

WAREHOUSING SERVICES AGREEMENT

This Warehousing Services Agreement (the "Agreement") is made and entered into this _____ day of _____, 20____ by and between DART ADVANTAGE WAREHOUSING, INC., a Minnesota corporation ("Warehouse") and _____ an _____ company ("Depositor").

Witnesseth

WHEREAS, Warehouse is a provider of warehousing services and operates a facility at the location described in Schedule A hereto, (the "Storage Facility"); and

WHEREAS, Depositor desires to store products more specifically described in Schedule A, (hereafter "Depositor's Products" or "Products") in the Storage Facility covered by this Agreement;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Warehouse and Depositor agree as follows:

1. **TERM.** The initial term of this Agreement shall be for the period indicated on Schedule A, attached hereto and hereby incorporated herein. Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party.
 - A. Upon receipt of the notice of termination by either party, the Products may not be removed from the Storage Facility until all invoices, costs, and liabilities due under this Agreement are paid in full.
 - B. If Depositor's Products remain at the Storage Facility after the effective date of termination of this Agreement, Depositor agrees to pay a monthly rate of 150% of the Storage Rate provided in Schedule A or Schedule B, whichever is applicable, until such Products are removed from the Storage Facility. Depositor shall be liable for the damages sustained by Warehouse, including but not limited to, any and all costs arising out of or incident to the removal of Depositor's Products from the Storage Facility by Warehouse, unless caused by the sole negligence of Warehouse.
 - C. Upon termination of this Agreement, Depositor shall cooperate fully in the orderly and timely transition of the Depositor's Products.
2. **SERVICES.** Warehouse shall provide warehousing services to Depositor as provided on Schedule A on the days and hours indicated on Schedule A. In the event Depositor requests additional services and charges that have not been provided for in Schedule A, the Warehouse's Standard Rate Schedule, attached hereto as Schedule B, shall apply.
3. **CHARGES/BILLING.** As consideration for such services, Depositor shall pay to Warehouse the rates, fees and charges listed on Schedule A hereto 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 Warehouse under this Agreement, all in full, without any offset amounts for any discounts, claims, or billing disputes, within thirty (30) days of Warehouse invoice date. If Depositor wishes to dispute any charges or has any claims against Warehouse, the parties shall work together to promptly resolve such dispute, but in any event any disputes shall be handled in accordance with the terms of this Agreement. Unless otherwise provided in Schedule A, the rates, fees and charges applicable to this Agreement are provided in the Standard Rates in Schedule B.
 - A. Depositor's Products located in the Storage Facility, if any, may not be removed from the Storage Facility by Depositor or its agents, until full payment for services, costs, and liabilities due under this Agreement is received;
 - B. Depositor's Products shall be subject to the lien provisions of Section 9 of this Agreement; and/or
 - C. In the event Depositor does not pay Warehouse in full within thirty (30) days of the date of Warehouse invoice, all unpaid amounts shall be subject to interest charges at the rate of 6.0% or the maximum rate permitted by law, whichever is less.
4. **MATERIALS.** All materials, including airbags, dunnage, pallets, wrapping paper, strapping materials and all other materials will be provided by Depositor at its own expense. In the event any of Depositor's materials are damaged, Depositor will furnish materials for and pay the cost of reworking the same, unless such damage was caused by the negligence of Warehouse, its agents, servants or employees, in which event such costs shall be borne by Warehouse.

5. **DAMAGE AND SHORTAGES.** Warehouse's duty of care shall be that of a reasonably careful person under like circumstances and Warehouse 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 Warehouse to exercise such reasonable care, and Warehouse is not liable for losses, damages or injuries which could not have been avoided by the exercise of such care. Warehouse shall be liable for loss, damage or shortage to Depositor's Product which (a) occurs from and after the date of Warehouse's receipt of Product and while such Product remains in Warehouse's care, custody or control, and in addition (b) is the result of Warehouse's breach or default under any of the terms of this Agreement; provided Warehouse's liability for such loss, damage or shortage shall be limited to the lesser of (1) \$0.50 per pound; (2) manufacturer's cost; (3) \$5,000.00 per warehouse receipt; or (4) \$50,000.00 per occurrence. Without limiting the foregoing, Warehouse shall not be liable, in any amount, for any loss, damage or shortage occasioned by Depositor's negligence, third party's negligence (including, but not limited to, motor carriers), or any inherent defect in Depositor's product. Depositor's loss shall be calculated as the manufacturer's cost. Warehouse shall not be liable for any indirect costs or special or consequential damages of any kind.

