

Lightning Logistics, LLC Terms and Conditions

Lightning Logistics, LLC is licensed motor carrier, and Lightning Logistics, LLC also provides warehousing services. The Motor Carrier Terms & Conditions herein shall apply when Lightning Logistics, LLC provides services under its motor carrier authority. When Lightning Logistics, LLC stores goods at its facility, issues a warehouse receipt, or otherwise acts as a warehouseman, the Warehouse Terms & Conditions herein shall apply, and Lightning Logistics, LLC's liability shall be that of a warehouseman.

MOTOR CARRIER TERMS & CONDITIONS

The term "Shipper" means the person(s) or entity(ies) desiring to have the goods transported, sending the goods, or otherwise liable as a shipper under law. This definition includes the exporter, importer, sender, receiver, owner, consignor, consignee, transferor, or transferee of the shipments, or any other representatives of Shipper. It is the responsibility of all such parties to provide notice and copies of these Terms and Conditions to each other.

The term "Company" refers to Lightning Logistics, LLC of Harris County, Texas.

Company reserves the right to modify, amend, and supplement these Terms and Conditions from time to time without notice.

A. General Terms

1. Application. Each provision of these terms and conditions shall apply to each transportation agreement entered into between Company and Company's customers and Shipper, regardless of the origin or destination, including interstate or intrastate shipments, unless expressly waived in a signed, written agreement. The terms and conditions herein shall apply to shipments exempt from economic regulation as well as shipments subject to the jurisdiction of the FMCSA. IN NO EVENT SHALL COMPANY'S LIABILITY FOR CARGO LOSS OR DAMAGE EXCEED THE LESSER OF THOSE SET OUT IN THESE TERMS AND CONDITIONS OR THE MAXIMUM SET FORTH IN ANY THROUGH BILL OF LADING OR OTHERWISE AGREED TO BETWEEN THE SHIPPER AND THE PARTY WHICH RETAINS COMPANY'S SERVICES. If there is any discrepancy or conflict between these terms and conditions and any terms contained in the bill of lading (including those executed by Company's personnel and contractors), Shipper's terms and conditions, or any other document, the terms and conditions herein shall control, unless changes have been made by obtaining written approval by an officer of Company prior to Company performing the transportation.
2. Bills of Lading. The terms and conditions of Company's Bill of Lading will apply notwithstanding the use by Shipper of any other bill of lading or shipping document. DRIVERS ARE NOT AUTHORIZED TO BIND COMPANY TO NON-CONFORMING BILLS OF LADING AND EXECUTE BILLS OF LADING WITH ALTERNATIVE TERMS AND CONDITIONS AS RECEIPTS FOR THE SHIPMENT ONLY.

B. Shipments

3. Compliance with Laws and Regulations. Shipper shall ensure that Company has all the information and documentation necessary to comply with the laws and regulations of any country in, through, or which the shipment will be transported.
4. Special Permits. When permits are required for the transportation of over-size and/or overweight loads, the Shipper of the freight shall procure and furnish such permits, or shall request, in writing, Company to secure them and costs will be billed to Shipper.
5. Steamship Line and Third-Party Equipment. Use of steamship line or third-party equipment (chassis, container, flat racks, ISO tanks, etc.) will be subject to the steamship line or third party's equipment interchange agreement, including allowances for free time, per diem charges, chassis splits, maintenance and repair, and all other charges incurred. Shipper will be billed for all charges plus an additional administrative charge. Shipper shall pay all valid charges without delay.
6. Chassis Splits. When container chassis is not located at the same location as the container to be transported, chassis split charges may be assessed.
7. Shipper Load and Count. All shipments will be loaded by the consignor and unloaded by the consignee. Where the driver was either not present or was not allowed to observe the loading or unloading, omission of shipper load and count (or "SLC" notation) on the bills of lading shall not result in a presumption of Company's liability for shortage or damage.
8. Packing and Packaging - Shortage. Company will not be responsible for shortage on shipments which are banded, strapped, netted, shrink-wrapped or otherwise secured to bins, pallets, platforms or skids when such securing material is found to be intact at the time of unloading by consignee. Company will only be responsible for the number of bins, pallets, platforms or skids on such shipments. Company will not be liable for damaged goods not clearly marked fragile or glass.

