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IARW-WFLO Convention

8–12 October 2022

San Diego, California



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October 11, 2022

Changes in Terms & Conditions

Kevin M. Phillips, Partner & Eric J. Meyers, Partner

Kevin M. Phillips

Partner, Scopelitis Law Firm

IARW's retained counsel for the United States. Kevin serves as a legal resource for association members, responding to member inquiries regarding customer contracts and warehouse law including:

- Claims involving chemical contamination of food-grade products
- Infestations of products involving multiple distribution centers
- Improper record keeping
- Food spoliation
- Cross contamination
- Inventory shortage claims against distribution centers
- Product damage claims
- Drafting, negotiating, and reviewing warehousing and transportation documents
- Instituting and enforcing warehousemen's liens
- Recovery of unpaid storage charges





Eric J. Meyers

Partner, Scopelitis Law Firm

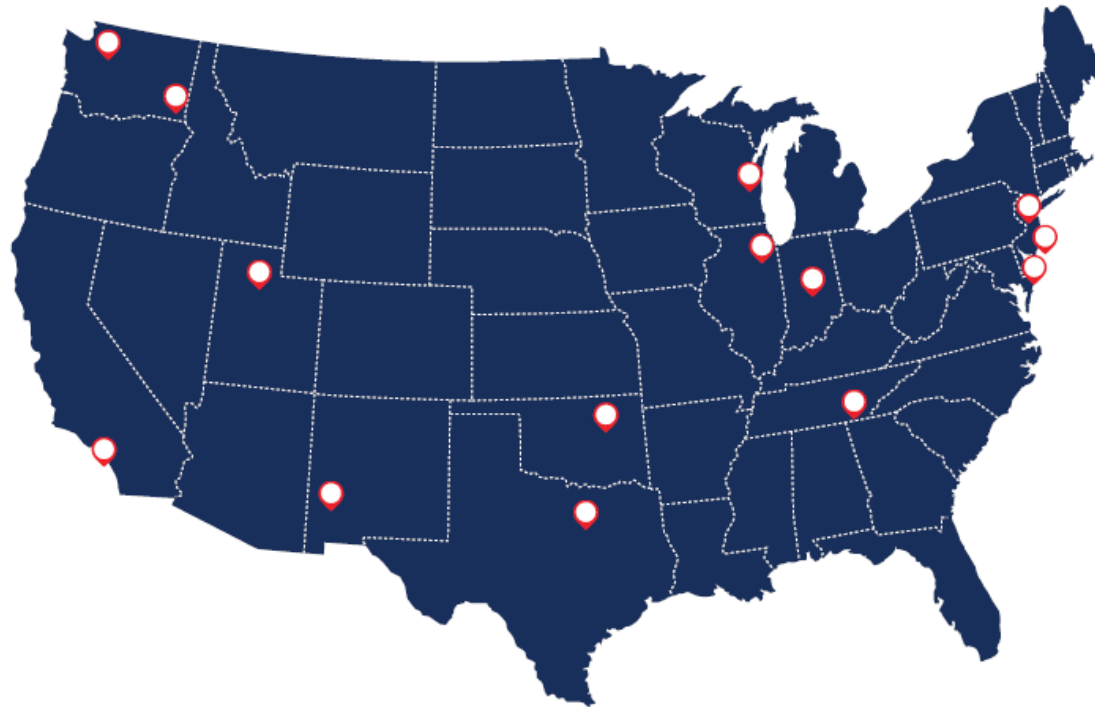
Eric has represented transportation and warehouse clients across a wide array of legal matters including:

- Property losses, general liability
- Infestation and contamination
- Detention and demurrage
- Cyber-security breaches
- Enforcement of warehousemen liens, TROs, and other equitable and regulatory actions
- Breach of contract
- Personal injury and statutory-based actions
- Trials, arbitrations, mediations, and administrative hearings
- Rail demurrage issue before the Surface Transportation Board

