

Dart Advantage Warehousing, Inc.'s Terms & Conditions of Warehousing

Dart Advantage Warehousing, Inc. ("DAW") is a provider of warehousing services (and logistics services as an agent of Advantage Transportation, Inc. d/b/a Dart Advantage Logistics pursuant to Dart Advantage Logistics' Terms & Conditions of Brokerage, found here <http://dartadvlogistics.com/Portals/0/dal-terms-of-service.pdf>) who offers personalized services to assist Depositors in areas including but not limited to product storage, rework, packaging and labeling, return processing, cross docking, freight reclination, and other warehousing and inventory management services (collectively, "Warehouse Services") These Terms & Conditions of Warehousing¹ supersede all previous contracts and agreements with warehousing Depositors whether express or implied except in the event that DAW and Depositor have entered into a written agreement signed by a vice-president or higher of DAW containing terms and conditions different from those set forth herein in which case the conflicting terms and conditions of the written agreement will control. DAW reserves the right from time to time to modify, amend or supplement these Terms & Conditions without notice and any goods tendered to DAW will be subject to the Terms & Conditions then in effect at the time of receipt of the goods.

1. Applicability. The act of tendering goods to DAW for Warehouse Services shall constitute acceptance by Depositor of the Terms & Conditions of Warehousing contained below.

2. Definitions.

2.1 "DAW" shall mean Dart Advantage Warehousing, Inc. who is a warehousemen, and NOT a CARRIER or BROKER. As a warehouse service provider, DAW will store, transfer, manipulate and process goods on behalf of Depositor using reasonable care that a reasonably careful person would exercise.

2.2 "Logistics Services" shall mean undertaking to arrange for local, regional, national or international shipments on behalf of Depositor. All Logistics Services that Depositor desires from DAW will be provided by Dart Advantage Logistics ("DAL"), a licensed broker operating under Permit No. 301004, Sub OB, and subject to DAL's Terms & Conditions of Brokerage. DAW is an authorized agent of DAL for Logistics Services only.

2.3 "Depositor" shall mean the party who tenders goods to and utilizes DAW's Warehousing and Logistics Services. By accepting Warehousing and Logistic Services from DAW, Depositor agrees to the Terms and Conditions set forth herein.

3. Independent Contractor. Depositor is and will remain an independent contractor of DAW with respect to the services being performed hereunder. Nothing herein shall be construed to create a legal partnership or joint venture between the parties. DAW is not considered an agent of Depositor and Depositor is not considered an agent of DAW except that when shipping Depositor's goods at Depositor's direction, DAW shall create and execute shipment paperwork on Depositor's behalf. Depositor agrees to indemnify, defend and hold DAW harmless from and against any and all claims, damages, lawsuits, and etc. arising out of the acts or omissions of Depositor and the acts and omissions of Depositor's employees, agents, invitees, and etc.

4. Depositor's Warranties. Depositor warrants to comply with all laws, rules and regulations applicable to its goods and its business, and that Depositor is lawfully possessed of the goods and has the right and authority to store them with DAW. Depositor agrees to indemnify, defend and hold harmless DAW from all loss, damage, cost and expense

¹ All logistics services are offered by DAW as an agent of Dart Advantage Logistics and are subject to Dart Advantage Logistics' Terms & Conditions of Brokerage, which are available upon request.

(including attorneys' fees) which DAW pays or incurs as a result of any dispute or litigation, whether instituted by DAW or others, respecting Depositor's right, title or interest in the goods or any intellectual property rights related to the goods. Any amounts due under this Section 4 shall be charged to Depositor in relation to the goods and subject to DAW's lien at DAW's discretion. Depositor further warrants that Depositor will provide DAW with information concerning stored goods which is accurate, complete and sufficient to allow DAW to comply with all applicable laws and regulations concerning the Warehousing Services, and that Depositor will indemnify, defend and hold harmless DAW from all loss, damage, cost, penalty and expense (including reasonable attorneys' fees) which DAW pays or incurs as a result of Depositor failing to fully discharge this obligation. DAW assumes no liability to the Depositor or to any other person for any loss due to the failure of the Depositor to comply with these warranties.

5. Shipping. Depositor agrees not to ship goods to DAW with DAW listed on the bill of lading or shipping document as the named consignee. If, in violation of these Terms & Conditions of Warehousing, goods are shipped to DAW as named consignee, Depositor agrees to notify delivering carrier in writing prior to such shipment, with copy of such notice to DAW, that DAW is a warehouseman and has no beneficial title or interest in such property and Depositor further agrees to defend, indemnify and hold DAW harmless from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention or charges of any nature, in connection with goods so shipped. Depositor further agrees that, if it fails to notify delivering carrier as required by this section, DAW 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. Depositor agrees that all goods shall be shipped to DAW as follows:

[OWNER CORP.]
c/o Dart Advantage Warehousing, Inc.
[Address]
[Address]

6. Tender for Storage. All goods for storage shall be delivered at the warehouse properly marked and packaged for handling. Depositor shall furnish at or prior to such delivery, a manifest showing marks, bands, or sizes to be kept and accounted for separately, and the class of storage and other services desired.

