

## WAREHOUSING TERMS AND CONDITIONS

### 1.1 INTERPRETATION

“**Milyard**” shall mean Milyard Group Inc., agents, employees and successors and assigns;

“**Crossdocking**” shall mean the acceptance of a shipment of Goods by Milyard, for redelivery as hereinafter set out, the unloading and breakdown thereof into component parts in accordance with instructions received from the Depositor and reloading for forwarding of the said component parts.

“**Dangerous Goods**” includes goods that are or may be dangerous, explosive, inflammable, radioactive, hazardous, bio hazardous, cytotoxic or environmentally damaging in nature.

“**Depositor**”, “**Owner**”, “**Storer**” means the owner of the Goods or the party for whose account the Goods are stored;

“**Goods**” means the goods or packages containing them that are stored for the account of the Depositor;

“**Parties**” means Milyard and the Depositor and “**Party**” means either one of them;

“**Receipt**” means a document evidencing the acceptance of Goods for storage by Milyard from Depositor.

“**Warehouse Facility**” shall mean the warehouse premises of Milyard;

“**Warehouseman**” shall mean Milyard whether it issues a receipt or not.

### AGREEMENT

**2.1 Term:** Unless terminated sooner pursuant to an applicable Schedule of Rates Agreement, the term of storage shall begin on the date set out in writing between the Depositor and Milyard (whether or not in a Receipt of the Goods) or the date the Goods are received by Milyard at the Warehouse Facility, whichever occurs first, and shall end at the later of a) the end date stipulated in writing between the Parties or b) the date the Goods are removed from the Warehouse Facility.

### PROVISION OF SERVICES

**3.1 Contract:** Subject always to legislation in force governing warehouse receipts in the province where the Goods are stored, these Terms and Conditions apply to the storage of Goods whether set out in a Receipt or not. These Terms and Conditions, apply when these Terms and Conditions are signed by the Depositor or when delivered or mailed to the Owner or Depositor of the goods at Depositor/Owner’s address last known to the Warehouseman, shall constitute the contract between the Owner or Depositor and the Warehouseman; provided that the Owner or Depositor may within twenty days after such delivery or mailing, notify the Warehouseman in writing that he does not accept the contract and forthwith thereafter shall pay the Warehouseman’s lien for charges and remove the Goods. If such notice is not given then these Terms and Conditions / Receipt constitutes the contract. This contract may be cancelled by either party upon 30 days written notice and is cancelled if no storage or other services are performed under this contract for a period of 180 days.

**3.2 Sole Discretion:** Milyard shall have the sole discretion to select the area within its Warehousing Facility in which to store the Goods and may, without notice, move the Goods within the Warehousing Facility or to another Warehousing Facility controlled by Milyard.

**3.3 Procedures:** Except for express written instructions from the Depositor, Milyard shall have absolute discretion regarding methods and procedures followed in the handling, storage and transport of Goods. In addition, if Milyard deems it necessary or desirable in the interests of the Depositor to deviate from the Depositor’s written instructions it shall have absolute right so to do. Instructions to ship Goods are not effective until delivered to and accepted by Milyard.

**3.4 Tender for Storage:** All Goods for storage shall be delivered at the Warehouse Facility properly marked and packaged for handling. The Storer 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.

**3.5 Acceptance of Goods:** All Goods tendered to Milyard shall be so tendered subject to the availability of space at the time of delivery of the Goods to Milyard and to the Terms and Conditions hereof.

Milyard undertakes the storage, handling, or Crossdocking of the Goods only in the units in which they are originally received without subsequent sorting, except by special arrangement subject to an additional charge as set out in a Schedule of Rates or as agreed to in writing by the Parties.

Unless otherwise agreed to in writing, all incoming shipments must be consigned to the Depositor, c/o Milyard, freight prepaid. Milyard reserves the right to refuse acceptance of any Goods improperly consigned or shipped freight collect and shall not be liable or responsible for any loss, injury or damage of any nature to or related to such Goods.