24 TRANSPORTATION-FOCUSED PRACTICE GROUPS

- 1 Air and Ocean Regulation, Transactions, and Litigation
- 2 Antitrust and Trade Regulation
- 3 Class Action Defense and Complex Litigation
- 4 Commercial and Bankruptcy Law
- 5 Corporate Structuring and Business Transactions
- 6 Driver Leasing
- 7 Employee Benefits
- 8 Estate Planning, Wills, and Probate Administration
- 9 Government Affairs
- 10 Independent Contractor Issues
- 11 Insurance & Risk Management Regulatory Compliance
- 12 International Transportation & Logistics Law
- 13 Labor and Employment
- 14 Legislative Services
- 15 Litigation and Appellate
- 16 Mergers and Acquisitions
- 17 Negotiation Counsel
- 18 Personal Injury, Property Damage, and Cargo Claims
- 19 Real Estate
- 20 Regulatory, DOT, and Hazardous Materials Compliance
- 21 Sharing Economy, Autonomous Vehicles, and Emerging Technologies
- 22 Taxation
- 23 Warehousing and Logistics
- 24 Workers' Compensation

11 OFFICES Headquarters in Indianapolis



A LONG HISTORY AS THE ONLY FIRM FOCUSED SOLELY ON TRANSPORTATION

Established in 1978

- 90 attorneys
- Over 5,000 transportation and logistics (and related) clients
- Clients range from Fortune 500 companies to small, family-owned businesses



THE SCOPELITIS WAY

Our attorneys take a comprehensive, concierge, 24/7/365 approach to helping clients chart a course to success, however they define it.



IARW Terms & Conditions

- The Standard Terms & Conditions last updated in 2013
- Why update?
 - Shifting industry
 - New liability protections
- Best protections for a claim start long before the claim happens by using T+Cs

General Changes

1. Throughout the Standard Terms and Conditions, we changed references for **STORER** to **DEPOSITOR**, and **COMPANY** to **WAREHOUSE**.
2. We also changed the formatting of some sections and subparagraphs for easier reading and citation.



Take Note: Specific Changes in Sections

Section 1: Acceptance

SECTION 1 -

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under this CONTRACT for a period of
180 days. WAREHOUSE. COMPANY'S
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front side of this CONTRACT.

~~(e) GOODS. The personal property and
any portion thereof described herein
which COMPANY has agreed to receive,
handle and/or store pursuant to this
CONTRACT.~~

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and to all terms of this CONTRACT.

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Section 2: Tender for Storage

SECTION	(c) <u>WAREHOUSE is not a guarantor of the condition of such GOODS under any circumstances, including, but not limited to hidden, concealed, or latent defects in the GOODS. Concealed shortages, damage, inherent vice or tampering will not be the responsibility of WAREHOUSE.</u>	be delivered marked and
(a) DEF	STORER will provide COMPANY with accurate and complete information concerning the GOODS sufficient to allow COMPANY to comply with all laws and regulations concerning the storage, handling and transportation of the GOODS and will indemnify and hold COMPANY harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) as a result of STORER'S failure to do so.	a manifest d for desired. lots in of
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Section 3: Shipments to & from Warehouse

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agree that, regardless of whether WAREHOUSE is named as an "agent" for purposes of 21 U.S.C. § 350d or receives notification from the U.S. government with respect to confirmation of WAREHOUSE'S status as "agent" under 21 U.S.C. § 350d, under no circumstances shall WAREHOUSE be an agent for purposes of identifying the "importer". WAREHOUSE shall not be responsible for complying with or performing the duties required of an "importer" under 21 U.S.C. § 384a. Whether WAREHOUSE accepts or refuses GOODS shipped in violation of this Section, DEPOSITOR agrees to indemnify and hold WAREHOUSE harmless from all claims for transportation, storage, handling, and other charges relating to such GOODS, including undercharges, rail demurrage, truck/intermodal detention, and any fines, penalties, costs and expenses (including attorney's fees), and other charges of any nature whatsoever resulting from DEPOSITOR'S failure to comply with the requirements of this Section. ~~STORER shall indemnify and hold COMPANY harmless from all claims for transportation, storage, handling and other charges relating to such GOODS.~~

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Section 4: Termination of Storage

SECTION 4

(a) WAREHOUSE, upon the expiration of the period, shall be deemed to have abandoned all rights in the GOODS.

