

**GULF WINDS INTERNATIONAL, INC.**  
**MASTER WAREHOUSE SERVICES AGREEMENT**

THIS GULF WINDS AND DISTRIBUTION MASTER SERVICE AGREEMENT (the "Agreement") made this \_\_\_ day of \_\_\_, 20\_\_\_, between GULF WINDS INTERNATIONAL. INC., located at 411 Brisbane, Houston, Texas 77061 (hereinafter "Gulf Winds") and \_\_\_\_\_, located at \_\_\_\_\_ (hereinafter "Customer"), covers all services and work ("Services") to be performed by Gulf Winds for or on behalf of Customer.

Gulf Winds and Customer enter into this agreement for warehouse and storage services. In consideration of the mutual agreements and consideration set forth below, the Parties, intending to be legally bound, hereby agree as follows:

**SERVICES – Sec. 1**

- (a) Gulf Winds will provide to Customer such warehouse and storage services as may reasonably be requested by or with the authority of Customer from time to time with respect to certain property, supplies, wares, merchandise and goods (the "Goods").
- (b) Gulf Winds shall provide the facilities, equipment, and trained personnel required to fulfill its obligations under this Agreement, exercise reasonable care, receive, carry, process and store the Goods tendered to it by Customer and promptly ship Goods to and from destinations designated by Customer.

**TERM– Sec. 2**

- (a) The term of this agreement shall be for a period of one year and will renew automatically year after year, with like terms, except with respect to rates and pricing, which may be re-negotiated each year.
- (b) This agreement may be canceled by either party upon 30 days written notice and is automatically canceled if no storage or other services are performed under this Agreement for a period of 180 days.

**SHIPMENTS TO AND FROM GULF WINDS – Sec. 3**

- (a) Customer agrees that all Goods shipped to Gulf Winds shall identify Customer on the bill of lading or other contract of carriage as the named consignee, in care of Gulf Winds, and shall not identify Gulf Winds as the consignee. If, in violation of this Contract, Goods are shipped to Gulf Winds as named consignee on the bill of lading or other contract of carriage, Customer agrees to immediately notify carrier in writing, with copy of such notice to Gulf Winds, that Gulf Winds named as consignee is the "in care of party" only and has no beneficial title or interest in the Goods. Customer further agrees that if it fails to notify carrier as required herein, Gulf Winds shall have the right to refuse such Goods and shall not be liable for any loss, misconsignment, injury or damage of any nature to, or related to, such Goods. In the event of a shipping error, Customer shall reimburse Gulf Winds for such error and shall pay the reasonable transportation charges incurred to return the misshipped goods. Whether Gulf Winds accepts or refuses Goods shipped in violation of this Section, Customer agrees to indemnify and hold Gulf Winds harmless from all claims for transportation, storage, handling and other charges relating to such Goods, including undercharges, rail demurrage, truck/intermodal detention and other charges of any nature whatsoever.

#### **TENDER AND STORAGE OF GOODS – Sec. 4**

- (a) All Goods shall be delivered to Gulf Winds' Warehouse properly marked and packaged for storage and handling. The Customer shall furnish at or prior to such delivery, documentation to clearly identify the Goods tendered for storage and distribution at Gulf Winds' Warehouse and such other information as is required for Gulf Winds to perform its duties pursuant to this Agreement, including a manifest showing marks, brands, or sizes to be kept and accounted for separately, and the class of storage and other services desired.
- (b) Gulf Winds shall store the Goods tendered to it by Customer in accordance with instructions provided by Customer at the time the Goods are tendered to Gulf Winds or in accordance with the terms and conditions contained in Exhibit A.
- (c) Gulf Winds shall be responsible for selecting the area within its Warehouse Facility for storing the Goods and may, without notice, cost or interruption to Customer move the goods within the facility set forth in Exhibit A, but shall not, without Customer's prior written consent, move the Goods to another Facility.
- (d) Customer shall notify Gulf Winds of the characteristics of any of Customer's Goods that may in any way be likely to cause damage to Gulf Winds' premises or to other Goods that may be stored by Gulf Winds.
- (e) Gulf Winds may refuse to accept any Goods that, because of infestation, contamination, or other damage may cause infestation, contamination, or other damage to Gulf Winds premises or to other Goods in the custody of Gulf Winds and Gulf Winds shall notify Customer of such refusal and shall have no liability for any demurrage, detention, transportation or other charges by virtue of such refusal.