9. Concealed Damage. COMPANY IS NOT RESPONSIBLE FOR HIDDEN OR CONCEALED DAMAGE.
10. Shipments Subject to re-weight/re-measurement. Shipper shall provide weight and measurement for all shipments. Advance written notification of overweight shipments is required. If the weight or measurements of the goods as delivered are different from Shipper's representations, or if pick-up or delivery time or location is changed by Shipper, Company will not be responsible for fines, permit fees, or penalties assessed by any agency. Additionally, Company's rates, charges, and fees are subject to change and will be included in the invoice and charges to be paid to Company.
11. Loading/Unloading. Shipper and consignee shall be responsible for loading and unloading all shipments at Shipper's and consignee's facilities. Rates do not include loading or unloading by Company personnel.
12. Attempted Pickup and Delivery. When Company is requested to dispatch a vehicle to a point designated by the Shipper, and the vehicle is furnished but not used, an attempted pickup charge and fuel surcharge will be assessed. If a shipment is rejected in whole or in part by Consignee, Shipper will be responsible for all freight charges as though the shipment had been accepted by Consignee. In addition, the rejected shipment may be returned to the point of origin or other location designated by Shipper, and Shipper will be responsible for freight charges for return transportation, in addition to any resulting storage charges or other expenses arising out of such rejection.
13. Reconsignment or Diversion. Shipments re-consigned or diverted while in transit may be subject to additional charges in accordance with Company's rates.
14. Stop-Offs. Stop-off charges may be assessed when Company is required to pick up from multiple origins or deliver to multiple destination locations.
15. Loss and Damage - Salvage. If goods are rejected, including overage, Company will have the right to sell or dispose such goods. This also applies to property transported by Company which is damaged or alleged to be damaged and is, as a consequence, not delivered or is rejected or refused upon tender to the owner, consignee, or person entitled to receive such property.
16. Disposition of Overage. Consignee shall accept overages in fulfillment of its duty to mitigate damages. Overages will be returned to the consignee or Shipper by Company upon request in return for payment of Company's applicable freight charges. In the event consignor and consignee decline to accept overages and mitigate damages, Company will treat any overage as salvage and after notice will sell same in accordance with the bill of lading contract and the terms herein. Company will not be liable for any difference between the sales price of overage and the destination market value where the Shipper and consignee decline to mitigate damages.
17. Hazardous Materials. Shipper will comply with all U.S. Department of Transportation requirements governing hazardous materials. Shipper must provide a legible bill of lading and Shipper's certificate with proper Hazmat information and affix any required placards before the shipment is tendered. Failure to comply with these requirements will relieve Company of any and all liability for loss or damage directly or indirectly caused to or by the hazardous materials.
18. Substituted Service. Company reserves the right to refer shipments to, and Shipper consents to the use of, Company's brokerage affiliate, Lightning Freight Brokerage, LLC, to arrange for transportation of all or part of given movements. Shipper agrees that services provided by Lightning Freight Brokerage, LLC shall be governed by Lightning Freight Brokerage, LLC's Terms & Conditions, which are available upon request. Shipper will not hold Company liable for the actions of Company's affiliates nor for the actions of any third party. In the event of any claim or loss, Shipper must look solely to the independent motor carrier and its insurance providers.
19. Limitation of Liability of Third Party Service. Company will in no event be held liable for any claim, loss, damage, expense, or delay to the goods for any reason whatsoever when such goods are in custody, possession, or control of third parties selected by Company to forward, enter and clear, transport, or render other services with respect to the goods.
20. Sale of Perishable Goods. Perishable goods or live animals to be exported, imported, or which are cleared through customs for which no instructions of disposition are furnished by Shipper may be sold or otherwise disposed of without notice to Shipper, owner or consignee of the goods, and payment or tender of the net proceeds of any sale after deduction of charges will be equivalent to delivery. In the event that any shipment is refused or remains unclaimed at destination or any trans-shipping point in the course of transit or is returned for any reason Shipper must pay Company for all charges and expenses in connection therewith. No provision herein obligates Company to forward, enter or clear the goods, or arrange for their disposal.
21. Shipper's Duty to Furnish Information.
 - a. On an import, at a reasonable time prior to entry of the goods to U.S. Customs, Shipper shall furnish to Company invoices in proper form together with other documents necessary or useful in the preparation of the U.S. Customs entry, and such further information as may be sufficient to establish the dutiable value, classification and admissibility of the goods pursuant to U.S.

law, or regulation or ruling. If Shipper fails to timely furnish all of such information or documents, as may be required to complete U.S. Customs entry. Where a bond is required by U.S. Customs to be given for the production of any document or the performance of any act, Shipper shall be deemed bound by the terms of the bond notwithstanding the fact that the bond has been executed by Company as Principal, it being understood that Company entered into such undertaking at the request and on behalf of Shipper and Shipper shall INDEMNIFY and DEFEND Company for the consequences of any breach of the terms of the bond.

- b. On an export, at a reasonable time prior to the exportation of the shipment, Shipper shall furnish to Company the commercial invoice in proper form and number, a proper consular declaration, weights, measures, values and other information in the language of and as may be required by the laws and regulations of the U.S. and the country of destination of the goods.
- c. On an export or import, Company will not in any way be liable for increased duty, penalty, fine, or expense unless caused by the gross negligence or other fault of Company, in which event its liability to Shipper will be limited in accordance with, and as further described in Company's Terms and Conditions in effect on the date of service. Shipper shall be bound by and warrant the accuracy of all invoices, documents and information furnished to Company by Shipper or its agent for export, entry or other purposes and shipper agrees to INDEMNIFY and DEFEND Company against any increased duty, penalty, liquidated damage, fine or expense, including attorney's fees, resulting from any act, inaccuracy or omission or any failure to make timely presentation, even if not due to any negligence or fault of shipper.
- d. The following notice is required to be given pursuant to 19 CFR part 111.29(b)(1): If you are the importer of record, payment to the broker will not relieve you of liability for Customs charges (duties, taxes, or other debts owed Customs) in the event the charges are not paid by the broker. Therefore, if you pay by check, Customs charges may be paid with a separate check payable to "U.S. Customs Service" which shall be delivered to Customs by the broker.

All customs penalties, storage charges, or related expenses incurred as a result of an action by a governmental agency, or failure by the Shipper, consignee or consignor to provide proper documentation or to obtain a required license or permit will be borne by Shipper and Shipper shall DEFEND and INDEMNIFY Company for such penalties, storage charges, and related expenses.

