

VENDOR-MANAGED
MATERIALS STORAGE AND INVENTORY AGREEMENT

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, purchase materials and/or inventory on Customer’s behalf (“Vendor-Managed Inventory”) and such Vendor-Managed Inventory shall be stored at Vendor’s facility (“Vendor Facility”) in order for Vendor to perform services for Customer. Customer and Vendor desire to agree to the terms and conditions upon which Vendor will warehouse and store such Vendor-Managed Inventory. 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 fees associated with Vendor’s storage, management and inventorying of the Vendor-Managed Inventory (“Vendor-Managed Inventory Warehouse Storage Fees”) as agreed to by the parties in a separate writing.
2. In the event there is (a) a de minimus or no order activity related to the Vendor-Managed Inventory for a period of twelve (12) or more months; (b) upon the expiration or termination of this Agreement; or (c) the expiration or termination of any other agreement between the parties to which the Vendor-Managed Inventory is addressed or the subject of, Vendor will use reasonable efforts to notify Customer of any such Vendor-Managed Inventory which remains under Vendor’s possession, direction or control and, unless otherwise agreed to in writing by both parties, Vendor shall invoice Customer for such Vendor-Managed Inventory and payment shall be due within thirty (30) days of the invoice date. For amounts owed which are more than thirty (30) days past due, Vendor may charge Customer interest in the amount of one and a half percent (1 ½%) per month or the maximum rate permitted by law. Upon receipt of payment from Customer, Customer shall accept C.O.D. return shipment of all such remaining Vendor-Managed Inventory and shall be responsible for all other costs or expenses related to the return of such Vendor-Managed Inventory. Risk of loss of Vendor-Managed Inventory shall transfer to Customer upon shipment. In addition to all other remedies available to Vendor, in the event that Vendor does not receive full payment for the Vendor-Managed Inventory within sixty (60) days of the invoice date, Vendor shall have the right to destroy, resell or otherwise dispose of such Vendor-Managed Inventory and, in addition to the invoiced amount of the Vendor-Managed Inventory, 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.
3. This Agreement shall remain in effect until such time as Vendor is no longer in possession or control of any Vendor-Managed Inventory provided that either party may terminate this Agreement immediately for cause upon written notice, which notice will include a ten (10) day opportunity to cure. Either party may terminate this Agreement for convenience upon sixty (60) days written notice to the other party.
4. 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.

5. 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.

6. This Agreement constitutes and contains the entire agreement between the Parties with respect to the storage, warehousing and inventorying of the Vendor-Managed Inventory. 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 Vendor-Managed Inventory contained in any other agreement executed by the parties, the terms related to such storage, warehousing and inventory of the Vendor-Managed Inventory contained therein, shall be governed by this Agreement and the terms contained herein shall prevail.
7. 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: _____