

THOMSON REUTERS PRACTICAL LAW

Warehouse Receipt Terms and Conditions

by Ronald E. Whitney and Lawrence A. Lichtman, Honigman Miller Schwartz and Cohn LLP, with Practical Law Commercial Transactions

Maintained • USA (National/Federal)

 [Related Content](#)

General terms and conditions contained on the reverse side of a warehouse receipt for the provision of warehousing or storage services, drafted in favor of the warehouse operator. This Standard Document, which can be used as a short-form warehouse or storage agreement, has integrated drafting notes with important explanations and drafting and negotiating tips.

READ THIS BEFORE USING DOCUMENT

This Standard Document contains terms and conditions related to the provision of warehouse or storage services, drafted in favor of the warehouse operator.

A warehouse receipt is a [Uniform Commercial Code](#) (UCC) Article 7 document of title that is issued by a warehouse operator to the party requesting storage services (depositor). A warehouse receipt:

- Provides evidence of title to the goods identified on the receipt.
- Provides the depositor with evidence of the goods' delivery to the specified warehouse.
- Serves as a contract that states the terms and conditions under which the warehouse operator agrees to store the goods on behalf of the depositor.
- If negotiable, entitles the person possessing the warehouse receipt to obtain possession of the goods.

While UCC Article 7 does not prescribe any particular form for a warehouse receipt, the warehouse operator is generally liable for damages caused to any person injured by the omission of any of the following items from the warehouse receipt:

- The location of the warehouse where the goods are stored.
- The date of issue of the receipt.
- The unique identification number of the receipt.
- A statement whether the goods received must be delivered to the bearer, to a named person, or to a named person or its order.
- Storage fees and handling charges.
- A description of the goods or the cartons, pallets, or containers containing them.
- The signature of the warehouse or its agent.
- If the receipt is issued for goods that the warehouse owns or co-owns, a statement of that ownership, including whether the warehouse has:
 - sole ownership;
 - joint ownership; or

- ownership in common with others.
- A statement of the amount of advances made and of liabilities incurred for which the warehouse operator claims a lien or security interest.

(UCC § 7-202(b).)

A warehouse receipt may also include any terms that:

- Are not contrary to the UCC.
- Do not impair the warehouse operator's obligation to deliver the stored goods under [UCC Section 7-403](#).
- Do not impair the warehouse operator's duty of care under [UCC Section 7-204](#).

(UCC § 7-202(c).)

Assumptions

These terms and conditions assume that:

- **The parties are US entities and the warehouse transaction takes place in the US.** If any party is organized or operates in or any part of the transaction takes place in a foreign jurisdiction these terms may need to be modified to comply with applicable laws in the relevant foreign jurisdiction.
- **US laws govern the transaction.** Warehouse receipts are generally governed by Article 7 of the **Uniform Commercial Code (UCC)**, as enacted by the relevant state. Because both UCC Article 7 and court cases interpreting Article 7 can vary from state to state, counsel should always refer to the law of the specific jurisdiction governing the transaction.
- **These terms are not industry-specific.** This Standard Document is drafted to cover a warehouse operator's receipt and storage of a variety of goods (for example, raw materials or manufactured goods). However, the warehouse operator must revise these terms if it contemplates the storage of hazardous goods, perishable goods, or other goods requiring special handling or storage conditions.
- **This Standard Document is not designed as a master agreement and covers a single storage transaction only.** If the warehouse operator stores additional goods on behalf of the depositor, each further storage transaction is governed by a new warehouse receipt.
- **These terms are printed on the reverse side of the warehouse receipt.** The front side of the warehouse receipt generally sets out the business terms of the storage arrangement, including:
 - a description of the goods stored;
 - the quantity of the goods stored;
 - the storage and handling fees;
 - any other services provided;
 - the reference number for the storage transaction; and
 - signature blocks for execution by an authorized representative of the warehouse operator and an authorized representative of the depositor.
- **These terms are part of a non-negotiable warehouse receipt.** This Standard Document recognizes that in commercial transactions, the warehouse and storage business is generally conducted using non-negotiable warehouse receipts (instead of negotiable warehouse receipts). Issuing a non-negotiable warehouse receipt furthers the movement of goods within the manufacturing supply chain by allowing a financing party to obtain a priority perfected security interest in the goods without having to take possession of each warehouse receipt that is issued. When a negotiable warehouse receipt is issued, a security interest filed against the stored goods can be superseded by a secured party that takes possession of the negotiable warehouse receipt.

