

Badger Fulfillment Group Inc. Warehouse Receipt Terms & Conditions

****It is agreed that the BadgerFG's Receipt Terms and Conditions shall govern the dealings between BadgerFG and Customer. It is furthermore agreed that BadgerFG's Warehouse Receipt Terms and Conditions electronically published at www.badgerfg.com, as amended, shall govern. In the event of any conflict between these Warehouse Receipt Terms and Conditions as printed herein, and the electronically published Warehouse Receipt Terms and Conditions, the electronically published version shall control.**

- 1. DEFINITIONS.** As used in this Warehouse Receipt: (a) "BadgerFG" means Badger Fulfillment Group Inc.; (b) "Customer" means the person, company, firm or other entity for whom the Goods are stored and to whom this Warehouse Receipt is issued; and (c) "Goods" means the property tendered to BadgerFG by Customer for which BadgerFG has agreed to store pursuant to this Warehouse Receipt.
- 2. OWNERSHIP OF GOODS.** Customer warrants that it is the lawful owner or has lawful possession of the Goods tendered for storage, and authority to store Goods tendered, to release Goods, and to instruct BadgerFG regarding delivery or disposition of the Goods. Customer agrees to indemnify and hold BadgerFG harmless from any claim by third parties relating to ownership, storage, handling or delivery of Goods, or any other services provided by BadgerFG under this Warehouse Receipt. Such indemnification shall include BadgerFG's legal fees or costs incurred defending any claim by a third party, regardless of whether or not litigation is actually filed.
- 3. SERVICES.** (a) Pursuant to these Warehouse Receipt Terms, BadgerFG agrees to receive, store, and release the Goods in accordance with Customer's reasonable instructions. BadgerFG may provide additional services to Customer as requested and as agreed to in additional pricing sheets which will be provided to Customer upon request. Additional handling charges will apply whenever Goods are pulled for distribution or release, whenever physical inventories are requested by Customer, and whenever additional services are requested. Such additional charges will be provided to Customer and will be invoiced to Customer in addition to any storage charges due. (b) Additional charges apply for merchandise in bond. If this Warehouse Receipt covers Good in U.S. Customs bond, BadgerFG is not liable for Good seized or removed by U.S. Customs.
- 4. TENDER OF GOODS.** All Goods shall be delivered at BadgerFG's facility properly marked and packaged for storage and handling. At or before the time of delivery, Customer shall furnish a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other services desired. All Goods shipped to BadgerFG's facility shall identify Customer on the bill of lading or other transportation document as the named consignee, in care of BadgerFG, and shall not identify BadgerFG as the consignee. If Goods are shipped to BadgerFG as a named consignee on any transportation document, BadgerFG shall have the right to refuse such Goods and shall not be liable for any loss, misconsignment, or damage of any nature in relation to such Goods. Customer shall indemnify and hold BadgerFG harmless from all claims for transportation, storage, handling and any other charges relating to Goods mistakenly consigned to BadgerFG, regardless of whether or not BadgerFG chooses to accept or refuse delivery of the Goods.
- 5. FIT FOR STORAGE/ACCURATE INFORMATION.** (a) Customer warrants that the Goods are fit for storage, packing, handling, and any transportation (as may be required), and that the Goods are not included in the IATA Dangerous Goods Regulations prevailing at the time of BadgerFG receives the Goods. If Customer delivers any unfit, dangerous or hazardous Goods to BadgerFG, Customer shall be liable for all expenses costs, losses, damages, fines, penalties or other expenses of any sort incurred by BadgerFG in

connection with the Goods. (b) For all Goods, Customer shall provide to BadgerFG all documents or information necessary or useful for the safe and proper warehousing, handling, storage, and transportation of the Goods. If all such information and documents are not fully, accurately and timely provided to BadgerFG, Customer shall indemnify BadgerFG for all consequences of such failure.

6. **PAYMENT TERMS.** Payment and billing terms will be determined based on the Customer fulfillment needs. These terms will be highlighted on the Warehouse Rate Quote. Any amount which is unpaid within that time shall accrue interest at the rate of one and a half percent (1.5%) per month until paid, which interest shall be added to the balance owed. Customer guarantees to BadgerFG the payment of all amounts set forth in the invoice, which shall be paid without set-off, counterclaim, deduction or delay.
7. **DELIVERY REQUIREMENTS.** No Goods shall be delivered or transferred until BadgerFG receives Customer's complete written instructions. Written Instructions may be transmitted by fax, EDI, e-mail or similar medium. If Customer has provided prior written authority, Goods may be delivered upon Customer's telephonic instructions. However, BadgerFG has no liability when relying on the information contained in the communication as received. When Goods are ordered out BadgerFG shall have a reasonable time to carry out instructions. During the course of BadgerFG's storage of the Goods, BadgerFG may move the Goods within BadgerFG's facility as reasonably necessary. BadgerFG may also move the Goods to another facility under BadgerFG's control, upon fourteen (14) days' written notice to Customer. BadgerFG may also require Customer to remove any Goods from BadgerFG's facility upon thirty (30) days' notice.
8. **LIEN RIGHTS.** BadgerFG shall have a lien on the Goods tendered by Customer and upon any and all property belonging to Customer in BadgerFG possession, custody or control for all charges, advances or amounts of any kind due to BadgerFG under this Warehouse Receipt or under any prior or subsequent invoices issues to Customer by BadgerFG (including charges for storage, handling, transportation, demurrage, terminal charges, insurance, labor and any other charges incurred. BadgerFG shall have a lien on the Goods and may refuse to surrender possession of the Goods until all charges or debts are paid in full. If such amounts remain unpaid for thirty (30) days after BadgerFG's demand for payment, BadgerFG may sell the Goods at public auction or private sale or in any other reasonable manner, and shall apply the proceeds of such sale to the amounts owed. Customer remains responsible for any deficiency outstanding to BadgerFG.
9. **COLLECTION EXPENSES.** If it becomes necessary for BadgerFG to utilize a collection agency and/or attorney to collect any unpaid amount of this invoice or to assist in effectuating the lien provisions herein, Customer shall be obligated to pay the collection agency fees and/or attorney fees, and expenses including court costs incurred, regardless of whether litigation is actually filed.
10. **LIABILITY. (a) BADGERFG SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR DESTRUCTION TO THE GOODS, HOWEVER CAUSED, UNLESS SUCH LOSS, DAMAGE OR DESTRUCTION RESULTED FROM THE FAILURE OF BADGERFG TO EXERCISE SUCH CARE IN REGARD TO THE GOODS AS A REASONABLY CAREFUL MAN WOULD EXERCISE UNDER LIKE CIRCUMSTANCES. BADGERFG IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.** BadgerFG is not responsible for loss or damage caused by acts of God, fires, frost or change in weather, civil or military unrest, riots, strikes, sprinkler leakage, floods, wind, storms, moths, or from inherent or perishable qualities of the merchandise, or other causes beyond its control. BadgerFG is also not responsible for losses due to pilferage or theft, unless such loss or damage is caused by the failure of BadgerFG to exercise such ordinary care required by law. BadgerFG shall also not be responsible for any concealed damage, or for losses incurred due to the concealed damage of the Goods. **(b) In the event of loss or**