6. **CLAIMS.** Depositor shall notify Warehouse of such claims for damage or shortage within sixty (60) days of discovery of such claim or delivery of the Products by Warehouse whichever is earlier. Such notice shall be given in accordance with Section 18 of this Agreement. Depositor shall file any claims for damage or shortage in the appropriate jurisdiction within one (1) year of discovery of such a claim or delivery of the Products by Warehouse. If Depositor does not notify Warehouse of such claims within sixty (60) days of (a) discovery of such claim or (b) delivery of Products by Warehouse and does not file such a claim for damage or shortage within one (1) year of discovery of such claim or delivery of the Products by Warehouse, its failure to do so shall constitute a waiver by Depositor of any such claim and shall be an absolute defense for Warehouse to such claim, unless Warehouse expressly waives such defense in writing.

7. **INDEMNIFICATION.** To the maximum extent permitted by law, Depositor agrees to defend, indemnify, and hold harmless Warehouse 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 for bodily injury, property damage, trademark or intellectual property infringement or pollution, (collectively referred to as "Claims"), arising out of or related to the storage of Products at Warehouse's facilities, Depositor's performance under this Agreement, or Depositor's request for services, except to the extent any Claim is caused by the negligence of Warehouse. 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 Warehouse 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 Warehouse 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 negligence or willful misconduct of Warehouse.

8. **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 according to the notice provisions of Section 16 of this Agreement, within ninety (90) days of the receipt of invoice. The parties shall then work to promptly settle the dispute.

9. **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), insurance, labor, taxes, and other charges present or future with respect to the goods, credits, 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.

10. **INSURANCE.**

A. Warehouse 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 person and occurrence.

Warehouse shall furnish Depositor with certificates evidencing such insurance upon request.

B. Depositor shall maintain in effect any Workers' Compensation and/or Unemployment insurance required by law for its employees, agents and subcontractors.

11. **FORCE MAJEURE.** Neither party to this Agreement shall be liable for any delays or failure to perform this Agreement caused by acts of God, public enemies, war, civil disorder, strike, or any other similar or different causes not within the reasonable control of the party in default.

12. **COMPLIANCE WITH LAWS.** Each party shall conform to all rules, regulations and other requirements of all federal, state or local governmental bodies related to its obligations hereunder.

13. **INDEPENDENT CONTRACTOR.** Each party shall, at all times while performing under this Agreement, act as an independent contractor and not as an employee or agent of the other party.

14. **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.

15. **CONFLICT OF LAW.** In the event any provisions of this Agreement are held to be invalid or unenforceable under the applicable law in effect on or validly retroactive to the effective date of this Agreement, the remaining provisions or portions thereof shall remain in full force and effect.

16. **APPLICABLE LAW.** The terms of this Agreement shall be governed by the laws of the State of Minnesota.

17. **ARBITRATION OF DISPUTE.** If the parties cannot voluntarily settle any dispute which may arise in the interpretation or application of this Agreement, it shall be submitted to final and binding arbitration under the commercial rules of the ADR Council, Inc. of Lenexa, Kansas at a point agreed upon by the parties or, if such agreement cannot be reached, in Minneapolis/St. Paul, Minnesota.

18. **NOTICES.** All notices permitted or required to be given hereunder shall be in writing and shall be sent via overnight courier, facsimile or certified mail, return receipt requested and shall be deemed to be given upon receipt by the other party. The addresses for the respective parties shall be:

DEPOSITOR:

WAREHOUSE:

	Dart Advantage Warehousing, Inc.
Attn:	Attn: Contract Administrator
Address:	800 Lone Oak Road
City/State/Zip:	Eagan, MN 55121
Fax No.:	Fax No.: (651) 681-6673

19. **ASSIGNMENT.** This Agreement and the Schedules attached hereto shall be binding upon and inure to the benefit of the successors and assigns of Depositor, provided, however, that neither this Agreement nor any rights or duties hereunder shall be assigned by Depositor, without the prior, written consent of Warehouse.

20. **ENTIRE AGREEMENT.** This Agreement and its Schedules attached hereto:
A. Constitute the entire Agreement between the parties with respect to its subject matter;
B. Supersede all prior or contemporaneous agreements relating to this subject; and
C. May be modified, amended or terminated only as herein provided or by an agreement in writing, signed by the parties.

