



## TERMS AND CONDITIONS

MBUSA means Martin Bencher USA, LLC. (NJ), Martin Bencher USA, LLC. (FL), Martin Bencher USA, LLC. (TX), Martin Bencher USA, LLC. (CA), and their employees, agents or authorized representatives.

Customer means the cargo owner and any party who has engaged the services of MBUSA, and their employees, agents or representatives and the cargo owner

### ACCEPTANCE -- SEC. 1

The act of tendering goods described herein for storage or other services, including but not limited to warehousing, import, export, outturn or transport by MBUSA shall constitute acceptance by the customer of the terms and conditions set forth herein.

### SHIPPING TO MBUSA-- SEC. 2

Customer agrees not to ship goods to MBUSA as the named consignee. If, in violation of this agreement, goods are shipped to MBUSA as named consignee, Customer agrees to notify carrier, with copy of such notice to MBUSA, that MBUSA is a warehouse and has no beneficial title or interest in such property. Customer further agrees to indemnify and hold harmless MBUSA from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention or charges of any nature, in connection with goods so shipped. Customer further agrees that, if it fails to notify carrier as required by the preceding sentence, MBUSA shall have the right to refuse such goods and shall not be liable or responsible for any loss, injury, or damage of any nature to, or related to, such goods.

### TENDER OF GOODS TO MBUSA -- SEC. 3

All goods shall be delivered to MBUSA marked and packaged for handling. The 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.

### STORAGE PERIOD AND CHARGES -- SEC. 4

Storage charges are billed in advance on the first day of each month. All other charges will be billed in accordance with the customary practice of MBUSA.

### TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS -- SEC. 5

(a) Instructions to transfer goods on the books of MBUSA are not effective until delivered to and received by MBUSA, and all charges up to the time transfer is made are chargeable to the Customer of record. If a transfer involves rehandling the goods, such rehandling will be subject to a charge at MBUSA's standard rates.



(b) MBUSA reserves the right to move, at its expense, 14 days after notice is sent by mail, or facsimile or electronic mail to the Customer of record, any goods in storage from the warehouse in which they may be stored to any other of its warehouses. MBUSA will store the goods at, and may without notice move the goods within and between, any one or more of the warehouse buildings which comprise its warehouse complex.

(c) If as a result of a quality or condition of the goods which MBUSA was not placed on written notice of at the time the goods were tendered to MBUSA, the goods are determined by MBUSA to be a hazard to other property or to the warehouse or to persons, MBUSA may sell the goods at public or private sale, without advertisement on reasonable notification to all persons known to claim an interest in the goods. The sale will not occur until at least fifteen (15) days after notice to Customer, unless the goods are perishable. If the goods are perishable the sale may occur immediately upon notice to the Customer. If MBUSA, after a reasonable effort is unable to sell the goods, or can not complete a sale, it may dispose of them in any lawful manner and shall incur no liability by reason of such disposition. Pending such disposition, sale, or return of the goods, MBUSA may remove the goods from the warehouse and shall incur no liability by reason of such removal.

(d) Customer agrees that when MBUSA releases goods to Customer or its authorized representative, including any common carrier or bailee engaged by Customer, that MBUSA will have no further obligation or responsibility to Customer or for the goods. A signed receipt to MBUSA without exception as to loss or damage shall be conclusive evidence that the goods were not lost or damaged while in the possession of MBUSA.

#### HANDLING -- SEC. 6

(a) The handling charge covers the ordinary labor involved in receiving goods at warehouse door, placing goods in storage, and returning goods to warehouse door.

(b) Unless otherwise agreed, labor for unloading and loading goods will be subject to a charge at the agreed upon rates. Additional expenses incurred by MBUSA in receiving and handling damaged goods, and additional expense in unloading from or loading into cars or trailers or other containers not at warehouse door will be charged to the Customer at the customary rates.

(c) MBUSA shall not be liable for demurrage or detention, delays in unloading inbound cars, trailers or other containers, or delays in obtaining and loading cars; trailers or other containers for outbound shipment unless MBUSA has failed to exercise reasonable care.

#### DELIVERY REQUIREMENTS -- SEC. 7

(a) No goods shall be delivered or transferred except upon receipt by MBUSA of complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, Email, or similar communication. However, when no negotiable receipt is outstanding, goods may be delivered upon instruction by telephone in accordance with a prior written authorization, but MBUSA shall not be responsible for loss or error occasioned thereby.