Bracketed Terms

Bracketed items in ALL CAPS should be completed with the facts of the transaction. Bracketed items in sentence case are either optional provisions or include alternative language choices to be selected, added, or deleted at the drafter's discretion.

NON-NEGOTIABLE WAREHOUSE RECEIPT

1. Applicability. [NAME OF WAREHOUSE OPERATOR] ("**Warehouse Operator**") shall provide warehousing, storage, handling, delivery, and related services (the "**Services**") for the goods described on the face side hereof (the "**Goods**") on behalf of the depositor named on the face side hereof ("**Depositor**") pursuant to these terms and conditions, together with the quotations, terms, and conditions contained on the face side of this document (collectively, this "**Warehouse Receipt**"). Warehouse Operator shall provide the Services in its warehouse facility identified on the face side hereof ("**Warehouse**"). If Warehouse Operator provides additional services, including the special handling services set forth on the face side hereof, it shall provide them (a) for the additional fees set forth in [Section 7](#), and (b) solely as agent for Depositor, and not as a bailee or warehouseman.

2. Acceptance. This Warehouse Receipt must be accepted within [NUMBER] days from the proposal date set forth on the face side of this document ("**Proposal Date**") either by Depositor's signature, or in the absence of written acceptance, Depositor's tender of Goods for storage hereunder within [NUMBER] days from the Proposal Date. Depositor's tender of Goods for storage is subject to the terms and conditions of this Warehouse Receipt, including [Section 3](#). Warehouse Operator may refuse to accept any goods for storage if (a) the Goods are tendered for storage after [NUMBER] days from the Proposal Date without prior written acceptance by the Depositor under this [Section 2](#); or (b) the goods tendered for storage do not conform to the description contained on the face side hereof. If Warehouse Operator accepts such goods for storage, Depositor agrees to rates and charges as may be assigned and invoiced by Warehouse Operator and to all other terms and conditions of this Warehouse Receipt. Any goods accepted by Warehouse Operator, including additional goods delivered by Depositor as part of this lot while this Warehouse Receipt is outstanding, constitute Goods under this Warehouse Receipt.

ACCEPTANCE

A warehouse receipt is a document prepared by the warehouse operator containing its quoted rates and other terms and conditions. It is treated as an offer to enter into a contract that must be accepted by the depositor to form a contract. This Standard Document provides for two methods of acceptance:

- **Acceptance by countersignature.** The depositor can signify its acceptance of the offer by countersigning the warehouse receipt on the face side of the document and returning an executed copy within the specified number of days after the offer is made (proposal date).
- **Acceptance by tender of goods.** If the depositor does not countersign the warehouse receipt, the warehouse receipt is deemed accepted when the depositor tenders the goods referred to in the warehouse receipt and accepts the warehouse receipt issued.

The warehouse operator is under no obligation to accept tender of any goods if the depositor has not proffered its acceptance by timely countersignature or tender of goods. Any untimely tender of goods by the depositor is treated as an offer by the depositor to enter into a contract under the terms and conditions of the warehouse receipt, which the warehouse operator can accept by accepting tender of the goods. Therefore, any goods tendered in the manner contemplated by [Section 2](#) and accepted by the warehouse operator constitute goods that are subject to all the terms and conditions of the warehouse receipt.

3. Tender of Goods for Storage. Depositor represents and warrants that it is the owner or has lawful possession of the Goods and all right and authority to store them with Warehouse Operator and thereafter direct the release and/or delivery of the Goods. Depositor shall (a) tender any Goods for storage only during Warehouse Operator's posted business hours for the Warehouse; (b) tender all Goods to the Warehouse properly marked and packed for storage and handling; (c) provide Warehouse Operator with information concerning the tendered goods that is accurate, complete, and sufficient to allow Warehouse Operator to comply with all laws and regulations concerning the storage, handling, processing, and transportation of the Goods; and (d) furnish at or prior to tender of the Goods for storage a manifest in a form approved by Warehouse Operator listing any categories of Goods, brands, or sizes to be separately kept and accounted for.