Executed by the duly authorized officials of the parties as of the date indicated below.

DART ADVANTAGE WAREHOUSING, INC.
("WAREHOUSE")

("DEPOSITOR")

By: _____
Print Name: Larry Lozinski
Title: Director of Sales
Date:

By: _____
Print Name: _____
Title: _____
Date: _____

STORAGE AGREEMENT

SCHEDULE A

DART ADVANTAGE WAREHOUSING, INC. –

Storage Facility:

1. **Term** - The initial term of this Agreement shall be for one month, commencing _____, 20____, and shall renew automatically for subsequent _____ periods.

2. **Description of the Products:** The Products to be stored are described as:

3. **Assumptions** (as mutually agreed upon by the Parties) -

- A. Inbound characteristics:
- B. Storage characteristics:
 - b. Rack Storage:
 - c. Bulk Storage:
 - d. Square Foot Storage:
- C. Shipping characteristics:
- D. Handling characteristics:
- E. Unique characteristics: Yes No
 - a. If Yes, explain:
- F. Clerical aspects:
- G. On-site personnel:
- H. Volume:
- I. Space:
- J. Product turn:
- K. Packaging:
- L. Est. labor hours:
- M. Est. machine hours:
- N. Expedited Orders:
- O. SKU's:

P. Other:

4. **Services / Charges / Billing** – Pricing is based on the assumptions listed above. If assumptions are not met or pricing is not otherwise available based on the information provided in the assumptions, then the Standard Rates as provided in Schedule B shall apply.

(Scheduled Hours of Operation – Monday through Friday 7:00 AM until 4:00 PM Storage Facility Local Time)

- | | |
|--|--|
| A. Inbound Storage Rate: \$ | G. Labor***: (Applies on any hours worked beyond |
| B. Recurring Monthly Storage Rate*: \$ | 4 pm Mon-Fri, excluding holidays) |
| C. Handling Rate: \$ | a. Personnel (Regular): \$ |
| D. Clerical: \$ | b. Personnel (Overtime): \$ |
| E. Transportation: \$ | c. Personnel & Forklift (Regular): \$ |
| F. Expedited Orders**: \$75.00 | d. Personnel & Forklift (Overtime): \$ |

WAREHOUSE Initials: _____

DEPOSITOR Initials: _____

All charges and rates in this Schedule A will be subject to and adjust according to a Consumer Price Index adjustment each quarter, beginning with the first quarter starting after the execution of this Agreement. The relevant index shall be the Consumer Price Index for All Urban Workers (No Seasonal Adjustments) with a base time period of 1982-1984 (“CPI-U NSA”) as published by the U.S. Department of Labor each quarter.

* \$500 minimum monthly storage charge

** Expedited fee will apply per order when shipment notification is received after 11am warehouse time for an order that must be shipped the same day before the warehouse closes or on a holiday or after hours.

** Regular hourly rates calculated charged with a one hour minimum and in increments of 15 minutes thereafter. Overtime hourly rate applies to any hours worked beyond 4 pm Mon-Fri (excluding holidays), Saturdays, Sundays and Holidays, and will be charged with a 4 hour minimum and in one hour increments thereafter.

5. **Customer Shipping/Receiving Procedures** - Warehouse has implemented the following procedures to service Depositor’s account both accurately and efficiently. In Warehouse’s business, scheduling and forecasting are critically important to meet the demands of receiving, storing, and shipping Depositor’s product. The following procedures are in place to best meet Depositor’s requirements.