#### **STORAGE PERIOD AND CHARGES – Sec. 5**

- (a) Unless otherwise agreed in writing, all charges for storage are for the time periods, the storage of goods, and the amounts, fees and charges as reflected on the Rate Sheet, attached hereto as Exhibit A.

#### **RECEIPT OF GOODS – Sec. 6**

- (a) Gulf Winds shall issue a sign a Warehouse Receipt, for each shipment tendered to it. A signature may be by an electronic acknowledgement, unless either party expressly requires otherwise.
- (b) Upon delivery of each shipment, Gulf Winds shall obtain a receipt from the consignee, in a form acceptable to Customer, showing the Goods delivered, the condition of such Goods, and the date and time of delivery.

#### **TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS – Sec. 7**

- (a) Instructions to transfer Goods on the books of Gulf Winds are not effective until such written instructions are delivered to and accepted by Gulf Winds, and all charges up to the time transfer is made are chargeable to the Customer. If a transfer involves rehandling the Goods, such will be subject to a charge. When Goods in storage are transferred from one party to another through issuance of a new Gulf Winds receipt, a new storage date is established on the date of transfer.
- (b) Gulf Winds reserves the right to move, at its expense, 14 days after notice is sent by certified mail or overnight delivery to the Customer, any Goods in storage from the Facility in which they may be stored to any other of Gulf Winds' Facilities. Gulf Winds will store the Goods at, and may without notice move the Goods within and between, any one or more of Gulf Winds buildings which comprise the Warehouse Facility identified on the front of the Warehouse Receipt.
- (c) Gulf Winds may, upon written notice of not less than 30 days to the Customer and any other person known by Gulf Winds to claim an interest in the Goods, require the removal of any Goods by the end of the next succeeding storage month. Such notice shall be given to the last known place of business of the person to be notified. If Goods are not removed before the end of next succeeding storage month the Gulf Winds may sell them in accordance with applicable law.
- (d) If Gulf Winds in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of Gulf Winds's lien before the end of the next succeeding storage month Gulf Winds may specify in the notification any reasonable shorter time for removal of the Goods and if the Goods

are not removed, may sell them at public sale held one week after a single advertisement or posting as provided by law.

- (e) If as a result of a quality or condition of the Goods of which Gulf Winds had no notice at the time of deposit the Goods are a hazard to other property or to the Facility or to persons, Gulf Winds 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. If Gulf Winds after a reasonable effort is unable to sell the Goods it may 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, Gulf Winds may remove the Goods from the Facility and shall incur no liability by reason of such removal.

#### **HANDLING – Sec. 8**

- (a) The handling charge covers the ordinary labor involved in receiving Goods at Gulf Winds door, placing Goods in storage, and returning Goods to Gulf Winds door. Handling charges are due and payable on receipt of Goods.
- (b) Unless otherwise agreed in writing, labor for unloading and loading Goods will be subject to a charge. Additional expenses incurred by Gulf Winds in receiving and handling damaged Goods, and additional expense in unloading from or loading into cars or other vehicles not at Gulf Winds door will be charged to the Customer.
- (c) Labor and materials used in loading rail cars or other vehicles are chargeable to the Customer.
- (d) When Goods are ordered out in quantities less than in which received, Gulf Winds may make an additional charge for each order or each item of an order.
- (e) Gulf Winds shall not be liable for any demurrage or detention, any delays in unloading inbound cars, trailers or other containers, or any delays in obtaining and loading cars, trailers or other containers for outbound shipment unless Gulf Winds has failed to exercise reasonable care.

#### **DELIVERY REQUIREMENTS – Sec. 9**

- (a) No Goods shall be delivered or transferred except upon receipt by Gulf Winds of Customer's complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, E-Mail or similar communication, provided Gulf Winds has no liability when relying on the information contained in the communication as received. Goods may be delivered upon instruction by telephone in accordance with Customer's prior written authorization, but Gulf Winds shall not be responsible for loss or error occasioned thereby.
- (b) When a negotiable receipt has been issued, no Goods covered by that receipt shall be delivered, or transferred on Gulf Winds' books, unless the receipt, properly endorsed, is surrendered for cancellation or for endorsement 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 as provided by law.
- (c) When Goods are ordered out a reasonable time shall be given Gulf Winds to carry out instructions, and if it is unable because of acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots or civil commotions, or any reason beyond Gulf Winds's control, or because of loss of or damage to Goods for which Gulf Winds is not liable, or because of any other excuse provided by law, Gulf Winds 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.