C. Limitation of Liability

22. Limitation of Liability per Shipment. Company's rates are based on a limited liability for loss or damage to cargo. All shipments are released to a maximum value of \$350,000 per shipment. In no event shall Company's liability be greater than the actual value of lost or damaged articles less salvage. Company's liability for cargo loss or damage will not exceed \$350,000 per shipment unless Shipper requests an increase in legal liability by a.) Submitting a written request for a higher Release Value, b.) Paying an additional charge based on the increased Release Value, and c.) Obtaining written confirmation of the higher Release Value from an Officer of Company. Provided, however, that if Shipper requests Company's liability to be increased above \$350,000 and Company obtains additional insurance specific to the Shipper to cover the cargo, then Company's liability shall be increased to the extent of Company's insurance coverage for the cargo. DRIVERS ARE NOT AUTHORIZED TO AGREE TO HIGHER RELEASED VALUE. In the event Company obtains additional cargo insurance that is specifically obtained for Shipper, such insurance may be available in excess of Carrier's standard \$350,000 release rate.
23. Inadvertence Clause. If a Shipper declares or fails to declare a value exceeding \$350,000 per truckload, without obtaining written approval from Company, the shipment will not be accepted, but if the shipment is inadvertently accepted, it will be considered as being released to a maximum value of \$350,000 per shipment, and the shipment will move subject to such limitation of liability. DRIVERS ARE NOT AUTHORIZED TO AGREE TO A HIGHER RELEASE VALUE.
24. No Liability for Special or Consequential Damages. COMPANY WILL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOST PROFITS, OR BUSINESS OPPORTUNITY, ATTORNEY FEES OR PUNITIVE AND EXEMPLARY DAMAGES) INCURRED OR SUFFERED BY THE SHIPPER AS A RESULT OF SHORTAGE, DAMAGE OR DELAY, EVEN IF COMPANY IS NOTIFIED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING. COMPANY WILL NOT BE LIABLE FOR PENALTIES OR TINES CLAIMED BY SHIPPER, SHIPPER'S CUSTOMER, OTHER PARTIES SHIPPER HAS CONTRACTED WITH, OR THIRD PARTIES.
25. Liability of Company. COMPANY WILL NOT BE LIABLE TO THE OWNER OF PROPERTY FOR LOSS OR DELAY CAUSED BY (1) an act of default of the Shipper, owner or consignee; (2) any act of any third party motor carrier; (3) any act of any affiliated or unaffiliated freight broker; and (4) freezing or spoiling of any perishable goods or property or for natural shrinkage.
26. Commodity Limitations. Company does not hold out to transport copper, money, jewelry, manufactured tobacco products, ammunition, objects d'art, currency, documents, items of unusual value, or rare metals. Unless otherwise indicated in these terms and conditions or agreed to by contract by an Officer of Company (Drivers have no authority), Company does not hold out to provide temperature-controlled service.

27. Reasonable Dispatch. Notwithstanding the fact that an estimated delivery date may be provided or that a specific delivery date and time may be requested, Company is not bound to transport a shipment by a particular schedule or in time for a particular market, but is responsible to transport a shipment with reasonable dispatch.
28. Force Majeure. Company will not be liable for failure to perform any obligation resulting from circumstances beyond its control, including but not limited to any act of God, riot, war, terrorist act, civil disturbance, fire, explosion, flood, strike, lock-out, labor disturbance, or any other cause outside of the reasonable control of Company.
29. Liability for Equipment and Cargo after delivery. Shipper shall ensure that any containers, chassis, or other equipment tendered to the consignor, consignee or delivery point and remaining at the consignor's facility, consignee's facility, or delivery point after delivery (for unloading or loading) shall be secured and handled in a manner to prevent theft, loss, or other damage. Company will not be responsible for stolen, lost, or damaged goods, containers, chassis, or other equipment after such items have been delivered and are not in the physical possession of Company; Shipper will be fully liable for theft, loss and damage to all goods, containers, chassis, and other equipment after such items have been delivered. Shipper will reimburse Company for any costs Company pays or incurs with regard to theft, loss, or other damage to goods, containers, chassis, or other equipment occurring after Company delivers the shipment, including, but not limited to property loss or damage and per diem.

D. Additional Terms

30. Cargo Claims. Claims for loss, damage, or delay to cargo shall be filed according to 49 C.F.R. § 370, 49 U.S.C. §14706, and Company's Bill of Lading. All cargo claims filed with Company are waived if not filed in writing within 9 months from the date of delivery or a reasonable time at which delivery should have been accomplished. Written notice of any patent damage to cargo shall be provided to Company immediately, and not later than 3 days after delivery. Written notice of latent damage shall be provided to Company upon discovery, and, in any event, not later than 15 days after delivery. All cargo claims are waived if a civil suit is not filed within 2 years from the date the Company gives a person written notice that Company has denied any part of the claim specified in the notice. All other claims must be brought within 2 years from the date the claim accrues. ALL CLAIMS FOR WHICH PROPER AND TIMELY NOTICE IS NOT GIVEN ARE DEEMED AUTOMATICALLY WAIVED.
31. Disposition of Contested Cargo Claims. Unless the parties agree to voluntary alternative dispute resolution, disputed claims will be subject to 49 U.S.C. §14706 (the Carmack Amendment) subject to any applicable released evaluation. Claimant waives any right to set-off or offset of contested and unliquidated cargo claims against freight charges otherwise due to Company as a precondition of service. Claimants agree to forfeiture of any contested claim asserted by it as a set-off after notice and demand for freight charges.
32. No Responsibility for Governmental Requirements. It is Shipper's responsibility to know and comply with all the classification, valuation, marking and other Custom's requirements, laws, regulations and ruling enforced by the U.S. and any country having jurisdiction over a shipment, the laws and regulations of any applicable governmental agency, including but not limited to the U.S. Food and Drug Administration, and all other requirements, laws and regulations of any applicable country or governmental agency. Company will not be responsible for action taken or fines, liquidated damages or penalties assessed by any governmental agency against the shipment because of the failure of Shipper to comply with any such laws, rulings, requirements or regulations of any country or governmental agency or with notification issued to Shipper by any such agency.
33. Advancing Charges. Company may advance for collection from Shipper, owner, or consignee any lawful charges that may be associated with the transportation of the freight. Charges paid by Company will be billed to the Shipper or Consignee at actual cost plus a handling fee.
34. Payment of Charges and Collection. Company or Company's affiliate will invoice Customer for Company's services in accordance with the rates, charges and provisions negotiated and agreed to between Customer and Company. Customer agrees to pay Company's invoice within 30 days of the invoice date without deduction or setoff. As a convenience to Customer, invoices may be processed by Company's affiliated entity and such administrative support in issuing invoices will not alter Company's role in connection with a particular shipment, as the act of invoicing is a purely administrative function performed independent of arranging for transportation services. In the event of a loss, Customer's claim and any remedies will be directed to, and the sole responsibility of, the actual motor carrier performing transportation services for the particular shipment at issue, to the extent of any claim for loss, damage or delay.