- 1) Normal shipping and receiving hours***: **7AM to 4:00PM, Monday-Friday** (The time zone corresponding with the Storage Facility applies to all times referenced in this Agreement)
 - a. Weekend service available upon request. Requests for such service must be received by Warehouse by **Thursday noon**, prior to the weekend for which services are being requested. Service shall be provided and billed at applicable overtime rates (**4-hour minimum**).
 - b. After hour service (Monday-Friday) available, provided Warehouse is given a minimum of 24 hours’ notice. Service shall be provided and billed at applicable overtime rates.
 - c. Service requirements (Monday-Friday) with less than 24-hour notice will be provided at the ability of the Storage Facility management to facilitate the order within the time frame requested.
 - d.
- 2) Outbound/inbound loads must have appointments, with a minimum of **24 hours’ notice**. In the event Warehouse receives less than 24 hours’ notice, service will be provided at the ability of the Storage Facility management.
- 3) Outbound orders (**faxed written instruction**) will be shipped to the customer within 24 hours the following business day.
- 4) Orders received that are expected to ship outside of the normal shipping/receiving hours/days or without the standard 24 hour notice requirement (outlined in #1(c)) are considered **expedited orders**. These expedited orders will be completed based upon the Storage Facility manager’s ability to facilitate the expedited order within the time frame requested.
- 5) Depositors are welcome at any time (after checking in at the Storage Facility office) to inspect its product. Depositor is not allowed to perform labor within the Storage Facility.

***Excluding holidays and extreme weather days

DART ADVANTAGE WAREHOUSING, INC.
 (“Warehouse”)

(“Depositor”)

BY: _____

BY: _____

TITLE: Director of Sales

TITLE: _____

DATE:

DATE: _____

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Storage Agreement

SCHEDULE B

DART ADVANTAGE WAREHOUSING, INC.

STANDARD RATES – ALL FACILITIES

<i>I. STORAGE</i>	<i>Rate</i>	<i>Unit of Measure</i>
A. Square Foot Rate	\$2.00	Square Foot
B. Bulk Storage		
a. Standard Pallet (40"x48")	\$24.53	Pallet
b. Irregular Pallet* (pallet footprint) x (64% Common & aisle) x (\$2.00 per square foot)] = Rate Per Pallet		
C. Racked Storage		
a. Standard Pallet (40"x48")	\$19.44	Pallet
b. Irregular Pallet* (pallet footprint) x (64% Common & aisle) x (\$0.80 per square foot)] = Rate Per Pallet		
D. Minimum Monthly Storage	\$1,000	Month

*Storage (irregular pallet formula) rates apply when the contractual assumptions do not match the actual storage characteristics.

II. HANDLING

A. Full Pallet In	\$9.18	Pallet
B. Full Pallet Out	\$9.18	Pallet
B. Clerical	\$15.00	BOL
C. Hourly Rates**		
a. Standard		
1) Hourly Manual Handling	\$63.16	Hour
2) Hourly Operator & Machine Handling	\$93.16	Hour
3) Hourly Clerical	\$63.16	Hour
b. Overtime***		
1) Hourly Manual Handling	\$89.74	Hour
2) Hourly Operator & Machine Handling	\$119.74	Hour
3) Hourly Clerical	\$89.74	Hour

**Hourly rates apply when the contractual assumptions do not match the realistic handling responsibilities

***Overtime labor will only be supplied with customer authorization

III. ADDITIONAL ACCESSORIAL CHARGES

A. Picking – full carton – additional charge per pallet	\$10.18	Pallet
B. Picking – full carton – additional charge per carton	\$0.99	Carton
C. Labeling – labels printed and provided by customer	\$0.53	Label
D. Labeling – labels printed and produced by Warehouse	\$0.93	Label
E. Stretch wrap pallets – as required by the customer	\$12.90	Pallet
F. Stretch wrap for customers' authorized projects	\$22.60	Roll
G. UPS Order Charge	\$15.50	Order
H. Same Day or Expedited Service	\$150.00	Order
I. FIFO Account Charge	18.00%	Monthly Account
J. Pallets (oversized)	\$39.00	Pallet

IV. CROSS DOCK SERVICES (SAME DAY IN & OUT)

A. Full pallets in/full pallets out (includes space usage)	\$18.77	Pallet
B. Floor Loaded in/palletized out (includes space usage)	\$21.03	Pallet
C. Minimum Cross Dock Charge	\$750.00	Crossdock

All charges and rates in this Schedule B will be subject to and adjust according to a Consumer Price Index adjustment each quarter, beginning with the first quarter starting after the execution of this Agreement. The relevant index shall be the Consumer Price Index for All Urban Workers (No Seasonal Adjustments) with a base time period of 1982-1984 ("CPI-U NSA") as published by the U.S. Department of Labor each quarter.

Depositor agrees to the rates and charges provided for in this Schedule B in the event the actual services provided by Warehouse are not otherwise provided for in Schedule A or the service needs of Depositor are materially different from those set forth in the Assumptions section of Schedule A.

Depositor's initials to acknowledge _____