#### **RATES AND CHARGES – Sec. 10**

- (a) Exhibit A, attached, is the Rate Sheet which contains the scheduled rates and charges (and related terms and conditions) applicable during the first annual term of this agreement. These Rates and Charges may be amended upon written agreement on a case by case basis, and shall be reviewed and updated annually throughout the term of this agreement, in which case an Amended Exhibit A will be signed and approved by both parties and attached hereto.
- (b) A minimum handling charge per lot and a minimum storage charge per lot per month will be made. When a Gulf Winds receipt covers more than one lot or when a lot is in assortment, a minimum charge

per mark, brand, or variety will be made.

- (c) 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 customer has several accounts, each requiring separate records and billing

#### **EXTRA SERVICES (SPECIAL SERVICES) – Sec. 11**

- (a) Gulf Winds labor required for services other than ordinary handling and storage will be charged to the Customer.
- (b) Special services requested by Customer including but 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 will be subject to a charge.
- (c) Dunnage, bracing, packing materials or other special supplies, may be provided for the Customer at a charge in addition to Gulf Winds' cost.
- (d) By prior arrangement, Goods may be received or delivered during other than usual business hours, subject to a charge.
- (e) Communication expense including postage, overnight delivery, or telephone may be charged to the Customer if such concern more than normal inventory reporting or if, at the request of the Customer, communications are made by other than regular United States Mail.

#### **BONDED STORAGE – Sec. 12**

- (a) A charge in addition to regular rates will be made for merchandise in bond.
- (b) Where a Gulf Winds receipt covers Goods in U.S. Customs bond, Gulf Winds shall have no liability for Goods seized or removed by U.S. Customs.

#### **LIABILITY AND LIMITATION OF DAMAGES – Sec. 13**

- (a) GULF WINDS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO GOODS TENDERED, STORED OR HANDLED HOWEVER CAUSED UNLESS SUCH LOSS OR DAMAGE RESULTED FROM THE FAILURE BY GULF WINDS TO EXERCISE SUCH CARE IN REGARD TO THEM AS A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND GULF WINDS IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE.
- (b) GULF WINDS CARRIES NO INSURANCE POLICY WHICH IS AVAILABLE TO COVER ANY CLAIMS RELATED TO LOSS OR DAMAGE HOWEVER CAUSED.
- (c) THE CUSTOMER DECLARES THAT DAMAGES ARE LIMITED TO \$0.10 PER POUND, OR THE AMOUNT OF REPAIRS, WHICHEVER IS LESS, PROVIDED, HOWEVER, THAT SUCH LIABILITY MAY AT THE TIME OF ACCEPTANCE OF THIS CONTRACT BE INCREASED UPON CUSTOMER'S WRITTEN REQUEST ON PART OR ALL OF THE GOODS HEREUNDER IN WHICH EVENT AN ADDITIONAL MONTHLY CHARGE WILL BE MADE BASED UPON SUCH INCREASED VALUATION.
- (d) WHERE LOSS OR DAMAGE OCCURS TO TENDERED, STORED OR HANDLED GOODS, FOR WHICH GULF WINDS IS NOT LIABLE, THE CUSTOMER SHALL BE RESPONSIBLE FOR THE COST OF REMOVING AND DISPOSING OF SUCH GOODS AND THE COST OF ANY ENVIRONMENTAL CLEAN UP AND SITE REMEDIATION RESULTING FROM THE LOSS OR DAMAGE TO THE GOODS. (e) CUSTOMER FOR ITSELF AND ITS INSURERES, HEREBY WAIVES ALL CLAIMS AGAINST GULF WINDS FOR LOSS OR DAMAGE TO GOODS, HOWEVER CAUSED, TO THE EXTENT THAT SUCH LOSS OR DAMAGES CLAIMED EXCEEDS THE AMOUNT ON THE DEDUCTIBLE ON THE INSURANCE CARRIED BY CUSTOMER FOR THE STORED GOODS.

#### **NOTICE OF CLAIM AND FILING OF SUIT – Sec. 14**

- (a) Claims by the Customer and all other persons must be presented in writing to Gulf Winds within a reasonable time, and in no event any later than the earlier of: (i) 60 days after delivery of the Goods by Gulf Winds or (ii) 60 days after Customer is notified by Gulf Winds that loss or damage to part or all of the Goods has occurred.
- (b) No lawsuit or other action may be maintained by the Customer or others against Gulf Winds for loss or

damage to the Goods unless timely written claim has been given as provided in paragraph (a) of this section and unless such lawsuit or other action is commenced by no later than the earlier of: (i) nine months after date of delivery by Gulf Winds or (ii) nine months after Customer is notified that loss or damage to part or all of the Goods has occurred.