Payment will be due within 30 days of invoice. If charges are to be paid by a third party other than the Shipper or consignee and such third party fails to pay the charges within 30 days of invoice, the Shipper and consignee shall be liable for the charges. Nonrecourse provisions on bills of lading shall not be given effect. Amounts not received within 30 days of invoice date are subject to 1.5% interest per month or the maximum amount allowed by law, whichever is less, beginning on the 31st day after payment was due. In the event Company finds it necessary to retain the services of legal counsel to collect any outstanding indebtedness, Shipper or consignee shall pay all attorney fees, collection service fees, court filing fees and related expenses to collect such outstanding debt.

35. Payment without offset. Shipper, Consignor and/or Consignee must pay all freight charges when due without offset for any cause. All claims for loss or damage shall be governed by these terms and conditions and neither consignor nor consignee shall deprive Company of proper cargo insurance adjustment by unilateral deduction of claims from payment of freight charges due. In the event that Shipper or its agents “short pay” freight charges or deduct charges from freight bills without Company’s authorization to do so in writing, prior to the deduction, Shipper and its agents waive their right to any contested cargo claim that is set-off against freight charges.
36. Third Party Billing. Company will invoice the Shipper's broker, bank or other agent for freight charges. Company reserves the right to bill and collect freight charges from the Shipper on prepaid shipments or the consignee on collect shipments in the event full payment of freight charges is not received pursuant to third party billing. A shipment in which charges are to be paid by a party other than the consignor or consignee will be accepted provided recourse to the consignor is preserved with Company picking the shipment up at origin. The consignor and consignee guarantee to pay the charges if the third party fails to do so in the time allotted under the applicable credit regulations. Any such shipment will not be accepted if the consignor executes a nonrecourse provision of the bill of lading.
37. Lien on Goods. Shipper hereby grants Company a lien on the goods tendered to Company by Shipper or consignor (including proceeds of such goods tendered to the Company), which shall survive delivery, to secure payment of all charges owed by Shipper to Company, including, but not limited to, freight, demurrage, detention, damages, loss, charges, expenses, collection costs, and any other sums (including costs, customs fees, attorney fees, and other fees for recovery of the sums) chargeable to Company or Shipper in connection with such goods or the transportation of such goods, regardless of whether the charges relate to goods that are presently in the possession of Company or goods that are not presently in the possession of Company, including both prior and subsequent shipments. Company shall have the right to sell the goods by public auction or private sale in order to enforce the lien, upon giving the notice required by the Texas UCC then in effect at the time. If on sale of the goods, the proceeds are insufficient to cover the amount owed, Company shall be entitled to recover the balance from Shipper. Shipper agrees that any sale by Company shall be commercially reasonable, and Shipper waives all claims that a sale of goods is not commercially reasonable. Shipper further agrees to execute any other document necessary for Company to perfect its lien.
38. Mexican Shipments. Company assumes no liability for cargo loss, shortage, or damage to shipments while in the United Mexican States (“Mexico”). Shippers are advised that liability for cargo loss in Mexico differs from U.S. law (49 U.S.C. 14706) and the special arrangements with the Mexican carrier participating in any trans-border movement is not the Company's responsibility. Clear bills of lading showing safe and damage-free delivery between the U.S./Mexican borders at the pickup or delivery points in the U.S. will be evidence of Company’s proper discharge of its cargo responsibility. In the event it is determined that Company is liable for loss, damage or delay occurring in Mexico, Company's maximum liability will be the rate affixed under the laws of Mexico for domestic shipments within that country.
39. Venue and Jurisdiction. This agreement shall be construed to have been entered in Harris County, Texas and performable in Harris County, Texas. All parties consent to the jurisdiction of Texas and to venue in Harris County, Texas. It is expressly acknowledged and agreed that any suit related to Company’s services or these terms and conditions shall be filed in the appropriate state or federal court in Harris County, Texas.
40. Entire Agreement. These terms and conditions and Company’s Bill of Lading constitute the entire contract between Company and Shipper and only an officer of Company has authority to alter, modify or waive any provision herein, excepting that the rate stated may be modified by Company to conform to the services Company provides.

WAREHOUSE TERMS & CONDITIONS

1. **Definitions:**
 - 1.1. **“Warehouseman”** shall refer to Lightning Logistics LLC.
 - 1.2. **“Customer”** shall refer to the person or entity tendering the goods, the person or entity holding title to the goods, and the owner of the goods and their employees, contractors, invitees, and agents.
 - 1.3. **“Warehouse”** shall refer to any warehouse or storage facility owned, leased by or operated by Warehouseman where Customer’s goods are stored pursuant to an agreement between Customer and Warehouseman.
2. **Application:** These Terms & Conditions shall apply to all of Customer’s goods tendered to Warehouseman and stored at Warehouseman’s Warehouses, to all goods subject to a warehouse receipt, and where Warehouseman otherwise acts as a warehouseman. If Customer is not the owner of the goods or does not have title to the goods, Customer agrees that it acts as the owner’s and title holder’s agent and also agrees to these Terms and Conditions on behalf of the owner and title holder of the goods and other interested parties.
3. **Shipment of Goods to Warehouse.**

3.1. Customer shall identify Customer as the named consignee on all goods shipped to the Warehouse. Customer shall not ship goods to or from the Warehouse naming Warehouseman as the consignee on a bill of lading or other shipment document. Warehouseman has no beneficial title or interest in Customer's goods, and Customer agrees to notify motor carriers that Warehouseman is providing warehousing services and to notify motor carriers of the actual consignee.