**3.6 Removal of Goods:** Milyard shall have the right to require the removal from its Warehouse Facility of any Goods of any kind or description, at any time, without stated reasons, upon written notice of not less than 21 days from the end of any then-current storage month.

**3.7 Access to Inspect Goods:** The Depositor may, subject to Milyard’s security and insurance regulations and reasonable limitations, have access to the Goods at any reasonable time provided the Depositor is accompanied by an employee of Milyard whose time shall be an additional charge to the Depositor and provided that the Depositor has given at least 48 hours written notice of the access requirement.

**3.8 Insurance:** Goods are not insured by Milyard and the charges applicable to the services hereunder will not include insurance unless specified in writing and signed by Milyard. It is the sole responsibility of the Depositor to ensure the Goods are insured with all risk insurance. Depositor warrants the Goods are insured. Such insurance shall contain a waiver of subrogation in favour of Milyard.

### PAYMENT TERMS

**4.1 Payment Terms:** The Depositor agrees to pay Milyard the rates and charges set forth in a Schedule of Rates, which are in effect as of the beginning of the term, and as may be revised from time to time. All payments shall be made thirty (30) days after the Depositor receives Milyard’s invoice. Payments not received within thirty (30) days from receipt of invoice shall constitute default and be assessed at the rate of 1% per month until paid together with any and all collection costs incurred by Milyard, including reasonable legal fees.

**4.2 Lien:** All advances and charges are due and payable prior to delivery or transfer of the Goods. Milyard shall have a general and specific lien upon, right of retention and security interest in all Goods, at any time heretofore and hereafter deposited by Depositor in the Warehouse Facility. Such lien, right of retention and security interest shall be for all charges, advances and expenses in relation to such Goods, whether or not heretofore released from the Warehouse Facility. In the event of nonpayment of any such amounts, Milyard has the right, after reasonable notice, to sell or otherwise dispose of the Goods in any manner that it may reasonably think fit to satisfy its lien, subject to legislation in force governing the disposition of such Goods in the province where such Goods are stored. Where Milyard decides, in its sole and exclusive discretion, to deliver or transfer the Goods prior to receipt of payment of all charges, advances and expenses in relation to the Goods, the Depositor shall deliver to Milyard, immediately upon its request, a signed acknowledgment of indebtedness including any invoice or other statement of account issued by Milyard.

**4.3 Minimum Charge:** There shall be a minimum charge assessed for storage, unloading, repacking, reloading, forwarding and any other services rendered by or required of Milyard with respect to each unit of Goods, and which minimum charge shall be set out in a Schedule of Rates.

**4.4 Count:** If a checker is not furnished by the Depositor or transportation company delivering the Goods to the Warehouse Facility, Milyard’s load or unload count shall be conclusively deemed to be correct.

### DAANGEROUS GOODS

**5.1 Representation re Dangerous Goods:** The Depositor represents and warrants to Milyard that there are no potential health, safety or environmental hazardous associated with the storage and handling of the Goods tendered to Milyard hereunder, save as previously disclosed in writing and accepted in writing by Milyard. The Depositor warrants that the Goods, the packaging and marking thereof comply in all respects with the provisions of any federal or provincial legislation or regulations governing the handling or storage of Dangerous Goods.

**5.2 Refusal to Accept:** Dangerous Goods which are hazardous by their nature and the storage of which in a public warehouse under ordinary general conditions is prohibited by government or local regulation or decision of Milyard or which will or may affect the rate or availability of insurance on other Goods or the Warehouse Facility will not be accepted for storage. It is the Depositor's responsibility to provide Milyard in advance with detailed, written information and instructions on any Dangerous Goods whether or not they are regulated under the *Transportation of Dangerous Goods Act* or other applicable legislation. If the Depositor fails to do so, Milyard shall have the right to refuse to accept such Goods when tendered for storage or other services and shall not be liable for any loss, mis-shipment or damage of any nature to such Goods.