7. Rates and Charges.

7.1. Warehousing Services. The rates and charges for the Warehousing Services provided by DAW shall be in accordance with the rates and charges stated in the Service Agreement between DAW and Depositor, or, if there is no Service Agreement, at the rates and charges stated in DAW's Schedule B (a copy of which is available upon request). Warehousing charges become applicable upon the date DAW accepts care, custody and control of the goods, regardless of unloading date or date of issue of warehouse receipt. To the extent a rate and charge is not agreed to prior to DAW providing its services and is not provided for in Schedule B, Depositor and DAW agree that the amount billed by DAW and paid by Depositor shall be the rates and charges for that particular service for that particular time period.

7.2. Minimum Charges. A minimum handling charge per lot and a minimum storage charge per lot per month will be made. When a warehouse receipt covers more than one lot or where a lot is in assortment, a minimum charge per mark, brand, or variety will be made. A minimum monthly charge to one account for storage and/or handling will be made. This charge will apply also to each account when one depositor has several accounts, each requiring separate records and billing.

7.3. Logistics Services. The rates and charges applicable for logistics services shall be subject to DAL's Terms & Conditions of Brokerage found here <http://dartadvlogistics.com/Portals/0/dal-terms-of-service.pdf>.

8. Payment. All rates and charges for services plus any and all sales, use or privilege, or other taxes imposed by any federal, state or local government, and any other amounts owed to DAW under these Terms and Conditions are payable in US dollars and due within thirty (30) days of the date of DAW's invoice without setoff. If any charges remain outstanding for more than thirty (30) days from the date of DAW's invoice, such charges shall be subject to 1.5% per month interest, or the highest amount allowed by law, whichever is less.

9. Cancellation Policy. Depositor may cancel warehouse services previously requested at anytime; however, there is a \$50.00 cancellation fee for all cancellations requested after DAW has begun to undertake previously requested or routine services in addition to Depositor's responsibility for the charges for the specific services actually performed prior to cancellation.

10. Transfer, Termination of Storage, Removal of Goods.

10.1. Transfer of Goods. Instructions to transfer goods (physically or electronically) at a DAW facility are not effective until delivered to and accepted by DAW, and all charges up to the time transfer is made are the responsibility of Depositor. If a transfer involves rehandling the goods, such rehandling will be subject to charge. When goods in storage are transferred from one party to another through issuance of a new warehouse receipt, a new storage date is established on the date of transfer. DAW reserves the right to move, at its expense, fourteen (14) days after notice is sent by certified or registered mail to Depositor, or to last known holder of the negotiable warehouse receipt, any goods in storage from the warehouse in which they may be stored to any other of DAW's warehouses; but if such Depositor, or last known holder of the negotiable warehouse receipt, takes delivery of the goods in lieu of transfer, no storage charge shall be made for the current storage month. DAW will store goods at, and may without notice move the goods within and between, any one or more of the warehouse buildings which comprise the warehouse complex identified on the front of DAW's warehouse receipt.

10.2. Removal of Goods. DAW may, upon written notice to Depositor and any other person known by DAW to claim an interest in the goods, require the removal of any goods within 15 days. Such notice shall be given to the last known address of the person to be notified. If goods are not removed before the end of such 15 day period, DAW may sell them in accordance with applicable law. If DAW in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of DAW's lien before the end of the next succeeding storage month, DAW may specify in the notification any reasonable shorter time for removal of the goods, and in case the goods (whether perishable or not) are not removed, sell them at public sale held one week after a single advertisement or posting, or as otherwise provided by applicable law. Notwithstanding anything to the contrary herein, if Depositor's goods remain in DAW's storage facility after the expiration of the time set forth in the notice of removal, Depositor agrees to pay a monthly rate of 150% of Depositor's then applicable storage rate until such goods are removed from the storage facility. Depositor shall be liable for the damages sustained by DAW, including but not limited to, any and all costs arising out of or incident to the removal of Depositor's goods from the storage facility by DAW, unless caused by the sole negligence of DAW.

10.3. Sale and Removal of Hazardous Goods. If as a result of a quality or condition of the goods of which DAW had no notice at the time of deposit, the goods are a hazard to other property or to the warehouse or to persons, DAW 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, or as otherwise provided by applicable law. If DAW after reasonable effort is unable to sell the goods, DAW, may at Depositor's sole cost and expense, 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, DAW may remove the goods at Depositor's sole cost and expense from the warehouse and shall incur no liability by reason of such removal.