3.2. If goods which name Warehouseman as consignee are inadvertently shipped and accepted, Customer shall immediately notify Warehouseman and the motor carrier in writing that Warehouseman is the "in care of party" only and has no beneficial title or interest in Customer's goods.

3.3. CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS WAREHOUSEMAN, ITS AFFILIATES, TRUSTEES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CHAPMAN MILLER LAND FUND, LLC, FLASHING FUNDING, LLC, SPINDLE TAP BREWERY, LLC, LIGHTNING FREIGHT BROKERAGE, LLC, RAPID CRATE SOLUTIONS, LLC, AND ALL CUSTOMERS, TRUSTEES, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS (WAREHOUSEMAN GROUP) OF THE ABOVEMENTIOEND ENTITIES FROM ANY AND ALL CLAIMS FOR UNPAID TRANSPORTATION CHARGES RELATED TO CUSTOMER'S GOODS, OF ANY KIND WHATSOEVER AND TO WHOMEVER OWED, INCLUDING DETENTION, DEMURRAGE, AND ALL OTHER CHARGES, WITHOUT REGARD TO WHETHER WAREHOUSEMAN WAS NAMED CONSIGNEE OR WHETHER WAREHOUSEMAN KNEW OR SHOULD HAVE KNOWN IT WAS THE NAMED CONSIGNEE ON A BILL OF LADING OR OTHER SHIPPING DOCUMENT.

4. Tender of Goods for Storage.

4.1. Customer shall deliver all goods for storage at the Warehouse properly marked and packaged for handling.

4.2. 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. Otherwise the goods may be stored in bulk or assorted lots in general storage at the discretion of Warehouseman and charges for such storage will be made at the applicable storage rate.

4.3. Receipt and delivery of all or any unit of a lot shall be made without subsequent sorting except as agreed and subject to a charge.

4.4. Warehouseman shall store and deliver goods only in the packages in which they are originally received unless otherwise agreed to in writing.

4.5. Warehouseman shall not be responsible for segregating goods by production code date unless specifically agreed to in writing.

4.6. Copper shall not be stored on Warehouseman's premises without Warehouseman's express written consent.

5. Storage Charges.

5.1. Warehouseman shall invoice Customer according to the Rate Confirmation or as otherwise quoted by Warehouseman or agreed in writing. Additionally, any rates, which may be verbally agreed upon, shall be deemed confirmed in writing where Warehouseman has billed the rate and Customer has paid it. All written confirmations of rates, including confirmations by billing and payment, shall be incorporated herein by this reference.

5.2. Customer shall pay Warehouseman storage charges and the charges for any additional services within 30 days of the invoice date without deduction or setoff.

5.3. Dunnage, bracing, packing materials or other special supplies may be provided by Warehouseman for Customer at a charge in addition to Warehouseman's cost.

5.4. Storage charges include the ordinary labor involved in receiving goods at the door of the warehouse. Any additional labor requested will be charged by Warehouseman to Customer.

5.5. Storage charges do not include bonded storage. An additional charge may apply if Warehouseman agrees to store any goods in bond. If a warehouse receipt covers goods in U.S. Customs bond, such receipt shall be void upon the termination of the storage period fixed by law.

5.6. Customer may not offset claims for loss or damage to goods against amount owed to Warehouseman unless otherwise agreed to in writing.

5.7. Warehouseman reserves the right to adjust rates for warehousing, storage and affiliated services in its discretion, with 30 days' advance written notice.

5.8. Should Customer stop doing business or reduce its business with Warehouseman below levels agreed upon between the parties, Customer shall be liable for all unrecoverable contractually obligated charges for the agreed upon term.

5.9. Warehouseman may submit invoices through its affiliate and such administrative functions shall not alter the services outlined in these Terms & Conditions, make Warehouseman liable for its affiliates' conduct, or establish any kind of joint liability between Warehouseman and its affiliates.

6. Transfer. Instructions to transfer goods on the books of Warehouseman are not effective until delivered to and received by Warehouseman, and all charges up to the time transfer is made are chargeable to the Customer of record. If a transfer involves re-handling the goods, such re-handling will be subject to charges at Warehouseman's standard rates.

7. Termination of Storage. Warehouseman may at any time require the removal of any goods by the end of the next succeeding calendar month by proving written notice to Customer. If goods are not removed before the end of the next succeeding calendar month, Warehouseman may dispose of the goods in accordance with applicable law.

8. **Handling of Goods.**

8.1. Warehouseman shall provide the ordinary labor involved in receiving goods at the door of the warehouse, placing goods in storage, and releasing the goods at the door of the warehouse. Customer shall pay Warehouseman for services requested other than ordinary handling and storage.

8.2. Customer shall pay Warehouseman for Warehouseman's additional expenses in receiving and returning damage goods and loading or unloading goods at a place other than the warehouse door.

8.3. Warehouseman shall not be required to store goods in a humidity-controlled or temperature-controlled environment.

8.4. Customer may be subject to an Escort Fee if Customer's access to Warehouseman's premises requires that Warehouseman personnel escort Customer.

