehouse no longer waives storage if Depositor removes the goods in lieu of warehouse relocating to another Facility.

§5(d) Changed notice period to a simple (minimum) 30 days.

§5(e) Minor clean-up.

§5(c) Minor clean-up.

HANDLING – Sec. 6

Minor clean-up.

DELIVERY REQUIREMENTS – Sec. 7

§7(a) All references to negotiable warehouse receipts have been eliminated, starting with §7.

§7(b) All references to negotiable warehouse receipts have been eliminated, starting with §7.

§7(b) The original document had mixed use of "loss", "damage", "injury", and "destruction". We have eliminated all references to "injury" and "destruction". Starting with §7 and continuing consistently throughout the document all such references are now stated as "loss or damage" to Goods.

EXTRA SERVICES (SPECIAL SERVICES) – Sec. 8

Minor clean-up.

BONDED STORAGE – Sec. 9

Expiration of a bond no longer voids the warehouse receipt (Standard Terms and Conditions). Instead, we have set forth that the Warehouse has no liability for Goods seized by Customs, which was likely the original intent of this Section.

MINIMUM CHARGES – Sec. 10

No changes.

LIABILITY AND LIMITATION OF DAMAGES – Sec. 11

§11(a) Changed "stored goods" to "tendered, stored or handled" to account for (1) goods in trailers dropped at the door and (2) cross-dock goods.

§11(a) Changed "Man" to "Person".

§11(c) Left the limitation provision blank, but inserted the word "per" to try to spur the Warehouse operator to fill in the blank correctly. **The Warehouse should complete the limitation provision before presenting a contract to the customer (Depositor).**

§11(d) Changed "stored goods" to "tendered, stored or handled" to account for (1) goods in trailers dropped at the door and (2) cross-dock goods.

NOTICE OF CLAIM AND FILING OF SUIT – Sec. 12

Minor clean-up. Note that the 9-month time limit for filing of suit is not enforceable in some states. Texas, for example, requires no less than 2 years.

LIABILITY FOR CONSEQUENTIAL DAMAGES – Sec. 13

Minor clean-up.

LIABILITY FOR MISSHIPMENT – Sec. 14

Minor clean-up.

MYSTERIOUS DISAPPEARANCE – Sec.15

Made the provision for Mysterious Disappearance straightforward.

RIGHT TO STORE GOODS – Sec. 16

Minor clean-up.

ACCURATE INFORMATION – Sec. 17

Minor clean-up.

SEVERABILITY and WAIVER – Sec. 18

§18(c) Made this section reciprocal.

LIEN – Sec. 19

New section.

DOCUMENTS OF TITLE - Sec. 20

New section.

GOVERNING LAW AND JURISDICTION – Sec. 21

New section.

II. SUPPLEMENTAL TERMS THAT CAN BE INCORPORATED INTO A STAND-ALONE CONTRACT OR AN ADDENDUM TO THE STANDARD TERMS AND CONDITIONS FOR MERCHANDISE WAREHOUSES

The following are additional provisions that a warehouse operator might consider when developing a customized contract for third-party warehouse services. The Insurance and Legal Affairs Committee recommends that a party to the contract consult an attorney experienced in the practice of warehouse law before modifying the Standard Contract Terms and Conditions for Merchandise Warehouses.

RESPONSIBILITY FOR DEMURRAGE/DETENTION

Limiting liability for demurrage or detention charges to ___ loads per day of throughput volume.

WAREHOUSE LEGAL LIABILITY

- No liability for a loss amount in excess of \$_____ per occurrence. **Note, the addition of this provision might void the whole notion of limitation of liability in a state or commonwealth that has not adopted the new Article 7 of the Uniform Commercial Code.**
- Damage and inventory shrink allowance defined as ___% of the annual throughput.
- Zero or very narrow liability in the event that the Depositor has access to and the ability to manipulate the inventory control system.

PAYMENT TERMS

The parties may consider adding a new section to address payment terms, which might define:

- Payment due date
- Late payment charges and/or interest rate for undisputed past-due balances
- #days within which the Depositor must notify the Warehouse in the event of a disputed invoice
- Process for resolving disputed invoices
- Payment in-full (regardless of payment terms) in the event that the Depositor orders Goods to be removed from the warehouse.

DEFAULT

- Responsibility for giving written notice to the defaulting party
- Defined “Cure Period” (___ days); and obligation for “prosecuting” a default that is not possible to cure within the defined Cure Period

NONSOLICITATION OF EMPLOYEES

- Define the period of time, beyond the term of the contract, during which each party agrees not to recruit or employ any employee of the other party.
- Define compensation in the event that one party does hire an employee of the other party

CONFIDENTIALITY

A section could be added stipulating that neither party shall disclose to third parties any of the terms of the contract, nor any confidential or proprietary information either party learns about the other.