

WAREHOUSING AND DISTRIBUTION AGREEMENT

This agreement is made and entered into as of the [] day of [] 200[] by and between [] (Client), and D.M. Bowman, Inc. a Corporation organized and existing under the laws of the State of Maryland, USA. The rates quoted below pertain to storage & handling of [], at a facility located at []

1. **Term and Termination:** The term of this Agreement is [] through []; thereafter subject to a 4% rate adjustment until provisions are completed for an extension to the Agreement and mutually agreed upon rate adjustments. Either party has the right to cancel or terminate this Agreement, without liability, upon 30 days prior written notice to the other party.

2. **Services:** During the term of this Agreement, D.M. Bowman agrees to provide distribution and warehousing services for Client at the warehouse facility set forth in the opening paragraph of this Agreement. In providing such services, D.M. Bowman will be considered a warehouseman as described in Article 7 of the Uniform Commercial Code (“UCC”), and is entitled to all rights and subjects to all obligations described therein. D.M. Bowman shall have the sole discretion to select the area within such facility to store Client’s merchandise (the “Goods”) and may, without notice, move the Goods within the facility or to another facility controlled by D.M. Bowman.

3. **Description of Goods.** Client represents and warrants to D.M. Bowman that there are no potential health, safety or environmental hazardous associated with the storage and handling of the Goods tendered to D.M. Bowman under this Agreement. All Goods shall be delivered to D.M. Bowman by Client properly marked and packaged for handling. D.M. Bowman may, at its sole discretion, reject any shipment of Goods that it deems to be improperly marked, packaged or contains any hazardous material (unless specifically agreed to by D.M. Bowman). Client agrees and acknowledges that D.M. Bowman shall maintain a warehouseman’s lien under the UCC for all Goods in D.M. Bowman’s possession, regardless of whether a specific receipt is issued by D.M. Bowman, to cover all charges set forth in this Agreement. In the event D.M. Bowman is required to exercise its lien, Client shall be responsible for all necessary and reasonable costs incurred by D.M. Bowman including, but not limited to, reasonable attorney fees.

4. **Liability Limitation.** D.M. Bowman, Inc. limits its damage liability to the lesser of the actual product value (manufacturers’ cost of the Goods) or ten times the monthly Storage rate per unit for any damage however caused, including damages caused by the negligence of D.M. Bowman’s employees. Client, declares that the Goods at this warehouse facility will throughout the term of this agreement have a value of \$ [] (manufacturer’s cost) or less on any single day, with a maximum of [] pallets at any one time. D.M. Bowman, Inc. shall not be liable for any loss or damage to the Goods unless the loss or damage resulted from the failure of D.M. Bowman, Inc. to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances. D.M. Bowman, Inc. shall not be liable for any such loss or damage, which could not have been avoided by the exercise of such care.

5. **Client’s Insurance Obligations.** Client shall at its sole cost and expense, maintain in full force and effect the following types and amounts of insurance, or Client shall elect to self-insure any portion thereof: (a) All-Risk Property Damage insurance insuring the Goods in an amount not less than the actual Replacement Cost thereof, subject to any commercially reasonable deductible amounts as determined solely by Client, and (b) Cargo Insurance on an all risk basis for any and all transportation exposures, whether related to an owned vehicle or a third-party contract or common carrier, in an amount not less than the actual replacement value thereof, subject to any commercially reasonable deductible amounts as determined solely by Client. Upon D.M. Bowman’s request, Client shall provide D.M. Bowman a certificate of insurance showing that such insurance coverage has been obtained and procured by Client. Furthermore, Client agrees to indemnify and hold harmless D.M. Bowman, Inc. and related companies harmless against loss of any kind except as provided under Warehouseman’s Legal Liability coverage.

6. **Force Majeure.** Neither party shall be liable to the other for failure to perform its obligations under this Agreement if prevented from doing so because of an act of God, fire, flood, war, civil disturbance, interference by civil or military authority or other causes beyond their responsible control of the parties.

7. **Confidentiality:** Client and D.M. Bowman, Inc. agree to maintain confidentiality of information contained in or related to this Agreement.

8. **Arbitration:** Client and D.M. Bowman, Inc. agree that disputes arising from this Agreement will be settled by binding arbitration, with Client selecting an arbitrator, D.M. Bowman, Inc. selecting an arbitrator and with a representative chosen by each party jointly selecting a third arbitrator. At its sole discretion, D.M. Bowman, may forego mandatory arbitration and instead seek a collection action to recover any monies owed by Client under this Agreement.

9. **Rates and Charges:** Client agrees to pay D.M. Bowman the rates and charges set forth in the Schedule of Rates below. All payments shall be made thirty (30) days after Client receives D.M. Bowman'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 D.M. Bowman, including reasonable attorney fees.