8.5. CUSTOMER SHALL NOT USE WAREHOUSEMAN'S EQUIPMENT (INCLUDING, BUT NOT LIMITED TO, LOADING, UNLOADING, HANDLING, CRATING, PACKAGING, AND CONSTRUCTION EQUIPMENT) WITHOUT WRITTEN PERMISSION FROM WAREHOUSEMAN. IF WAREHOUSEMAN GROUP ALLOWS CUSTOMER TO USE ANY OF WAREHOUSEMAN GROUP'S EQUIPMENT FOR ANY REASON, CUSTOMER ACKNOWLEDGES THAT CUSTOMER ACCEPTS ALL RISK AND RESPONSIBILITY OF DAMAGE TO PROPERTY AND INJURY AND/OR DEATH TO ANY PERSON(S) ARISING FROM SUCH USE. CUSTOMER SHALL ENSURE THAT ANY PERSON USING WAREHOUSEMAN GROUP'S EQUIPMENT SHALL BE QUALIFIED AND CERTIFIED IN ACCORDANCE WITH OSHA REQUIREMENTS AND ALL APPLICABLE STATUTES AND REGULATIONS TO OPERATE THE EQUIPMENT IN THE CONDITIONS PRESENTED. CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS WAREHOUSEMAN GROUP FROM ANY CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE ARISING FROM CUSTOMER'S USE OF WAREHOUSEMAN'S EQUIPMENT, EVEN IF SUCH CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSES (INCLUDING WITHOUT LIMITATION, ALL COSTS, EXPENSES AND ATTORNEYS' FEES), IS CAUSED IN WHOLE OR IN PART BY A PRE-EXISTING DEFECT IN SAID EQUIPMENT.

8.6. Warehouseman Group shall not be liable for damages to Customer's and Customer's contractors' loading, unloading, packaging and related equipment and materials or damages to person or property arising from use of such equipment and materials, except to the extent of Warehouseman's proportionate fault. **CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS WAREHOUSEMAN GROUP FROM ANY CLAIM ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE ARISING FROM SUCH EQUIPMENT OR MATERIALS OR THE USE THEREOF, EXCEPT TO THE EXTENT OF WAREHOUSEMAN GROUP'S PROPORTIONATE FAULT.**

9. **Release**

9.1. No goods shall be released or transferred except upon receipt by Warehouseman of complete written instructions. However, when no negotiable receipt is outstanding, goods may be released upon instruction by telephone, but Warehouseman shall not be responsible for loss or error occasioned thereby.

9.2. Customer shall afford Warehouseman a reasonable time to release goods and shall afford Warehouseman at least 10 business days after receipt of a delivery order to locate any misplaced goods. If Warehouseman has exercised reasonable care and is unable, due to causes beyond its control, to release goods before expiration of the current storage period, the goods will be subject to storage charges for each succeeding storage period. If Warehouseman is unable to release goods because of acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots and civil commotions, other force majeure causes, or any reason beyond Warehouseman's control, or because of loss or destruction of goods for which Warehouseman is not liable, or because of any other excuse provided by law, Warehouseman shall not be liable for failure to release the goods and the goods remaining in storage will continue to be subject to regular storage charges.

9.3. All instructions and requests for release or transfer of title are received subject to satisfaction of all charges, liens and security interests of Warehouseman with respect to the goods whether for accrued charges, advances, or otherwise.

9.4. Warehouseman may require, as a condition precedent to release, a statement from Customer holding Warehouseman harmless from claims of others asserting a superior right to Customer to possession of the goods. Nothing herein shall prevent Warehouseman from exercising any other remedy available to it under the law to resolve conflicting claims to possession of the goods. All costs, including attorney's fees, incurred by Warehouseman relating to Warehouseman's activities referred to in this subsection may be charged to Customer and shall be subject to Warehouseman's lien described herein.

9.5. Customer, shipper, consignee, the motor carrier, and their agents agree that Warehouseman shall not be liable for the motor carrier's freight or other charges.

10. **Warehouseman Group's Limited Liability.**

10.1. WAREHOUSEMAN GROUP SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY TO GOODS STORED HOWEVER CAUSED UNLESS SUCH LOSS OR INJURY RESULTED FROM THE FAILURE BY WAREHOUSEMAN GROUP TO EXERCISE SUCH CARE IN REGARD TO THEM AS A REASONABLY CAREFUL WAREHOUSE WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND WAREHOUSEMAN IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE. WAREHOUSEMAN GROUP AND CUSTOMER AGREE THAT WAREHOUSEMAN GROUP'S DUTY OF CARE DOES NOT EXTEND TO PROVIDING A SPRINKLER SYSTEM AT THE WAREHOUSE OR ANY PORTION THEREOF.

10.2. WAREHOUSEMAN GROUP SHALL NOT BE LIABLE IN CONTRACT, TORT, OR OTHERWISE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES IN CONNECTION WITH ITS PERFORMANCE UNDER THESE TERMS, INCLUDING WITHOUT LIMITATION, LOST PROFITS AND LOST OPPORTUNITY, EVEN IF SUCH DAMAGES WERE REASONABLY FORESEEABLE AND EVEN IF WAREHOUSEMAN GROUP WAS NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF SUCH CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSES IS CAUSED IN WHOLE OR IN PART BY A PRE-EXISTING DEFECT, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT OF WAREHOUSEMAN GROUP (OR ANY SUCH INDEMNITEE).