(b) If, upon the expiration of the period, the WAREHOUSE has not received notification from the owner of the GOODS, and if the GOODS are not held on the premises by law.

(c) If the WAREHOUSE determines that the GOODS are a hazard to the facility or to persons, the WAREHOUSE may remove the GOODS from the facility and shall incur no liability by reason of such removal.

(d) If, after a reasonable effort, the WAREHOUSE is unable to sell the GOODS pursuant to its lien or this Section 4, the WAREHOUSE may dispose of the GOODS in any lawful manner and shall incur no liability by reason of such disposition.

(c) If as a result of a quality or condition of the GOODS of which WAREHOUSE had no notice at the time of deposit, the GOODS are a hazard to other property or to the FACILITY or to persons, WAREHOUSE may: i) sell the GOODS at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the GOODS, ii) return GOODS freight collect, or iii) dispose of GOODS. Pending such disposition, sale or return of the GOODS, WAREHOUSE may remove the GOODS from the FACILITY and shall incur no liability by reason of such removal.
(d) If, after a reasonable effort, WAREHOUSE is unable to sell the GOODS pursuant to its lien or this Section 4, WAREHOUSE may dispose of the GOODS in any lawful manner and shall incur no liability by reason of such disposition.

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Section 5: Storage Location

SECTION	<u>wit</u> <u>wit</u> <u>of</u> <u>com</u> <u>ide</u> <u>loc</u> <u>not</u> <u>be</u>	(b) Unless otherwise agreed in writing, COMPANY may, at any time, at its expense, and without notice to STORER, remove any GOODS from any room or area of the WAREHOUSE to any other room or area thereof. (<u>be</u>) Upon ten days written notice to STORER <u>DEPOSITOR</u> , <u>COMPANY</u> <u>WAREHOUSE</u> may, at its expense, remove the GOODS to any other warehouse operated by <u>COMPANY</u> <u>WAREHOUSE</u> .		on, at any , without ore of the E may, at ated by
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Section 6: Storage Charges

(a) Unless otherwise agreed in

~~(c)~~ Unless WAREHOUSE specifies otherwise, storage charges shall be computed separately for each lot on one of the following bases:

(i) If storage rates are quoted on a "SPLIT MONTH BASIS" the storage month shall be a calendar month. A full month's storage charge will apply to all GOODS received between the 1st and 15th, inclusive, of a calendar month. One half month's storage charge will apply on all GOODS received between the 16th and last day, inclusive, of a calendar month. A full month's storage charge shall apply on the 1st day of the

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WAREHOUSE to DEPOSITOR and may be increased on 30 days' notice.

(e) Unless WAREHOUSE specifies otherwise, all storage charges are fully earned and are due and payable on the 1st day of storage for the initial month and thereafter on the 1st day of each storage month.

(f) Rates quoted by weight will, unless otherwise specified, be computed on gross weight.

Section 7: Handling Charges

SECTION 7

(a) Unless otherwise specified, a charge in addition to the regular handling charges will be made for labor for unloading and loading GOODS and any work performed by COMPANY WAREHOUSE other than as specified in Section 67(a), at COMPANY WAREHOUSE'S then current rates which are available upon request. Additional expense in unloading from or loading into cars or other vehicles not at the FACILITY door will be charged to DEPOSITOR.

(b) Unless otherwise specified, a charge in addition to the regular handling charges will be made for labor for unloading and loading GOODS and any work performed by COMPANY WAREHOUSE other than as specified in Section 67(a), at COMPANY WAREHOUSE'S then current rates which are available upon request. Additional expense in unloading from or loading into cars or other vehicles not at the FACILITY door will be charged to DEPOSITOR.

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

(d) When received, or each item delivered, shall be made without subsequent sorting except by special arrangement which may be subject to an additional charge.

(e) Delivered

(b) Unless otherwise specified, a charge in addition to the regular handling charges will be made for labor for unloading and loading GOODS and any work performed by COMPANY WAREHOUSE other than as specified in Section 67(a), at COMPANY WAREHOUSE'S then current rates which are available upon request. Additional expense in unloading from or loading into cars or other vehicles not at the FACILITY door will be charged to DEPOSITOR.