damage to the Goods for which BadgerFG is legally liable, BadgerFG's liability for the Goods lost, damaged, or delayed shall be limited to actual value of the Goods, subject to (i) a maximum of USD \$5,000.00 per incident or loss occurring in any state other than New York or Missouri, or (ii) a maximum of USD \$50.00 per package or per customary freight unit if the incident or loss occurs in New York or Missouri. BadgerFG's liability may be increased if, at the time of acceptance of these Warehouse Receipt Terms, Customer makes a written request that BadgerFG's liability for part or all of the Goods be increased, in which event an additional monthly charge will be made based upon such increased liability. Except as provided above, in no event, whether as a result of breach of BadgerFG's duties, negligence, liability without fault or any other legal theory or basis, shall BadgerFG be liable for special, incidental, consequential, punitive or statutory damages, losses or injuries of any nature, including, without limitation, loss of profits or revenue, loss of customers, loss of use of Goods, cost of substituted Goods, downtime costs, advertising costs, or labor costs of Customer or Customer's customers.

11. **INSURANCE.** BadgerFG does not insure the Goods against any loss or damage.
12. **TEMPERATURE OR HUMIDITY CONTROLLED STORAGE.** Unless specifically agreed to in writing, BadgerFG shall not be responsible for storage of the Goods in a temperature or humidity controlled environment. Customer knowingly accepts that the Goods will be warehoused in a non-temperature/humidity controlled environment. BadgerFG will not be responsible for any loss or damage to the Goods that will result from fluctuations in temperature range or in humidity levels of the Warehouse. BadgerFG will furthermore not be responsible for losses or damages incurred to Perishable Goods, unless otherwise agreed to in writing prior to tender of the Goods for storage.
13. **MYSTERIOUS DISAPPEARANCE.** BadgerFG is not liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods unless Customer establishes such loss occurred because of BadgerFG's failure to exercise to care required under Section 10 above. Any presumption of conversion imposed by law does not apply to such loss. Customer must establish any claim of conversion by affirmative evidence that BadgerFG converted the Goods to BadgerFG's own use.
14. **FILING CLAIMS/TIME BAR.** (a) BadgerFG shall not be liable for any claim whatsoever for any loss, damage, or destruction of the Goods unless it is timely filed, in writing, within a maximum of thirty (30) days after Customer knew, or *should have known* by the exercise of reasonable care, of such loss or damage. (b) Any lawsuit or other claim against BadgerFG with respect to the Goods is waived unless commenced within two (2) years after Customer knew, or *should have known* by the exercise of reasonable care, about such loss or damage.
15. **CHOICE OF LAW/VENUE/JURISDICTION.** This Warehouse Receipt shall be governed by the laws of the State of Illinois, without reference to its conflict of laws principles. Any litigation arising out of this Warehouse Receipt shall be exclusively brought in the state or federal courts in McHenry, IL.
16. **GENERAL.** This Warehouse Receipt constitutes the entire understanding between Customer and BadgerFG regarding the storage of Goods and services provided. This Warehouse Receipt supersedes all prior or contemporaneous verbal or written negotiations, statements, representations, or agreements. It is expressly understood that this Warehouse Receipt does not cover or apply to any rights, obligations, terms or conditions of the freight forwarding, customs brokerage or other services that BadgerFG has provided or may provide to the Customer. This Agreement may not be modified except by a written agreement between Customer and an officer of BadgerFG. If any section or portion of this Warehouse Receipt is held by any court to be illegal or unenforceable it shall not affect the legality or enforceability of the remaining provisions or terms and conditions herein. These Warehouse Receipt Terms are binding upon by BadgerFG and Customer, and their respective heirs, assigns, and successors.

Agreed to by parties:

Badger Fulfillment Group Inc.

Signature: _____

Name: _____

Title: _____

Date: _____

Customer:

Signature: _____

Name: _____

Title: _____

Date: _____