10.3. IN THE EVENT OF LOSS, DAMAGE OR DESTRUCTION TO GOODS FOR WHICH WAREHOUSEMAN GROUP IS LEGALLY LIABLE, CUSTOMER AGREES THAT WAREHOUSEMAN GROUP'S MAXIMUM LIABILITY SHALL NOT EXCEED \$250,000.00. CUSTOMER MAY, HOWEVER, REQUEST AN INCREASE TO THE MAXIMUM LIABILITY OF WAREHOUSEMAN GROUP BY: A.) SUBMITTING A WRITTEN REQUEST FOR A HIGHER MAXIMUM LIABILITY BEFORE THE GOODS ARE TENDERED TO WAREHOUSEMAN, B.) PAYING AN ADDITIONAL CHARGE BASED ON THE INCREASED MAXIMUM LIABILITY, AND C.) OBTAINING WRITTEN CONFIRMATION OF THE HIGHER MAXIMUM LIABILITY FROM AN OFFICER OF WAREHOUSEMAN. THIS MAXIMUM LIABILITY APPLIES TO THE AGGREGATE OF ALL OF CUSTOMER'S GOODS STORED BY WAREHOUSEMAN AT ANY GIVEN TIME. IN THE EVENT WAREHOUSEMAN GROUP'S MAXIMUM LIABILITY IS INCREASED ABOVE \$250,000.00, UNDER NO CIRCUMSTANCES SHALL WAREHOUSEMAN GROUP'S LIABILITY EXCEED THE AMOUNT AVAILABLE TO COVER THE LOSS OR DAMAGE UNDER WAREHOUSEMAN GROUP'S WAREHOUSE INSURANCE POLICY AND IS SUBJECT TO THE CONDITIONS, THEN EXISTING COVERAGE LIMITS, AND AMOUNT REMAINING UNDER THE POLICY FOR COVERAGE.

10.4. WAREHOUSEMAN GROUP'S MAXIMUM LIABILITY REFERRED TO ABOVE SHALL BE CUSTOMER'S EXCLUSIVE REMEDY AGAINST WAREHOUSEMAN GROUP OR ANY OF ITS AFFILIATES, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES AND INSURERS FOR ANY CLAIM OR CAUSE OF ACTION WHATSOEVER RELATING TO LOSS, DAMAGE AND/OR DESTRUCTION OF GOODS AND SHALL APPLY TO ALL CLAIMS INCLUDING INVENTORY SHORTAGE AND MYSTERIOUS DISAPPEARANCE CLAIMS UNLESS CUSTOMER PROVES BY AFFIRMATIVE EVIDENCE THAT WAREHOUSEMAN GROUP CONVERTED THE GOODS TO ITS OWN USE. CUSTOMER WAIVES ANY RIGHTS TO RELY UPON ANY PRESUMPTION OF CONVERSION IMPOSED BY LAW.

10.5. WHERE LOSS OR INJURY OCCURS TO STORED GOODS, FOR WHICH WAREHOUSEMAN GROUP 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 INJURY TO THE GOODS.

11. Indemnification by Customer: CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD WAREHOUSEMAN GROUP, WAREHOUSEMAN'S AFFILIATES, LIENHOLDER, AND THEIR RESPECTIVE AGENTS HARMLESS FROM: ANY INJURY TO OR DEATH OF ANY PERSON; ANY DAMAGE TO OR LOSS OF PROPERTY; ANY ENVIRONMENTAL DAMAGE INCLUDING SPILLS AND POLLUTION; AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS ARISING FROM CUSTOMER'S ACTS OR OMISSIONS RELATED TO THESE TERMS, EXCEPT TO THE EXTENT OF WAREHOUSEMAN GROUP'S PROPORTIONATE FAULT. THE INDEMNITY CONTAINED IN THIS PARAGRAPH: (A) IS INDEPENDENT OF CUSTOMER'S INSURANCE OBLIGATIONS UNDER THESE TERMS AND CONDITIONS; AND (B) WILL SURVIVE THE END OF THE TERM.

12. Insurance.

12.1. Customer shall maintain the following insurance policies, at Customer's sole cost and expense, with at least the coverages described below:

12.1.1. Comprehensive General Liability Insurance, including contractual liability coverage, and bodily injury and property damage coverage, with limits of no less than \$2,000,000.00 per occurrence, or the amount required by law, whichever is higher;

12.1.2. Worker's Compensation Insurance or Occupational Disease Insurance, and Employer's Liability Insurance with limits of no less than \$1,000,000.00, or the amount required by law, whichever is higher, for accidents or occupational disease covering all work related to Customer's business; and

12.1.3. Commercial Auto Liability Insurance, with a combined single limit of no less than \$1,000,000.00 to injuries to any person or for damages to property in any one occurrence.

12.2. Customer shall furnish to Warehouseman Certificates of Insurance, signed by its insurance carriers, evidencing the insurance required by these Terms & Conditions, and endorsements to confirm the additional insured and waiver of subrogation terms contained herein. Each certificate must provide:

12.3. Worker's Compensation. Each certificate must provide:

12.3.1. Inclusion of Warehouseman, Flash Funding, LLC, Chapman Miller Land Fund, LLC, Rapid Crate Solutions, LLC, Lightning Freight Brokerage, LLC and Spindle Tap Brewery, LLC as additional insured in Customer's General Liability, and all other applicable third party liability insurance;

12.3.2. Waiver of subrogation in favor of Warehouseman, Flash Funding, LLC, Chapman Miller Land Fund, LLC, Rapid Crate Solutions, LLC, Lightning Freight Brokerage, LLC and Spindle Tap Brewery, LLC Group in Customer's Workers' Compensation, Employers' Liability, General Liability;

12.3.3. The policies and insurance coverage referenced above shall be primary and non-contributory to any other coverage in favor of Warehouseman, Flash Funding, LLC, Chapman Miller Land Fund, LLC, Rapid Crate Solutions, LLC, Lightning Freight Brokerage, LLC and Spindle Tap Brewery, LLC Group;

12.3.4. The policies and insurance certificates shall provide coverage in those territories as may be applicable to the location where the services will be performed; and

12.3.5. 30 days' prior written notice will be given to Warehouseman in the event of cancellation, suspension, or material change in the policy to which it relates.

12.4. The insurance requirements contained herein shall in no way limit Customer's liability or responsibility under these Terms & Conditions nor shall they be construed to be the ultimate types and amounts of insurance Customer should maintain to adequately insure itself.