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

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Section 8: Transfer; Delivery

written instructions. Written instructions shall include, but are not limited to, FAX, EDI, E-Mail or similar communication, provided WAREHOUSE has no liability when relying on the information contained in the communication as received. GOODS may be delivered upon instruction by telephone or electronically in accordance with DEPOSITOR'S prior written authorization, but WAREHOUSE shall not be responsible for loss or error occasioned thereby. WAREHOUSE shall not be liable for failure to carry out such instructions and GOODS remaining in storage will continue to be subject to regular storage charges. ~~STORER may authorize COMPANY in writing to accept telephone orders for delivery. In such case, delivery by COMPANY pursuant to telephone order shall be at STORER'S risk.~~

such charges.

(f) WAREHOUSE may require, as a condition to delivery, a statement from DEPOSITOR holding WAREHOUSE harmless from claims of others asserting rights to the GOODS. WAREHOUSE may also exercise any other remedy available to it under the law to resolve conflicting claims to the GOODS. All costs, charges and expenses, including reasonable attorneys' fees, incurred by WAREHOUSE relating in any way to WAREHOUSE'S activities referred to in this Section 8(f) shall be charged to DEPOSITOR and shall be considered charges with respect to the GOODS and subject to WAREHOUSE'S general warehouse lien.

Section 9: Charges and other Services

~~COMPANY~~WAREHOUSE'S energy costs by providing ~~STORER~~DEPOSITOR with no less than 30 days prior notice.

(k) WAREHOUSE shall not be responsible for chargebacks of any kind.

~~such EXPENSES relating to lawsuits (including Bankruptcy proceedings) involving in any way said GOODS and/or STORER'S performance under this CONTRACT. All such EXPENSES shall constitute charges with respect to the GOODS and subject to COMPANY'S general warehouse lien.~~

(i) ~~STORER~~DEPOSITOR shall reimburse ~~COMPANY~~WAREHOUSE for the cost of all pallets supplied by ~~COMPANY~~WAREHOUSE.

(j) ~~COMPANY~~WAREHOUSE may charge ~~STORER~~DEPOSITOR an energy surcharge in the event of an increase in

~~shipment COMPANY shall not be responsible for detention or~~

Section 10: Liability and Limitation of Damages

charges incurred to return the misshipped GOODS to the FACILITY. If the consignee fails to return the GOODS, WAREHOUSE'S maximum liability shall be for the lost or damaged GOODS as specified in~~COMPANY, at its option, shall pay the reasonable transportation charges to return the misshipped GOODS to the WAREHOUSE or the value of the misshipped GOODS based upon~~ Section 10~~9~~(d). COMPANYWAREHOUSE shall have no liability whatsoever for any damages due to the consignee's acceptance or use of the GOODS.

no liability whatsoever for any damages due to the consignee's acceptance or use of the GOODS.

MONTHLY STORAGE CHARGE APPLICABLE TO SUCH LOST, DAMAGED AND DESTROYED GOODS, (4) \$0.50 PER POUND FOR SAID LOST, DAMAGED, AND DESTROYED GOODS. PROVIDED, HOWEVER THAT WITHIN A REASONABLE TIME AFTER RECEIPT OF THIS CONTRACT, DEPOSITOR MAY REQUEST, IN WRITING, AN INCREASE IN WAREHOUSE'S LIABILITY ON PART OR ALL OF THE GOODS IN WHICH CASE AN INCREASED CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION; FURTHER PROVIDED THAT NO SUCH REQUEST SHALL BE VALID UNLESS MADE BEFORE LOSS OR DESTRUCTION OF OR DAMAGE TO ANY PORTION OF THE GOODS HAS OCCURRED.

Section 11: Consequential Damages

SECTION 11 - CONSEQUENTIAL DAMAGES
With respect to any claim arising from or related to this Agreement, or otherwise arising from the relationship of the parties, in no event will WAREHOUSE be liable for special, indirect, exemplary, punitive, or consequential damages of any kind, including but not limited to lost profits, lost sales, or damages due to business interruption, regardless of whether such damages were foreseeable or WAREHOUSE had notice of the possibility of such damages.