Before tendering Goods that require specialized handling or which are dangerous or hazardous, Depositor must identify the Goods and special handling requirements to Warehouse Operator in writing, and Warehouse Operator must specifically agree to store such Goods. Depositor is solely responsible for providing complete and accurate handling and storage instructions for such Goods, including any applicable safety procedures. If such Goods create a risk of harm to persons or property, or if continued storage becomes impractical, Warehouse Operator may require Depositor to take delivery of such Goods, or may dispose of such Goods at Depositor's risk and expense.

(a) For all Goods shipped to the Warehouse, Depositor shall ensure that the bill of lading or other contract of carriage ("**Transportation Contract**") (a) identifies Depositor as the named consignee, in care of Warehouse Operator, and (b) does not identify Warehouse Operator as the consignee. If any Goods are shipped to the Warehouse naming Warehouse Operator as named consignee on the Transportation Contract, Depositor shall promptly notify the carrier in writing that Warehouse is (x) the "in care of party" only and (y) does not have any beneficial title or

interest in the Goods. Warehouse Operator may refuse to accept any Goods tendered for storage in violation of this provision, and shall not be liable for any loss or damage to, or misconsignment of, such Goods. Depositor agrees to indemnify, defend, and hold Warehouse Operator harmless from any costs, liabilities, actions, penalties, or expenses of any kinds associated with the improper declaration of Warehouse Operator as consignee.

TENDER OF GOODS FOR STORAGE

[Section 3](#) sets out some of the basic ground rules to the proper tender of goods for storage. The depositor must:

- Confirm that it has the right to store the goods with the warehouse operator.
- Tender the goods only during the normal business hours of the warehouse.

To ensure that all goods are properly accounted for, the depositor must also:

- Properly pack the goods for storage, including affixing proper labels.
- Provide the warehouse operator with a manifest with detailed information about each tender of goods.

The second paragraph helps to reduce the risk that any transportation provider that delivers the goods to the warehouse on behalf of the depositor can make a claim against the warehouse operator for payment of transportation charges by requiring the depositor to:

- Identify the warehouse operator as a service provider, rather than the owner of the goods.
- Notify and correct any potential misunderstanding of the carrier that the warehouse operator may have title or an interest in the goods.

For more information about transportation providers, see [Practice Note, Logistics: Transportation Service Providers Overview](#).

The second paragraph also helps protect the warehouse operator from liability associated with being named the consignee for an imported shipment, and provides a means for the recovery of any costs associated with a government investigation, claim, or penalty.

4. **Indemnity.** Depositor shall indemnify, defend, and hold harmless Warehouse Operator [and its [officers,] [directors,] employees, agents, affiliates, successors, and permitted assigns] (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including undercharges, rail demurrage, truck/intermodal detention or related charges and [reasonable] attorneys' fees, fees, and the costs of enforcing any right to indemnification under this Warehouse Receipt and the cost of pursuing any insurance providers, [incurred by Indemnified Party/awarded against Indemnified Party], [relating to/arising out of or resulting from] any claim of a third party [or Warehouse Operator] arising out of or occurring in connection with the Services or from Warehouse Operator's or Depositor's negligence, willful misconduct, or breach of this Warehouse Receipt (each, a "**Warehouse Claim**"). Depositor shall not enter into any settlement of a Warehouse Claim without Warehouse Operator's or Indemnified Party's prior written consent.

INDEMNITY

This pro-warehouse operator Standard Document contains a one-way indemnity by the depositor in favor of the warehouse operator. The indemnity covers claims arising out of or incurred in connection with the warehouse receipt, including any breach of the warehouse receipt by the depositor for example, any breach of [Section 3](#) resulting in any losses incurred by the warehouse operator due to:

- Its involvement in a third-party claim that is adverse to the depositor's rights in the goods.
- Any claim by a carrier for transportation charges that should rightfully be borne by the depositor.

The bracketed definition of indemnified party includes third parties. Therefore, if the warehouse operator wants to ensure that those third parties can seek remedies under this indemnification provision, it should carve them out from [Section 14](#).

The warehouse operator should consider expanding this provision by adding the optional phrase "or Warehouse Operator" to cover its direct claims (the warehouse operator's claims against the depositor) in addition to its losses from third-party claims. For more information on indemnification for direct claims, see [Practice Note, Indemnification Clauses in Commercial Contracts: Direct versus Third-Party Claims](#).