- (c) When Goods have not been delivered, notice may be given of known loss or damage to the Goods by mailing of a letter via certified mail or overnight delivery to the Customer. Time limitations for presentation of claim in writing and maintaining of action after notice begin on the date of mailing of such notice by Gulf Winds.

#### **LIABILITY FOR CONSEQUENTIAL DAMAGES – Sec. 15**

- (a) Gulf Winds shall not be liable for any loss of profit or special, indirect, or consequential damages of any kind.

#### **LIABILITY FOR MISSHIPMENT – Sec. 16**

- (a) If Gulf Winds negligently misships Goods, Gulf Winds shall pay the reasonable transportation charges incurred to return the misshipped Goods to the Facility. If the consignee fails to return the Goods, Gulf Winds's maximum liability shall be for the lost or damaged Goods as specified in Section 13 above, and Gulf Winds shall have no liability for damages due to the consignee's acceptance or use of the Goods whether such Goods be those of the Customer or another.

#### **MYSTERIOUS DISAPPEARANCE – Sec. 17**

- (a) Gulf Winds shall be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods only if Customer establishes such loss occurred because of Gulf Winds' failure to exercise the care required of Gulf Winds under Section 13 above, and then Gulf Winds's maximum liability shall be for the lost Goods as specified in Section 13 above. Any presumption of conversion imposed by law shall not apply to such loss and a claim by Customer of conversion must be established by affirmative evidence that Gulf Winds converted the Goods to Gulf Winds' own use.

#### **RIGHT TO STORE GOODS – Sec. 18**

- (a) Customer represents and warrants that Customer is lawfully possessed of the Goods and has the right and authority to store them with Gulf Winds. Customer agrees to indemnify and hold harmless Gulf Winds from all loss, cost and expense (including reasonable attorneys' fees) which Gulf Winds pays or incurs as a result of any dispute or litigation, whether instituted by Gulf Winds or others, respecting Customer's right, title or interest in the Goods. Such amounts shall be charges in relation to the Goods and subject to Gulf Winds' lien.

#### **ACCURATE INFORMATION – Sec. 19**

- (a) Customer will provide Gulf Winds with information concerning the Goods which is accurate, complete and sufficient to allow Gulf Winds to comply with all laws and regulations concerning the storage, handling and transporting of the Goods. Customer will indemnify and hold Gulf Winds harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which Gulf Winds pays or incurs as a result of Customer failing to fully discharge this obligation.

#### **SEVERABILITY AND WAIVER – Sec. 20**

- (a) If any provision of this Contract, or any application thereof, should be construed or held to be void, invalid or unenforceable, by order, decree or judgment of a court of competent jurisdiction, the remaining provision of this Contract shall not be affected thereby but shall remain in full force and effect.
- (b) Gulf Winds' failure to require strict compliance with any provision of this Contract shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of this Contract.
- (c) The provisions of this Contract shall be binding upon the heirs, executors, successors and assigns of both Customer and Gulf Winds; contain the sole agreement governing Goods tendered to Gulf Winds; and, cannot be modified except by a writing signed by Gulf Winds and Customer.

**LIEN – Sec. 21**

(a) Gulf Winds shall have a general Gulf Winds lien for all lawful charges for storage and preservation of the Goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing cooperating, and other charges and expenses in relation to such Goods, and for the balance on any other accounts that may be due. Gulf Winds further claims a general Gulf Winds lien for all such charges, advances and expenses with respect to any other Goods stored by the Customer in any other facility owned or operated by Gulf Winds. In order to protect its lien, Gulf Winds reserves the right to require advance payment of all charges prior to shipment of Goods.

**DOCUMENTS OF TITLE - Sec. 22**

(a) Documents of title, including Gulf Winds receipts, may be issued either in physical or electronic form at the option of the parties.

**GOVERNING LAW AND JURISDICTION – Sec. 23**

(a) This Contract and the legal relationship between the parties hereto shall be governed by and construed in accordance with the substantive laws of the State of Texas, and jurisdiction and venue of any litigation related to or arising from any purported breach or enforcement of this Agreement shall be exclusive and mandatory to the appropriate State or Federal Court located in Harris County, Texas.

**The parties acknowledge the Limitation of Liability and Damages in Section 13.**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by a duly authorized officer effective as of the date first above written.

**GULF WINDS INTERNATIONAL, INC.**

**CUSTOMER**

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

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

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

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

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

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_