(b) When Customer requests goods from the warehouse, a reasonable time shall be given MBUSA to carry out the applicable instructions, and if unable to do so because of acts of God, war, public enemies, seizure under legal process, riots and civil commotion, or any reason beyond MBUSA's control, or because of loss or destruction of goods for which MBUSA is not liable, or because of any other excuse provided by law, the MBUSA shall not be liable for failure to carry out such instructions.

#### EXTRA SERVICES (SPECIAL SERVICES) -- SEC. 8

Warehouse labor required for services other than ordinary handling and storage will be charged to the Customer at the customary rates of MBUSA.

#### LIABILITY AND LIMITATION OF DAMAGES -- SEC. 9

(a) In consideration of the rate charged, it is agreed that the liability of MBUSA shall be that of an ordinary bailee. MBUSA shall undertake to exercise reasonable care in the storage, transport and handling of the goods. MBUSA is not an insurer of the goods and will be liable only for loss or damage caused by the failure to exercise reasonable care in the storage, transport and handling of the goods. Customer acknowledges that it should maintain its own insurance on its goods for loss or damage while in the possession of MBUSA.

In the event that MBUSA fails, for any reason, to exercise reasonable care in the transport, storage or handling of the goods, Customer agrees that the liability of MBUSA shall be limited to \$.50 cents per pound per article not to exceed a maximum of \$500 unless a higher value is declared by the Customer and rates for increased valuation paid by Customer in accordance with the standard rates of MBUSA.

(b) Where damage occurs to goods, for which the MBUSA is not liable, the Customer shall be responsible for the cost of removing and disposing of such goods and the cost of any environmental cleanup and site remediation resulting from the loss or injury of goods.

#### NOTICE OF CLAIM AND FILING OF SUIT -- SEC. 10

(a) Claims by the Customer and all other persons must be presented in writing to MBUSA within a reasonable time, and in no event longer than 90 days after delivery of the goods or notification to the Customer that loss or damage to part or all of the goods has occurred, whichever time is shorter.

(b) No action may be maintained by the Customer or others against the MBUSA for loss or damage to the goods stored unless such action is commenced nine months after delivery of the goods or notification to the Customer that loss or damage to part or all of the goods has occurred, whichever time is shorter.

(c) When goods have not been delivered or there is loss or damage to goods, notice may be given of known loss or damage to the goods by FAX, EDI, Email, regular mail or similar communication.

#### LIABILITY FOR CONSEQUENTIAL DAMAGES -- SEC. 11



MBUSA shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind.

#### LIABILITY FOR MISSHIPMENT -- SEC. 12

If MBUSA negligently misships goods, through the sole fault of MBUSA it shall pay the reasonable transportation charges to redeliver the goods, up to \$500. If the consignee fails to return the goods, MBUSA's maximum liability shall be for the lost or damaged goods as specified in Section 9 above. In no event will MBUSA be liable for any associated costs, damages, chargebacks or expenses

#### MYSTERIOUS DISAPPEARANCE -- SEC. 13

MBUSA shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods unless Customer establishes such loss occurred because of MBUSA's failure to exercise the care required of MBUSA under Section 9 above and merchandise shortages are more than 10% of goods received by MBUSA. MBUSA shall be entitled to offset any overage on other items which are held for the account of Customer. Customer agrees that no shortage will constitute conversion in the absence of evidence that the goods were actually converted by MBUSA.

#### RIGHT TO STORE GOODS -- SEC. 14

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

#### ACCURATE INFORMATION -- SEC. 15

Customer will provide MBUSA with information concerning the goods, which is accurate, complete and sufficient to allow MBUSA to comply with all laws and regulations concerning the storage, handling and transporting of the goods. Customer will indemnify and hold MBUSA harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which MBUSA pays or incurs as a result of Customer failing to fully discharge this obligation.

#### SEVERABILITY and WAIVER -- SEC. 16

(a) If any provision of this receipt, or any application thereof, should be construed or held to be void, invalid or unenforceable, by order, decree or judgment of a court of competent jurisdiction, the remaining provisions of this receipt shall not be affected thereby but shall remain in full force and effect.

(b) MBUSA's failure to require strict compliance with any provision of these terms and conditions shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of these terms and conditions.



(c) These terms and conditions shall be binding upon the Customer's heirs, executors, successors and assigns; contain the sole agreement governing goods stored with the MBUSA; and, cannot be modified except by a writing signed by MBUSA.