SCHEDULE OF RATES

STORAGE

D.M. Bowman will provide storage of pallets of [] that can be stacked [] high while in storage.

In-Month Storage

Storage per box billable upon receipt

\$ [] /plt/calendar Mo. or part thereof

Recurring Storage

Storage for all boxes in storage on the 1st of each calendar month

\$ [] /plt/calendar Mo. or part thereof

HANDLING IN & OUT SERVICES

Handling In pallets and handling to a point of rest within warehouse.

\$ [] /pallet

Handling OUT pallets from warehouse for Withdrawal from Storage

\$ [] /pallet

(NOTE: Handling IN & OUT invoiced at the time of receipt)

TRANSPORTATION SERVICES

Pick-up sea container & chassis at Port of Baltimore and deliver to Bowman, Hagerstown, MD then return empty to Port of Baltimore

\$ [] /roundtrip plus fuel surcharge

MINIMUM SERVICE CHARGE

Should the storage and handling service charges in a calendar month not total at least \$ [], the difference between what was invoiced and \$ [] will be invoiced.

Accepted and agreed to: []

Accepted and agreed to:
D.M. Bowman, Inc.

Name Date

Name Date

Title

Title

NON-NEGOTIABLE WAREHOUSE RECEIPT: TERMS AND CONDITIONS

1. **Rights to Goods.** The Customer warrants that it is the owner and/or has lawful possession of the goods and has sole legal right to store and thereafter direct the release and/or delivery of such goods. The Customer agrees to indemnify and hold harmless (including legal fees and costs) Bowman of and from any claim by others relating to ownership, storage and release of the goods, and/or any other services provided by Bowman under this Warehouse Receipt.
2. **Services Provided.** Bowman shall receive, store and release the goods in its Facility as indicated on the Warehouse Receipt. Bowman may provide other services as requested by the Customer, at the rates set forth in the Schedule of Rates from time to time promulgated by Bowman with respect to such services; however, such additional services shall be provided by Bowman not as a bailee or warehouseman but solely as agent for the Customer.
3. **Rates and Charges.** Whenever provision is made herein for a charge by Bowman, such charge shall be based upon Bowman's Schedule of Rates in effect at the time such charge accrues or the service is performed. The Schedule of Rates shall be provided to the Customer with or prior to the initial deposit of goods into storage, and may thereafter be obtained by the Customer from time to time upon written request to Bowman. Storage rates shall be computed as set forth in the Schedule of Rates. A warehouse handling charge shall be made for placing goods in storage and for removing goods to a platform for delivery, as set forth in the Schedule of Rates. Charges for other services performed by Bowman shall be billed as such services are performed according to the Schedule of Rates. The Customer, as well as the shipper, owner and consignee of goods themselves, shall remain jointly and severally liable for all damages.
4. **Payment.** All charges are net, due and payable without offset or deduction, as set forth in the applicable Schedule of Rates. Handling-out charges shall be due and payable at the time the entire lot of goods is removed from storage.
5. **Customer Warranties.** In addition to the warranties set forth in Section 1 above, the Customer warrants that the information as to count, weight, description and condition of the goods set forth on any delivery document is accurate and complete and may be relied upon by Bowman. The Customer acknowledges and agrees that Bowman has no obligation to verify the quantity, content, condition or quality of the goods delivered to Bowman for storage. The Customer further warrants that all individual packages, pieces and items are clearly marked.
6. **Lien and Security Interest.** Bowman shall have a warehouseman's lien upon all goods and property of the Customer deposited or stored with Bowman, and upon the proceeds from the sale thereof, in accordance with provisions of all applicable laws, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooping and other charges and expenses in relation to such goods, and for the balance on any other accounts that may be due or for any other services that may have been rendered, and also for all reasonable charges and expenses for notice, advertisement and sale of the goods where default has been made, and for all costs, including legal fees, incurred in enforcing such lien, collecting charges or defending itself in the event Bowman is made party to any litigation concerning such goods and/or property. This lien may be enforced by Bowman at any time and from time to time. In addition, the Customer hereby grants to Bowman a security interest in the goods and all proceeds derived there from, in accordance with the Uniform Commercial Code of the jurisdiction in which the Facility is located, for the full amount of the fees, charges and expenses identified above, and interest thereon, whether incurred before or after delivery, and the Customer agrees to execute and deliver all such documents as may be required to perfect such security interest.
7. **Corrections.** Unless written notice is given to Bowman within ten (10) days after receipt hereof by the Customer, this Warehouse Receipt shall be deemed complete and correct.