NEW SECTION ADDED

Section 12: Recall

SECTION 12 – RECALL

In the event a recall, field alert, product withdrawal or field correction ("Recall") may be necessary with respect to any GOODS provided under this CONTRACT, DEPOSITOR shall immediately notify WAREHOUSE in writing. WAREHOUSE will not act to initiate a Recall without the express prior written approval of DEPOSITOR unless otherwise required by applicable laws. The cost of any Recall shall be borne by DEPOSITOR. DEPOSITOR shall indemnify and hold harmless WAREHOUSE from all loss, cost, penalty, and expense (including reasonable attorneys' fees) which WAREHOUSE pays or incurs as a result of a Recall.

NEW SECTION ADDED

Section 13: Notice of Claim & Filing a Suit

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LOSS OR DESTRUCTION OF OR DAMAGE TO THE GOODS OR THE BASIS FOR ANY OTHER CLAIM AGAINST ~~COMPANY~~WAREHOUSE.

(d) When GOODS have not been delivered, notice may be given of known loss or damage to the GOODS by mailing of a letter via certified mail or overnight delivery to the DEPOSITOR. Time limitations for presentation of claim in writing and maintaining of action after notice begin on the date of mailing of such notice by WAREHOUSE.~~Any lawsuit or other action against COMPANY must be brought in the state or province where the WAREHOUSE is located and will be governed by the laws of such state or province.~~

claim against ~~COMPANY~~WAREHOUSE. Each claim must contain information necessary to identify the GOODS affected, the basis for liability and the amount of the alleged loss or damage, as well as all appropriate supporting documentation.

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Section 14: Insurance

SECTION 14 - INSURANCE

The GOODS are not insured by WAREHOUSE and the storage rates do not include insurance on the GOODS.

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Section 15: Lien

SECTION 15 LIE
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regardless of otherwise applicable
payment terms. Unless expressly
stated otherwise in writing,
WAREHOUSE will not subordinate its
lien to any lender, financial
institution, or any other third
party.

~~SECTION 13 - WAIVER - SEVERABILITY~~

~~(a) COMPANY'S failure to insist upon
strict compliance with any provision
of this CONTRACT shall not
constitute a waiver of or estoppel
to later demand strict compliance
with said provision or to insist
upon strict compliance with all
other provisions of this CONTRACT.
(b) In the event any Section of this
CONTRACT or part thereof shall be
declared invalid, illegal or
unenforceable, the validity,
legality and enforceability of the
remaining Sections and parts shall
not, in any way, be affected or
impaired thereby.~~

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Section 16: Force Majeure

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NEW SECTION ADDED

Section 17: Authority

SECTION 17 AUTOMATICALLY
DEPOSITOR represents and warrants
of the GOODS and
WAREHOUSE. DEPOSITOR shall have no
interest in the GOODS covered by this
CONTRACT and to the extent of the
the agreement of DEPOSITOR and
and Conditions. DEPOSITOR shall
WAREHOUSE from and against (including
attorneys' fees) any dispute or claim
others, respectively, arising out of or
GOODS. Such amount shall be paid
and subject to the terms and conditions

and Conditions of this CONTRACT and to obtain, as a condition of granting any interest, the agreement of such parties to be bound by such ~~Contract~~ CONTRACT Terms and Conditions. DEPOSITOR agrees to indemnify and hold harmless WAREHOUSE from all loss, cost, and expense (including reasonable attorneys' fees) that WAREHOUSE pays or incurs as a result of any dispute or litigation, whether instituted by WAREHOUSE 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 WAREHOUSE'S warehouse lien.

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Section 18: Accurate Information

SECTION 18 -
DEPOSITOR represents and warrants to
WAREHOUSE that there are no known
potential health, safety and/or
environmental hazards associated
with the storage and handling of the
GOODS that have not been disclosed
to and acknowledged by WAREHOUSE.
Notwithstanding, DEPOSITOR will
provide WAREHOUSE with information
concerning the GOODS that is
accurate, complete, and sufficient
to allow WAREHOUSE to comply with
all laws and regulations concerning
the storage, handling, and
transporting of the GOODS. DEPOSITOR
will indemnify and hold WAREHOUSE
harmless from all loss, cost,
penalty and expense (including
reasonable attorneys' fees) that
WAREHOUSE pays or incurs as a result
of DEPOSITOR failing to fully
discharge this obligation.