**5.3 Subsequent Removal of Dangerous Good:** No Goods that are or may become dangerous, explosive, inflammable, radioactive, hazardous, bio hazardous, cytotoxic or environmentally damaging in nature and that, in the opinion of Milyard, may create a condition hazardous to any personnel or goods and/or articles located in the Warehouse Facility or to the Warehouse Facility itself shall be delivered to the Warehouse Facility, except where the Depositor has obtained the prior written approval of Milyard, which may be unreasonably withheld. Any such Good may upon being discovered, be destroyed, dumped, sold or otherwise dealt with as Milyard reasonably sees fit, the whole at the risk and expense of the Depositor and without liability on the part of Milyard.

## LIABILITY OF PARTIES

**6.1 Depositor Liability for Costs:** The Depositor assumes all liability for costs incurred and for damages resulting from the Depositor's failure to comply with the Terms and Conditions hereunder.

**6.2 Responsibility of Milyard:** The responsibility of Milyard is the reasonable care and diligence required by the laws of the province where the Goods are stored.

**6.2 Condition Unknown.** The quality, condition, contents and value of the Goods are not known to Milyard except as declared by the Depositor and described in writing.

**6.3 Goods Stored at Depositor's Risk:** All Goods are stored at the Depositor's and/or owner's risk of loss, damage or delay in the delivery, caused by or through inaccuracies, obliteration or absence of marks, numbers, address or description, act of God, irresistible force, enemies of the Queen, civil or military authorities, insurrection, riot, strikes, terrorist acts, picketing or any other labour trouble, water, steam, sprinkler leakage, floods, rain, wind, storm, fire, frost, vermin, heating or corruption, deterioration, drainage, dampness, rust, decay, collapse of the building, inevitable accident, depredation or perishing by a lapse of time, changes in temperature, interruption or loss of power, contact with or odours from other Goods, inherent defects, lack of any special care or precaution, injury to Goods insufficiently protected or arising from the nature of the Goods, loss in weight, insufficient cooperage, boxing, crating or packing, ordinary wear and tear in handling, leakage, concealed damage or any cause beyond the control of the Milyard or failure to detect any of the foregoing. All storage and other applicable charges must be paid on Goods stored for an additional time, or lost or damaged by any of the above causes.

**6.4 Milyard Limit of Liability:** The legal liability of Milyard shall be strictly limited to the lesser of

- a) the monetary amount of the loss or damage incurred;
- b) 10 times the monthly storage rate on any one package or stored unit with the contents (or, in cases where Milyard's charges are calculated for other than actual storage, with a maximum \$50.00 per unit) unless the Depositor specifically requests a higher limit in writing and declares an excess value, in which case Milyard may, at its option, accept liability and assess an additional charge to the monthly storage or other applicable rate; or
- c) 2 SDR (SDR=Special Drawing Right) units per kilo of gross weight of the goods lost or damaged.

**6.5 Removal of Goods:** Where loss, damage or destruction occurs to the Goods, for which Milyard is not liable, the Depositor 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, damage or destruction to the Goods.

**6.6 Claim in Writing Within 7 Days:** Milyard shall not in any event, be liable for any claim of any type whatsoever with respect to the Goods unless such claim is presented in writing within a reasonable time, not exceeding 7 days after the Depositor learns of, or, in the exercise of reasonable care, should have learned of the loss, damage or destruction of the Goods and Milyard shall have had an opportunity to inspect said Goods.

**6.7 Damages and Data Transmission:** Milyard shall have no responsibility for errors resulting from the corruption of electronically transmitted data, or from verbal or telephoned shipping instructions, unless written confirmation of such instructions is received not less than twenty four (24) hours prior to the shipment of the Goods.

**6.8 Damages for Delays in Loading or Unloading:** Milyard shall not be responsible for delays in loading or unloading railway cars, trailers or other containers, nor for demurrage charges or other time penalties arising from any delay at the Warehouse Facility, which cannot reasonably be avoided by Milyard in the normal course of its business.

**6.9 Consequential Damages:** Milyard shall not be liable for any losses, damages, costs or expenses for loss of earnings or profit or revenue, loss of use, or special, aggravated, exemplary, incidental, indirect, penal, punitive or consequential damages of any kind whatsoever.