For more information on drafting and negotiating indemnification clauses, see [Practice Note, Indemnification Clauses in Commercial Contracts](#) and [Standard Clauses, General Contract Clauses, Indemnification](#).

5. **Access and Release of Goods.** Warehouse Operator shall use all reasonable efforts to release the Goods to Depositor or its designee within a reasonable time after Warehouse Operator's receipt of Depositor's written instructions to do so (each, a "**Release Order**"), provided that all charges have been paid in full. Warehouse Operator may without liability rely on any information contained in any instructions or other communication from Depositor. Depositor shall be responsible for all shipping, handling, and other charges assessed by carriers and other third parties in connection with the delivery and/or other shipment of the Goods. A Release Order providing instructions to transfer Goods on the books of Warehouse Operator to any other depositor of goods in the Warehouse will not be effective until such Release Order is delivered to and accepted by Warehouse Operator. The depositor of record shall be responsible for all charges up to the time the actual transfer of the applicable Goods is made. When Goods in storage are transferred from one party to another through issuance of a new warehouse receipt, a new storage date for the transferee will be established effective on the date of transfer.

Warehouse Operator may move, upon [NUMBER] days' notice to Depositor any Goods in storage from the Warehouse to any of the other warehouses belonging to or operated by Warehouse Operator. Warehouse Operator may, without notice, move the Goods within the Warehouse in which the Goods are stored.

ACCESS AND RELEASE OF GOODS

In [Section 5](#) of this pro-warehouse operator form, the warehouse operator agrees to use reasonable efforts to follow the depositor's instructions regarding the release of the goods from the warehouse. The warehouse operator is also entitled to rely on information and directions received from the depositor concerning the depositor's goods. This clause aims to ensure that the warehouse operator:

- Is not strictly held to any specific deadlines.
- Has flexibility in its ability to move stored goods within the warehouse the goods are in or to other warehouses operated by the warehouse operator.

6. **Warehouse Lien.** Warehouse Operator shall have a lien on the Goods and upon the proceeds from the sale thereof to secure Depositor's payment of all fees, charges, and expenses hereunder in connection with the storage, transportation, preservation, and handling of the Goods. Warehouse Operator may enforce this lien at any time, including, by selling all or any part of the Goods in accordance with applicable law.

WAREHOUSE LIEN

[Section 6](#) confirms that the warehouse operator has a statutory lien under UCC Article 7 in the warehoused goods to secure the depositor's obligation to pay the storage and related charges set out in [Section 7 \(UCC § 7-209\(a\)\)](#).

[Section 11](#) gives the warehouse operator the right to terminate the agreement if the goods are about to deteriorate or decline in value to less than the amount of the warehouse lien set out in [Section 5](#) before the end of the next succeeding storage month.

Third-party lenders, including vendors that provide purchase money financing to the depositor, however, typically want assurances from the depositor that the depositor can provide the lender a first priority security interest in any warehoused goods. Therefore, as a condition to financing, the lender typically requires the depositor to obtain the warehouse operator's:

- Agreement that the lender's security interest prevails over any lien or security interest that the warehouse operator may have in the warehoused goods.
- Acknowledgement that it does not have any rights in the goods that would interfere with the lender's first priority security interest.
- Authentication that it holds or acknowledges that it will hold possession of the warehoused goods for the lender's benefit to overcome any presumption that the warehouse operator may have a possessory security interest in the goods ([UCC § 9-313\(c\)\(1\)](#) and (c)(2)).

For a form of letter providing these assurances of the warehouse operator to the depositor's lender, see [Standard Document, Letter: Security Interest in Warehoused Assets](#).