11. Handling. The handling charge covers the ordinary labor involved in receiving goods at warehouse door, placing goods in storage, and returning goods to warehouse door. Unless otherwise agreed, labor for unloading and loading goods will be subject to a charge. Additional expenses incurred by DAW in receiving and handling damaged goods, and additional expenses in unloading from or loading into trailers, railcars, or other vehicles not at warehouse door will be charged to Depositor. When goods are ordered out in quantities less than in which received, DAW may make an additional charge for each order or each item of an order. DAW 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 DAW has failed to exercise reasonable care.

12. Delivery Requirements. No goods shall be delivered or transferred except upon receipt by DAW of complete, written instructions. Written instructions shall include, but are not limited to, FAX, EDI, TWX, EMAIL or similar communication, provided DAW has no liability when relying on the information contained in the communication as received. However, when no negotiable receipt is outstanding, goods may be delivered upon instructions by telephone in accordance with a prior written authorization, but DAW shall not be responsible for loss or error occasioned thereby. When a negotiable receipt has been issued no goods covered by that receipt shall be delivered, or transferred (physically or electronically), unless the receipt, properly indorsed, is surrendered for cancellation, or for indorsement of partial delivery thereon. If a negotiable receipt is lost or destroyed, delivery of goods may be made only upon order of a court of competent jurisdiction and the posting of security approved by the court as provided by law. When the goods are ordered out, a reasonable time shall be given DAW to carry out instructions, and if DAW is unable because of acts of god, war, public enemies, seizure under legal process, strikes, lockouts, riots and civil commotions, or any reason beyond DAW's control, or because of loss or destruction of goods for which DAW is not liable, or because of any other excuse provided by law, DAW shall not be liable for failure to carry out such instructions and goods remaining in storage will continue to be subject to regular storage charges.

13. Extra Services. Warehouse labor required for services other than ordinary handling and storage will be charged to Depositor. Special services requested by Depositor include but are not limited to compiling of special stock statements; reporting marked weights, serial numbers or other data from packages; physical check of goods; and handling transit billing, and all special services will be subject to a charge. Dunnage, bracing, packing materials or other special supplies may be provided for Depositor at a charge in addition to DAW's cost. By prior arrangement, goods may be received or delivered during other than usual business hours, subject to a charge. Communication expense including postage, telephone, or texting will be charged to the Depositor if such concern more than normal inventory reporting or if, at the request of Depositor, communications are made by other than regular United States Mail.

14. Insurance.

14.1. DAW. DAW shall maintain in effect the following types of insurance:

1. Workers' Compensation Insurance as required by statute;
2. Comprehensive General Liability Insurance in amounts of not less than one million dollars (\$1,000,000.00) per occurrence.

14.2. DAW Insurance Terms. DAW shall furnish Depositor with certificates evidencing such insurance upon request.

14.3. Depositor. Depositor shall maintain in effect any Workers' Compensation and/or Unemployment insurance to the extent required by law for its employees.

15. Damages and Shortages. DAW's duty of care shall be that of a reasonably careful person under like circumstances and DAW shall not be liable for any loss, damage or injury to goods stored however caused unless such loss, damage or injury resulted from the failure by DAW to exercise such reasonable care, and DAW is not liable for losses, damages or injuries which could not have been avoided by the exercise of such care. DAW shall be liable for loss, damage or shortage to Depositor's goods which (a) occurs from and after the date of DAW's receipt of goods and while such goods remains in DAW's care, custody or control, and in addition (b) is the result of DAW's breach of duty of care of a reasonably careful person under like circumstances; **provided DAW's maximum liability for such loss, damage or shortage shall be limited to the lesser of: (1) \$0.50 per pound; (2) the manufacturer's cost; (3) \$5,000.00 per warehouse receipt; or (4) \$50,000.00 per calendar year for the aggregate goods deposited by a single depositor in a single warehouse facility.** Notwithstanding the foregoing, Depositor may, by a prior fully executed written agreement, elect a higher level of liability upon paying an increased storage rate. DAW shall not be liable, in any amount, for events including but not limited to, loss, damage or shortage occasioned by Depositor's negligence, a third party's negligence (including, but not limited to, motor carriers), or any inherent defect in Depositor's goods or any cause beyond DAW's control. Depositor's loss shall be calculated as the manufacturer's cost. DAW shall not be liable for any indirect costs or special or consequential damages of any kind.