SECTION 18 - ACCURATE INFORMATION

DEPOSITOR represents and warrants to
WAREHOUSE that there are no known
potential health, safety and/or
environmental hazards associated
with the storage and handling of the
GOODS that have not been disclosed
to and acknowledged by WAREHOUSE.
Notwithstanding, DEPOSITOR will
provide WAREHOUSE with information
concerning the GOODS that is
accurate, complete, and sufficient
to allow WAREHOUSE to comply with
all laws and regulations concerning
the storage, handling, and
transporting of the GOODS. DEPOSITOR
will indemnify and hold WAREHOUSE
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Section 19: Inventories & Audit

SECTION 19 – INVENTORIES AND AUDITS

(a) A physical inventory or alternative mutually agreed upon system of inventory verification of all GOODS shall be conducted by WAREHOUSE at intervals as agreed upon by the parties. WAREHOUSE will take such additional physical inventories as requested by

DEPOSITOR, at DEPOSITOR'S expense. Representatives of DEPOSITOR and WAREHOUSE personnel, as well as any independent auditor or designee, may be present during any inventory.

(b) DEPOSITOR has the right during normal business hours and upon reasonable notice, to inspect the GOODS and to examine the WAREHOUSE'S books, records and accounts pertaining to operations under this CONTRACT.

NEW SECTION ADDED

Section 20: Notices

SECTION 20 – NOTICES

All written notices required herein may be transmitted by any commercially reasonable means of communication and directed to WAREHOUSE at the address on the front hereof and to DEPOSITOR at its last known address. DEPOSITOR is presumed to have knowledge of the contents of all notices transmitted in accordance with this Section 20 within five days of transmittal.

No Material Changes

Section 21: Confidentiality

SECTION 21

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(a) The parties shall keep in confidence and not disclose to any third party (i) the terms of this CONTRACT, and (ii) any confidential

(b) WAREHOUSE will maintain and enforce safety and physical security procedures with respect to its possession and maintenance of

Confidential Information that comport with the standard of care outlined in Section 10(a) of this CONTRACT, and which provide reasonably appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure, removal or access of Confidential Information. WAREHOUSE will not be liable for any breach of security or unauthorized access affecting Confidential Information which could not be avoided by the exercise of such reasonable care.

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Section 22: WAIVER, SEVERABILITY AND ASSIGNMENT

(a) WAREHOUSE'S failure to insist upon strict compliance with any provision of this CONTRACT shall not constitute a waiver of or estoppel to later demand strict compliance with said provision or to insist upon strict compliance with all other provisions of this CONTRACT.

(b) In the event any Section of this CONTRACT or part thereof shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining Sections and parts shall not, in any way, be affected or impaired thereby.

(c) DEPOSITOR shall not assign or sublet its interest or obligations herein, including, but not limited to, the assignment of any monies due and payable, without the prior written consent of WAREHOUSE.

written consent of WAREHOUSE.

**Previously
Section 13**

Section 23: Documents of Title

SECTION 23 – DOCUMENTS OF TITLE

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

NEW SECTION ADDED

Section 24: Governing Law & Jurisdiction

SECTION 24 - GOVERNING LAW AND JURISDICTION

This CONTRACT and the legal relationship between the parties hereto shall be governed by and construed in accordance with the substantive laws of the state where the FACILITY is located, including Article 7 of the Uniform Commercial Code as ratified in that state, notwithstanding its conflict of laws rules. Any lawsuit or other action against WAREHOUSE involving any dispute, claim or controversy relating in any way to this CONTRACT must be brought in the appropriate state or federal court in the State where the FACILITY is located.

NEW SECTION ADDED

Section 25: Entire Agreement

SECTION 25 - ENTIRE AGREEMENT

This CONTRACT constitutes the entire agreement between WAREHOUSE and DEPOSITOR relating to the GOODS and supersedes all existing agreements between them whether written or oral and shall not be changed, amended or modified except by written agreement signed by representatives of WAREHOUSE and DEPOSITOR.

No Material Changes