7. Storage Charges. Depositor shall pay the storage charges and service fees at the rates set forth on [the face side hereof/Warehouse Operator's Rate Sheet in effect at the time such charges accrue or the services are performed]. All Goods are stored on a month-to-month basis. All charges for storage are per package, or other unit specified on the face side hereof, per month. [Warehouse Operator may, upon thirty days written notice, revise its rates during the time the Goods are in storage.] The current Rate Sheet shall be provided at the time of deposit of Goods into storage and upon request by Depositor. Notwithstanding the above, (a) a full month's storage charge will apply to all Goods received between the first and the 15th, inclusive, of a calendar month; (b) one-half month's storage charge will apply to all Goods received between the 16th and last day, inclusive, of a calendar month; and (c) a full month's storage charge will apply to all Goods in storage on the first day of a calendar month. Standard services are limited to the ordinary labor involved in receiving tendered Goods at the warehouse door, placing Goods in storage, and returning Goods (that are to be dispatched from the Warehouse) to warehouse door. Additional charges apply to other specified services at the rates set forth on [the face side hereof/Warehouse Operator's Rate Sheet in effect at the time such charges accrue or the services are performed], and will be separately billed as such services are performed. All charges are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Depositor. Depositor shall be responsible for all such charges, costs, and taxes; provided, that, Depositor shall not be responsible for any taxes imposed on, or with respect to, Warehouse Operator's income, revenues, gross receipts, personnel, or real or personal property. Depositor is subject to and shall pay the minimum handling charge per lot and a minimum storage charge per lot per month specified on [the face side hereof/Warehouse Operator's Rate Sheet in effect at the time such charge accrues or the services are performed].

STORAGE CHARGES

The warehouse operator can incorporate pricing information in:

- The face side of the warehouse receipt.
- The warehouse operator's then current price list.

Many warehouse operators prefer to set their prices by reference to a price list because it:

- Provides them with greater flexibility.
- Avoids the need for a price adjustment clause.

[Section 7](#) identifies a monthly billing period, although the warehouse operator is free to specify some other period of time, for example, bi-weekly or quarterly.

This Standard Document contemplates the provision of standard storage and related services. Special services are subject to additional charges that the warehouse operator can include on the face side of the warehouse receipt or on its rate schedule. Special services might include:

- Inspecting the goods.
- Unloading damaged goods
- Receiving or delivering goods outside of normal business hours.
- Reporting serial numbers, marked weights, or other data from packages.
- Supplying packing materials or other special supplies.
- Furnishing special communications to or on behalf of the depositor, for example, by overnight courier.
- Furnishing insurance on the goods.

8. Payment Terms. Depositor shall pay all storage charges for each storage period in advance for (a) the initial month or partial month on the first day of storage and (b) each succeeding months on the first day of such month. All charges for other Services are due and payable within ten (10) days from the date of invoice; provided that charges related to an entire lot of Goods shall be due and payable at the time the entire lot of Goods is removed from storage. Depositor shall make all payments hereunder by [wire transfer/check/[OTHER PAYMENT METHOD]] and in US dollars. Depositor shall pay interest on all late payments at the lesser of the rate of [1.5/[OTHER NUMBER]%] per month or the highest rate permissible under applicable law, calculated and compounded daily from the date due until paid in full. Depositor shall reimburse Warehouse Operator for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Warehouse Receipt or at law

(which Warehouse Operator does not waive by the exercise of any rights hereunder), Warehouse Operator shall be entitled to suspend the release of any Goods or cease performance of any services if Depositor fails to pay any amounts when due hereunder [and such failure continues for [NUMBER] days following written notice thereof]. In addition, Warehouse Operator reserves the right to require payment in full of all amounts owed by Depositor in advance of the release of the related Goods. Depositor shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Warehouse Operator, whether relating to Warehouse Operator's breach, bankruptcy, or otherwise.

PAYMENT TERMS

This Standard Document does not include language requiring the warehouse operator to issue an invoice for monthly charges because that language:

- Creates a contractual obligation for the warehouse operator.
- Triggers a default by the warehouse operator if it fails to issue an invoice.
- Can be deemed a condition to the depositor's obligation to make payment.

The interest rate in [Section 8](#) is generally set at the lesser of the specified rate or the highest rate permissible by law to avoid conflict with applicable state usury laws.

For more information on payment terms, see [Standard Clauses, General Contract Clauses: Payment Terms](#). For more information about set-off rights, see [Standard Clauses, General Contract Clauses: Setoff](#) and [General Contract Clauses: No Setoff](#).