**6.10 Indemnification:** The Depositor shall indemnify, defend and hold Milyard (including its officers, directors, parent and affiliated companies, employees, and agents) harmless from and against cost, any losses, liabilities, damages, penalties, demands, expenses, claims of whatever type or nature by or on behalf of any person, including but not limited to damage or destruction of property or injury (including death) to any person, arising out of the Goods being stored at the Warehouse Facility or tendered for transportation or handled by third parties retained by Milyard or from instructions of the Depositor.

## GENERAL

### 7.1 Assignment

The provisions of these Terms and Conditions and all relevant receipts of goods, if applicable, shall be binding upon the Depositor's heirs, executors, successors and assigns as well as Depositor.

### 7.2 Severability/Waiver

If any provision of these Terms or Conditions, or any application thereof, should be construed or held to be void, invalid or unenforceable, by order, decree or judgment of a court/tribunal of competent jurisdiction the remaining provisions of the same shall not be affected thereby but shall remain in full force and effect Milyard'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 provisions of these terms and conditions.

### 7.3 Currency

Unless specified otherwise, all statements of or references to dollar amounts in these terms and conditions and all relevant receipts of goods, if applicable, are to lawful money of Canada.

**7.4 Errors in Shipment:** When errors in shipment occur, any liability of the Warehouseman shall be strictly limited to the transportation costs involved to rectify any such error, and shall not, under any circumstances, include liability for damages due to the acceptance or use of said Goods.

**7.5 In Bond Goods:** A charge, in addition to regular rates, will be made for merchandise in bond pursuant to the Customs and Sufferance regulations of the Government of Canada.

**7.6 Inventory Shortage:** Milyard shall not be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods unless Depositor establishes such loss occurred because of Milyard's failure to exercise the care required of Warehouseman set out above.

**7.7 Depositor's Right to Storage:** Depositor represents and warrants that Depositor is lawfully possessed of the Goods and has the right and authority to store them with the Warehouseman.

**7.8 Indemnification re Title to Goods:** Depositor agrees to indemnify and hold harmless Milyard from all loss, costs and expenses (including reasonable lawyers' fees) which Milyard pays or incurs as a result of any dispute or litigation, whether instituted by Milyard or others, respecting Depositor's right, title or interest in the Goods. Such amounts shall be charges in relation to the Goods and subject to Warehouseman's lien.

**7.9 Choice of Law and Arbitration:**

The Parties hereto agree that all disputes, disagreements or differences between them relating to their business relationship with each other, including any dispute, disagreement or difference relating to the validity, enforceability or applicability of this agreement to arbitrate, shall be submitted to final and binding arbitration. The arbitration shall be commenced by one (or more) Party (or Parties) delivering to the other Party (or Parties) a Notice to Arbitrate which shall set out a brief description of

the dispute, disagreement or difference to be arbitrated and a summary of the relief claimed. The arbitration shall be conducted under the arbitration laws of Ontario, and specifically the *Arbitration Act* (Ontario). The arbitration shall be conducted in Toronto Ontario Canada in the English language. This agreement shall be governed by the substantive law of Ontario. The arbitration shall be conducted by a single arbitrator who shall be agreed upon by all Parties to the arbitration. In the event the Parties cannot agree on an arbitrator, the arbitrator shall be appointed by an Appointing Authority. The Appointing Authority shall be the ADR Institute of Canada. The arbitration rules and procedures shall be as agreed between the Parties. In the event that the Parties fail to reach agreement as to the rules and procedures to be followed in the arbitration within thirty days of the appointment of the arbitrator, any Party may apply to the arbitrator for a determination of the rules and procedures to be applied in the arbitration. The Parties shall be entitled pre-hearing disclosure. The Parties shall be entitled to obtain relevant documentary evidence which will assist it in making out its own case and which may assist the arbitrator in determining the facts upon which the arbitrator should render its decision.

**Any warehousing services are subject to Milyard Group Warehousing Terms and Conditions copy available on request and on our website [www.milyardgroup.com](http://www.milyardgroup.com). Placing an order with us or utilizing our services shall be deemed acceptance of the terms and conditions unless we are advised to the contrary.**

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