16. Claims. Depositor shall notify DAW of such claims for damage or shortage within sixty (60) days of discovery of such claim or delivery of the goods by DAW whichever is earlier. Such notice shall be given in writing. Depositor shall file any claims for damage or shortage in the appropriate jurisdiction within one (1) year of discovery of such claim or delivery of the goods by DAW, whichever is earlier. If Depositor does not notify DAW of such claims within sixty (60) days of (a) discovery of such claim or (b) delivery of goods by DAW and does not file such a claim for damage or shortage within one (1) year of discovery of such claim or delivery of the goods by DAW, Depositor's failure to do so shall constitute a waiver by Depositor of any such claim and shall be an absolute defense for DAW to such claim, unless DAW expressly waives such defense in writing.

17. Indemnification. To the maximum extent allowed by law, Depositor agrees to defend, indemnify, and hold harmless DAW from any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees), claims or causes of action of any kind or nature, including but not limited to claims related to bodily injury, property damage, intellectual property rights, or pollution, (collectively referred to as "Claims"), arising out of or related to the storage of goods at DAW's facilities, Depositor's performance under these Terms & Conditions of Warehousing, or Depositor's request for services, except to the extent caused by the sole negligence of DAW. In the event Depositor has any of its own agents, employees, subcontractors, guests, and/or representatives at the storage facility, Depositor shall maintain workers' compensation coverage or its equivalent on such agents, employees, subcontractors, guests, and/or representatives while at the storage facility to the extent required by law or otherwise warrant that any agent, subcontractor, guest, and/or representative is covered by a valid workers' compensation policy or its equivalent and provide proof of insurance of the same prior to the agent's, subcontractor's, guest's and/or representative's physical presence at the storage facility. Depositor also agrees to defend, indemnify, and hold harmless DAW from any and all Claims for bodily injury and property damage to its own agents, employees, guests, subcontractors and/or representatives at the storage facility, provided however that DAW will remain liable to Depositor for any injury or property damage to Depositor's agents, employees, subcontractors, guests, and/or representatives that is proximately caused by the sole negligence or willful misconduct of DAW.

18. Overcharge/Undercharge Claims. Any claims for overcharges or undercharges shall be made within ninety (90) days of the date of invoice. The claiming party shall notify the nonclaiming party in writing, within ninety (90) days of receipt of invoice. The parties shall then work to promptly settle the dispute.

- 19. Lien.** DAW shall have a lien against all goods and on the proceeds thereof for all charges for storage, handling, transportation (including demurrage and terminal charges), Warehousing Service, Logistics Service, insurance, labor, taxes, and other charges present or future with respect to the goods, credits, services, advances or loans by DAW in relation to the property, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. This lien is a general lien on all goods stored now or thereafter, and shall be security for all amounts owed by Depositor for all charges and expenses whether related to the specific storage of goods or not. Goods will not be released, transferred or delivered until all charges and amounts due under these Terms and Conditions or any other agreement have been paid in full. Depositor agrees that it will execute all necessary documents to provide DAW, or any carrier it utilizes, with a perfected security interest in any goods that DAW, or any carrier it utilizes, agrees to release to Depositor without payment of all charges and expenses.
- 20. Compliance with Laws.** Each party shall conform to all rules, regulations and other requirements of all state and local governmental bodies related to its obligations hereunder.
- 21. Waiver.** No waiver by either party with respect to any provision hereof by the other party shall operate or be construed as a waiver of any subsequent rights, duties or obligations and shall not preclude the exercise of any right or remedy such party may have at law, in equity or hereunder.
- 22. Applicable Law.** These Terms & Conditions of Warehousing shall be governed by the laws of the State of Minnesota. If the parties cannot voluntarily settle any dispute which may arise in the interpretation or application of these Terms & Conditions of Warehousing, either party may file suit in the state or federal courts of the State of Minnesota.
- 23. Signature Authority.** Only individuals with titles of Vice-President or higher are authorized to sign for or on behalf of DAW for any terms and conditions of service and the signature or authorization of any other individual is not binding on DAW or valid.
- 24. Non-Exclusivity.** These Terms & Conditions of Warehousing apply on a non-exclusive basis to Depositor goods. Every good tendered or caused to be tendered to DAW will be subject to the Terms & Conditions hereof. DAW is free and able to provide warehousing and logistics services to any person or entity and Depositor is free and able to utilize other persons or entities for warehousing and logistics services.
- 25. Severability.** The invalidity of any term and/or part of these Terms & Conditions of Warehousing shall not invalidate or otherwise affect any other terms and/or parts hereof.
- 26. Amendment.** These Terms & Conditions of Warehousing may be updated at anytime by DAW. Depositor's continued use of DAW's services after such update shall be considered Depositor's agreement to the updated Terms & Conditions of Warehousing.