9. **Limited Warranty.** Warehouse Operator shall not be liable for any loss or damage to the Goods tendered, stored, or handled, however caused, unless such loss or damage resulted from the failure by Warehouse Operator to exercise the level of care with regard to the Goods that a reasonably careful person would have exercised under the circumstances. Warehouse Operator is not liable for damages which could not have been avoided by the exercise of such care. Any presumption of conversion under applicable law shall not apply to a loss with respect to any Goods, and a claim for conversion must be established through evidence that Warehouse Operator converted the Goods to its own use. Depositor shall permit Warehouse Operator to inspect any damaged Goods for which a claim is submitted hereunder. Warehouse Operator shall not be liable for any breach of this [Section 9](#) unless: (a) Depositor gives written notice to Warehouse Operator of any claim within [10/[OTHER NUMBER]] days after release of the Goods by Warehouse Operator or (b) Depositor is notified by Warehouse Operator that loss or damage to part or all of the Goods has occurred as the case may be, reasonably described. No lawsuit or other action may be maintained by Depositor against Warehouse Operator for loss or damage to the Goods unless a timely written claim has been given by Depositor as provided in the previous sentence and unless such lawsuit or other action is commenced no later than the earlier of: (x) [NUMBER] months after the date of delivery of the Goods to Depositor or its nominee by Warehouse Operator or (y) [NUMBER] months after Depositor is notified by Warehouse Operator that loss or damage to part or all of the Goods has occurred.

IN NO EVENT SHALL WAREHOUSE OPERATOR'S LIABILITY UNDER THIS SECTION 9 EXCEED (A) THE ACTUAL COST TO REPAIR, RESTORE, AND/OR REPLACE ANY DAMAGED GOODS, OR (B) [NUMBER] CENTS PER [UNIT] FOR ANY DAMAGED GOODS, WHICHEVER IS LESS. THE REMEDIES SET FORTH IN THIS SECTION 9 SHALL BE DEPOSITOR'S SOLE AND EXCLUSIVE REMEDY AND WAREHOUSE OPERATOR'S ENTIRE LIABILITY FOR ANY BREACH OF WAREHOUSE OPERATOR'S OBLIGATIONS SET FORTH IN THIS SECTION 9.

LIMITED WARRANTY

The limited warranty contained in [Section 9](#) is consistent with [UCC Section 7-204](#), which provides that a warehouse operator is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances.

The limitation of liability contained in [Section 9](#) is consistent with [UCC Section 7-204\(b\)](#), which allows a warehouse operator to limit the amount of liability in case of loss or damage beyond which the warehouse operator is not liable. The time limit imposed for making claims is consistent with [UCC Section 7-204\(c\)](#), which allows a warehouse operator to include reasonable provisions regarding the time and manner of presenting claims and commencing actions.

To further strengthen the warehouse operator's argument that the depositor's remedies are exclusive, the warehouse receipt does not contain a cumulative remedies clause. For information about drafting and negotiating cumulative remedies provisions, see [Standard Clauses, General Contract Clauses: Cumulative Remedies \(with Exclusive Remedies Carve-out\)](#).

10. Limitation of Liability. IN NO EVENT SHALL WAREHOUSE OPERATOR BE RESPONSIBLE OR LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES OF ANY TYPE OR NATURE WHATSOEVER AND HOWEVER ARISING, INCLUDING, WITHOUT LIMITATION, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF ANY PROVISION OF THIS WAREHOUSE RECEIPT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY DEPOSITOR OR COULD HAVE BEEN REASONABLY FORESEEN BY DEPOSITOR, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL WAREHOUSE OPERATOR'S AGGREGATE LIABILITY UNDER THIS WAREHOUSE RECEIPT INCLUDING, BUT NOT LIMITED TO, WAREHOUSE OPERATOR'S LIABILITY UNDER SECTION 9 OF THIS WAREHOUSE RECEIPT, EXCEED **[NUMBER] TIMES** THE TOTAL OF THE AMOUNTS PAID TO WAREHOUSE OPERATOR FOR THE SERVICES RENDERED HEREUNDER **[OR \$[AMOUNT], WHICHEVER IS LESS]**.

In the case of loss or damage to Goods for which Warehouse Operator is not liable, Depositor shall be responsible for all charges incurred in removing and disposing of such Goods, including any environmental clean-up and remediation costs related to such Goods and their removal and disposal.

