

CUSTOMER-OWNED  
MATERIALS STORAGE AND INVENTORY TERMS AND CONDITIONS

This Materials Storage and Inventory Agreement (“Agreement”) between vendor, as set forth on the signature block below (“Vendor”) and the customer, as set forth on the signature block below, (“Customer”) and is made and entered into on the earlier of the date the Agreement is signed by both parties or the date upon which Vendor receives the Customer Materials, as defined below (“Effective Date”).

Vendor may, from time to time, house materials or inventory owned by Customer (“Customer Materials”) at its facility (“Vendor Facility”) in order for Vendor to perform services for Customer and Customer and Vendor desire to agree to the terms and conditions upon which Vendor will store such Customer Materials. Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Customer agrees to pay the storage and other fees associated with Vendor’s storage, inventorying and warehousing of the Customer Materials (“Customer Materials Warehouse Storage Fees”) as agreed to by the parties in a separate writing.
2. Upon Vendor’s receipt of Customer Materials, Customer agrees that it shall bear all and insure against all risk of loss at all times while such Customer Materials are located at the Vendor Facility or while such Customer Materials are under the direction and control of Vendor. Unless caused by the gross negligence or willful misconduct of Vendor, in no event shall Vendor be liable for any loss or damage to the Customer Materials.
3. In the event there is no order or de minimus activity related to the Customer Materials for a period of twelve months or upon expiration or termination of this Agreement, Vendor will use reasonable efforts to notify Customer of any such Customer Materials which remain under Vendor’s direction or control and, unless otherwise agreed to in writing by both parties, Customer shall accept C.O.D. return shipment of all such remaining Customer Materials. In the event such Customer Materials are returned to Vendor, Customer shall remain liable for all costs related to the shipment of such Customer Materials and Vendor shall have the right to destroy, resell or otherwise dispose of such Customer Materials and Customer shall be liable for all costs and expenses related thereto, including but not limited to all costs of shipment, destruction, resale, enforcement of and collection under this Agreement, including reasonable attorneys fees.
4. This Agreement shall remain in effect until such time as Vendor is no longer in possession or control of any Customer Materials provided that either party may terminate this Agreement immediately for cause upon written notice, which notice will include a ten (10) business day opportunity to cure. Either party may terminate this Agreement for convenience upon sixty (60) days written notice to the other party.
5. IN NO EVENT SHALL EITHER PARTY BE LIABLE HEREUNDER FOR INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY FOR SUCH DAMAGES AND VENDOR’S TOTAL LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL FEES DUE UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRIOR TO THE LIABILITY UPON WHICH THE CLAIM IS BASED.
6. All notices, requests and other communications with respect to disputes arising hereunder shall be in writing and shall be effective as follows: (a) when served by personal delivery; (b) three (3) days following deposit, postage prepaid by United States or Canadian registered or certified mail; or (c) one (1) day following dispatch via an overnight delivery service such as UPS, Federal Express or similar carrier.  
  
Any notices to Customer shall be sent to the address on record with Vendor. Any notices to Vendor shall be sent to the address listed on Vendor’s invoice or otherwise provided by Vendor with a copy to: General Counsel’s Office, 1725 Roe Crest Drive, North Mankato, MN 56002.
7. This Agreement constitutes and contains the entire agreement between the Parties with respect to the storage, warehousing and inventorying of the Customer Materials. The parties acknowledge and agree that to the extent there is a conflict between any terms in this Agreement and any terms

contained in the storage, warehousing and inventory provisions related to the Customer Materials contained in any other agreement executed by the parties, the terms related to such storage, warehousing and inventory of the Customer Materials contained therein, shall be governed by this Agreement and the terms contained herein shall prevail.

8. This Agreement shall be governed by the laws of the State of Minnesota, without reference to conflicts of law principles. The Parties hereto hereby acknowledge and consent to personal jurisdiction and venue exclusively in Nicollet County, Minnesota (in a federal or state court of competent jurisdiction) with respect to any action or proceeding brought in connection with this Agreement. In any action between the Parties to enforce any of the terms of this Agreement, the prevailing Party shall be entitled to recover expenses, including reasonable attorneys' fees and the parties expressly waive any right they may have to a jury trial and agree that any such litigation shall be tried by a judge without a jury. This Agreement shall be binding upon the Parties, their representatives, successors, administrators and assigns. This Agreement and the rights and obligations herein may not be assigned or delegated in whole or part by either of the Parties to any third party without the prior written consent of both of the Parties. The Parties agree that Vendor is an independent contractor and not an employee, agent or representative of the Customer and this Agreement does not constitute a partnership, joint venture, agency, employee/employer, or any other similar relationship between the parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, and which collectively will be deemed one document. All terms and conditions of this Agreement that would, by their nature, survive the expiration or termination of this Agreement, shall so survive.

**IN WITNESS WHEREOF**, the authorized representatives of the parties hereby agree to these terms as of the Effective Date and as evidenced by their signatures below:

**Vendor**

**Customer**

Vendor Name: \_\_\_\_\_

Customer Name: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_