8. **Transfer, Removal of Goods, Termination.** Bowman reserves the right to move, at its own expense of transfer, any goods in storage from the Facility in which they may be stored to any other warehouse owned or leased by Bowman or any of its affiliates; in which case such new warehouse shall be deemed the Facility for all purposes hereunder. Bowman can move goods within the Facility without notice to the Customer or any other party. Upon not less than thirty (30) days' prior written notice to the Customer and to any other party known by Bowman to claim an interest in the goods, Bowman may require the removal of the goods, or any portion thereof, and the immediate payment of all amounts owing hereunder, for any reason, with or without cause, and whether or not there has been any default by the Customer. Such notice shall be given by delivery in person or certified mail addressed to the last known place of business or abode of the person to be notified.
9. **Liability of Bowman.** Bowman shall be responsible for exercising reasonable care under the circumstances, and shall not be liable for any loss, damage or injury to the goods that could not have been avoided by the exercise of such reasonable care. In particular, and not in limitation hereof, Bowman shall not be responsible for loss or damage resulting from sprinkler leakage, fire, insect or rodent infestation, or any other cause, unless such damage results from Bowman's failure to exercise the degree of care required hereby or under the law. Goods are stored at the Customer's risk of loss or damage by acts of God, seizure or other acts of civil or military authority, insurrection, riot, strike, or enemies of the government, for loss or damage resulting from inadequate packaging or wear and tear, or from any cause beyond Bowman's control. In the event of loss, damage, shortage, failure to deliver and/or misdelivery involving the goods for any cause or reason for which Bowman is legally liable, Bowman shall be responsible only to the extent of the lesser of the actual cost to repair, restore and/or replace such goods or the amount specified on the first page of this Warehouse Receipt. If the Customer has declared a higher value on the first page of this Warehouse Receipt, an excess valuation charge shall be assessed in accordance with the applicable Schedule of Rates. The Customer agrees that the foregoing shall be its exclusive remedy against Bowman for any claim or cause of action whatsoever relating to the goods or services hereunder. IN NO EVENT SHALL THE CUSTOMER BE ENTITLED TO ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR NATURE.
10. **Insurance.** The goods are not, and shall not at any time be, insured by Bowman. It is agreed that the charges assessed hereunder do not include any insurance charges.
11. **Change of Address.** Notice of any change of address of the Customer must be given by the Customer to Bowman in writing and acknowledged in writing by Bowman on the following monthly statement and no notice of any change of address shall be valid or binding against Bowman if given in any other manner.
12. **Claims.** The Customer shall notify Bowman in writing of any loss, damage, shortage, failure to deliver and/or misdelivery of goods within three (3) business days after the discovery by the Customer of such loss, damage, shortage, failure to deliver and/or misdelivery. The Customer must retain and permit Bowman to inspect the goods relating to such claim. Any lawsuit or arbitration proceeding must be commenced within nine (9) months following the date such claim arose. Failure to comply with any of the foregoing shall preclude the Customer from maintaining any claim or suit against Bowman. Any dispute or claim arising out of or for the breach of this Agreement or in connection with any goods stored hereunder, whether founded in tort or contract, shall be settled by arbitration under the arbitration laws of the jurisdiction in which the Facility is located and under the rules of the American Arbitration Association, provided, however, that upon any such arbitration, the arbitrator may not vary, modify or disregard the provisions contained herein, including those respecting the declared or agreed valuation of the goods and the limitation of liability of Bowman. The award may be entered as a judgment of a court of record in the county where the award is made. The Customer and Bowman shall share equally the cost of arbitration. Court costs shall be borne by the losing party.
13. **Law and Forum.** This Warehouse Receipt shall be construed in accordance with, and governed by, the laws of the state in which the Facility is located. Notwithstanding any provision requiring arbitration of claims, any litigation arising out of this Warehouse Receipt or performance hereunder must be filed in any state or federal court located in the state in which the Facility is located, with the substantially prevailing party entitled to recover its reasonable legal fees and costs.
14. **Severability.** Bowman's failure to insist upon the strict compliance with any provision hereof shall not constitute a waiver or estoppel of its right to demand strict compliance. If any provision hereof is found to be invalid, illegal and/or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall remain intact.
15. **Counterparts and Signatures.** This Warehouse Receipt may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. Any electronic or facsimile signature to this Warehouse Receipt shall be deemed equivalent to an original signature.
16. **Integration.** The headings used in these terms and conditions are for convenience of reference only, and may not be construed so as to give any substantive meaning. This Warehouse Receipt, in conjunction with any Schedule of Rates and any Release Order issued in connection herewith, constitutes the entire agreement between Bowman and the Customer, and may not be altered or amended unless through writing signed by both parties.