11. Termination. In addition to any remedies that may be provided under this Warehouse Receipt, Warehouse Operator may terminate this Warehouse Receipt with immediate effect upon written notice to Depositor, if: (a) Depositor fails to pay any amount when due under this Warehouse Receipt [and such failure continues for [NUMBER] days after Depositor's receipt of written notice of nonpayment]; (b) Depositor has not otherwise performed or complied with its obligations under any of the provisions contained in this Warehouse Receipt, in whole or in part; (c) Depositor becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors; (d) the Goods are a hazard to other property within the Warehouse or to the Warehouse itself or to persons as a result of the quality or condition of the Goods of which Warehouse Operator had no notice at the time of deposit; or (e) the Goods are about to deteriorate or decline in value to less than the amount of the warehouse lien set forth in [Section 5](#) before the end of the next succeeding storage month.

This Warehouse Receipt will terminate without notice by either party if no storage or other services are performed hereunder for a continuous period of [six/[NUMBER]] months. [In addition, Warehouse Operator may terminate this Warehouse Receipt at any time upon [60/[NUMBER]] days' prior written notice and with or without any cause or reason being given or required.]

If this Warehouse Receipt is terminated for any reason, Depositor shall promptly arrange the removal of all Goods from the Warehouse, subject to payment of all outstanding fees and charges due hereunder. If Depositor does not promptly remove such Goods, Warehouse Operator may without liability remove the Goods and sell the Goods at public or private sale without advertisement and with or without notification to all persons known to claim an interest in the Goods (to the last known place of business of the person to be notified) in the manner provided by law. If Warehouse Operator, after a reasonable effort, is unable to sell the goods, it may dispose of them without liability in any lawful manner.

TERMINATION

[Section 11](#) gives the warehouse operator the right to terminate for the depositor's:

- Nonpayment.
- Breach of other provisions.
- Bankruptcy, insolvency, or financial distress.

[Section 11](#) also allows the warehouse operator to terminate if the goods pose a hazard or if the goods deteriorate in value so that they can no longer support the warehouse lien discussed in [Section 6](#).

Many warehouse operators include termination for convenience provisions similar to the bracketed language in the second paragraph. If the warehouse operator includes a termination for convenience clause, it should carefully consider whether to include costs or limitations on implementing this right, such as a termination fee to preempt a claim that there is insufficient consideration to support the right.

For more information on termination and an example of a long-form, integrated term and termination provision commonly used in commercial agreements, see [Standard Clauses, General Contract Clauses: Term and Termination](#).

12. Waiver. No waiver by Warehouse Operator of any of the provisions of this Warehouse Receipt is effective unless explicitly set forth in writing and signed by Warehouse Operator. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Warehouse Receipt operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

WAIVER

From time to time, the warehouse operator may fail to enforce its rights under this warehouse receipt, whether as a result of oversight or because of business considerations. This clause provides that a failure to enforce its rights is not a waiver of a breach of any term of this warehouse receipt.

13. Force Majeure. The Warehouse Operator shall not be liable or responsible to Depositor, nor be deemed to have defaulted or breached this Warehouse Receipt, for any failure or delay in fulfilling or performing any term of this Warehouse Receipt when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Warehouse Operator including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers, or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

If Warehouse Operator has been unable to remove/deliver any Goods due to any reason specified in this [Section 13](#), such Goods shall continue to be subject to storage charges until such Goods are actually removed or delivered.

FORCE MAJEURE

A [force majeure clause](#) aims to exclude liability for a party's failure to comply with the terms of the contract where the failure (usually an impermissible delay or failure to perform an obligation) is a result of an event that is outside the reasonable control of the party that is otherwise in default.

Because the warehouse operator is responsible for the main performance obligations under the warehouse receipt (the depositor's primary obligation is to pay for storage of the goods and related services), the warehouse operator generally wants the *force majeure* clause to be drafted as broadly as possible. Note that this pro-warehouse operator force majeure provision includes labor disputes involving its own workforce as a force majeure event, which is something that many depositors may object to.

For more information about force majeure provisions generally, see [Practice Note, Force Majeure Clauses: Key Issues](#). For more information on and an example of a force majeure clause, see [Standard Clauses, General Contract Clauses: Force Majeure](#).