13. **Warehouseman's Lien and Security Interest.** To secure Customer's performance under these Terms & Conditions, Customer grants to Warehouseman a lien and security interest against all of Customer's non-exempt personal property that is in or on the Warehouse. This is a security agreement for the purposes of the Uniform Commercial Code and Warehouseman may file a financing statement to perfect Warehouseman's security interest under the Uniform Commercial Code. In addition to the charges described herein, Customer shall be liable for any and all expenses Warehouseman incurs to sell or dispose of the goods, including, but not limited to, attorney fees, transportation costs, administrative costs, and expenses necessary for the preservation of the goods. Warehouseman shall have the right to pay another service providers, whether hired by Warehouseman or not, for services provided with relation to transportation, handling, warehousing, or related services, including instances where Warehouseman provides such services, Warehouseman hires a third party to provide the services, or otherwise. Customer consents to such costs being included in Warehouseman's lien and sale of the goods to satisfy such costs.

Customer agrees that any goods sold pursuant to a claim of a warehouseman's lien shall be deemed to be goods stored for hire by a merchant in the course of its business, and the sale may be accomplished by any means allowed by law for merchants or otherwise. Customer agrees that any sale by Warehouseman shall be commercially reasonable, and Customer waives all claims that a sale of goods is not commercially reasonable.

14. **Warehouseman's Access Requirements.** Customer shall comply with and cause each of Customer's employees, contractors, and invitees to comply with and execute the Warehouseman Access Requirements and furnish the executed the Warehouseman Access Requirements to Warehouseman before Customer's employees, contractors, or invitees access the premises. Customer understands and agrees that no employee, contractor, or invitee of Customer will be allowed to access the property until and unless the Warehouseman Access Requirements have been executed and it is a condition precedent to the access of the premises that Customer's employees, contractors, and invitees execute the Warehouseman Access Requirements.

CUSTOMER'S FAILURE TO REQUIRE AND CAUSE EACH OF CUSTOMER'S EMPLOYEES, CONTRACTORS, OR INVITEES THAT ENTER WAREHOUSEMAN GROUP'S PROPERTY TO EXECUTE THE WAREHOUSEMAN ACCESS REQUIREMENTS SHALL NOT CONSTITUTE A WAIVER BY WAREHOUSEMAN GROUP OF THE RIGHTS AND REMEDIES CONTAINED IN THESE TERMS AND CONDITIONS AND THE WAREHOUSEMAN ACCESS REQUIREMENTS. CUSTOMER SHALL DEFEND AND INDEMNIFY WAREHOUSEMAN GROUP FOR ANY CLAIMS OR DAMAGES INCURRED BY WAREHOUSEMAN GROUP THAT WAREHOUSEMAN GROUP WOULD NOT HAVE OTHERWISE INCURRED HAD CUSTOMER FULFILLED THE TERMS IN THIS SECTION.

The indemnity obligations under these Terms & Conditions are effective to the maximum extent permitted by law. If a law is applied in a jurisdiction which prohibits or limits Customer's ability to indemnify Warehouseman Group, then Customer's liability and indemnification obligation shall exist to the fullest extent allowed by the law of the relevant jurisdiction.

15. **Notice of Claims.**

15.1. It is a condition precedent to recovery on any claim against Warehouseman that Customer shall present all claims for loss or damage to goods to Warehouseman in writing within 91 days after delivery or the expected delivery date of the goods underlying the claims. Customer agrees that any claims for which notice is not provided to Warehouseman within 91 days are waived.

15.2. Customer may only maintain an action by Customer or others against Warehouseman for loss or damage to goods if said action is commenced within 2 years after delivery or the expected delivery date of the goods underlying the action.

15.3. As a condition precedent to making any claim and/or filing any suit, Customer shall provide Warehouseman a reasonable opportunity to inspect the goods which form the basis of Customer's claim and/or suit.

16. **Customer's Representations.**

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

16.2. Customer represents and warrants that the information concerning the goods it provides Warehouseman will be accurate, complete and sufficient to comply with all laws and regulations concerning the storage, handling, and transporting of the goods, and Customer shall indemnify, defend, and hold Warehouseman Group harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which Warehouseman Group pays or incurs as a result of Customer's failure to comply with this provision.

17. **Warehouse Receipt.** Any warehouse receipt issued by Warehouseman in connection with these Terms & Conditions will be non-negotiable. A warehouse receipt, if issued by Warehouseman, may be issued in either physical or electronic form at Warehouseman's option.

18. **Force Majeure.** Warehouseman shall not be liable for failure to perform any of its obligations during any time in which such performance is prevented by fire, flood, hurricane, storm, weather-related incidents, or other natural disaster, war, embargo, riot, civil disobedience, or the intervention of any government authority, or any other cause outside of the reasonable control of Warehouseman.

19. **Governing Law; Venue.** These Terms & Conditions shall be subject to and governed by the laws of the State of Texas, without regard to choice-of-law principles and irrespective of the fact that one or more of the parties may be or may become a resident of a different state. The parties agree that any and all disputes under these Terms & Conditions shall be filed in the appropriate county, state and federal courts located within Harris County, Texas.

20. **Abandoned Property.** Warehouseman may retain, destroy, or dispose of any property left on the Premises after termination of these Terms & Conditions by providing 60 days' written notice to Customer by certified mail at Customer's last known address.

21. **Non-Waiver.** The failure or refusal of either party to insist upon the strict performance of any provision of these Terms & Conditions, or to exercise any right in any one or more instances or circumstances shall not be construed as a waiver or relinquishment of such provision or right, nor shall such failure or refusal be deemed a customary practice contrary to such provision or right.

22. **Severability.** If any provision in these Terms & Conditions is held to be unenforceable the parties intend and request that the provision be reformed and replaced with a provision as close as the parties' original intent as permitted by law, and that as much of these Terms & Conditions remain in effect as permitted by law.