14. Third-Party Beneficiaries. [Except as specified in the next sentence,] [this/This] Warehouse Receipt is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these terms. Notwithstanding the foregoing, all limitations upon, and exceptions and defenses to, liability granted to Warehouse Operator shall be automatically extended to all parent, subsidiary, and affiliated entities and all subcontractors of Warehouse Operator and the owners, directors, officers, employees, and agents of each of the foregoing. [Depositor agrees that Warehouse Operator's [officers,] [directors,] employees, agents, affiliates, successors, and permitted assigns are third-party beneficiaries of the indemnification provision, [Section 4](#) of this Warehouse Receipt [having the right to enforce clause 4].]

THIRD-PARTY BENEFICIARIES

The warehouse operator should include the bracketed language if it designates its officers, directors, employees, agents, affiliates, successors, and permitted assigns as indemnified parties in [Section 4](#). The warehouse operator can also add that the third-party beneficiaries have the direct right to enforce the indemnification provision.

For more information and an example of a long-form no-third-party beneficiaries clause, see [Standard Clauses, General Contract Clauses: Third-Party Beneficiaries](#).

15. **Choice of Law and Forum**. All matters arising out of or relating to this Warehouse Receipt shall be governed by and construed in accordance with the internal laws of the State of [RELEVANT STATE] without giving effect to any choice or conflict of law provision or rule (whether of the State of [RELEVANT STATE] or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of [RELEVANT STATE]. Any legal suit, action, or proceeding arising out of or relating to this Warehouse Receipt shall be instituted in the federal courts of the United States of America or the courts of the State of [RELEVANT STATE] in each case located in the City of [RELEVANT CITY] and County of [RELEVANT COUNTY], [RELEVANT STATE]. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. [The prevailing party in any litigation shall be entitled to recover its reasonable legal fees and costs.]

CHOICE OF LAW AND FORUM

It is customary for the warehouse operator to specify the law and jurisdiction of the state where the relevant storage facility is located as the governing law of and the forum for settling disputes related to the warehouse receipt. For more information on drafting and negotiating governing law clauses, see [Standard Clause, General Contract Clauses: Choice of Law](#) and [Practice Note, Choice of Law and Choice of Forum: Key Issues](#).

The warehouse operator can add the bracketed last sentence if it wants to allocate litigation costs and expenses to the losing party in any lawsuit. If the warehouse operator does not add the bracketed language, a court typically follows the "American Rule," in which each side is responsible for its own fees.

For more information on drafting and negotiating choice of forum clauses, see [Standard Clauses, General Contract Clauses: Choice of Forum](#) and [Practice Note, Choice of Law and Choice of Forum: Key Issues](#). For more information on drafting and negotiating clauses that allocate legal fees (and other expenses) to the losing party in a dispute, see [Standard Clauses, General Contract Clauses: Litigation Costs and Expenses](#).

16. **Integration**. This Warehouse Receipt, together with any current Rate Sheet and [Release Order] issued in connection with this Warehouse Receipt, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Warehouse Receipt, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

INTEGRATION

This integration clause (also known as a merger or entire agreement clause) helps to prevent the warehouse operator from being liable for any understanding, agreements, representations, and warranties other than those expressly set out in the warehouse receipt. For more information on drafting and negotiating an integration clause, see [Standard Clauses, General Contract Clauses: Entire Agreement](#).

17. **Counterparts**. This Warehouse Receipt may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A PDF or other electronically transmitted signature shall be treated as an original signature hereunder.

COUNTERPARTS

For more information on drafting and negotiating counterparts clauses, see [Standard Clauses, General Contract Clauses: Counterparts](#).

18. **Headings**. Headings in this Warehouse Receipt are for convenience of reference only, and are not to be used in any interpretation of the agreement between the parties.

HEADINGS

For more information about drafting headings clauses, see [Standard Clauses, General Contract Clauses: Headings](#).

PRODUCTS

PLC US Commercial Transactions, PLC US Law Department

© 2019 THOMSON REUTERS. NO CLAIM TO ORIGINAL U.S. GOVERNMENT WORKS.

Practical Law. © 2019 Thomson Reuters | [Privacy Statement](#) | [Accessibility](#) | [Supplier Terms](#) | [Contact Us](#) | 1-800-REF-ATTY (1-800-733-2889) | [Improve Practical Law](#)