



EQUALITY PROCESS, INC. WAREHOUSING TERMS AND CONDITIONS OF SERVICE

1. Structure of the Agreement. Customer desires to receive certain warehousing, distribution and/or logistics services provided by Equality Process, inc. These Terms and Conditions of Service, and work orders and/or warehousing agreement between the parties are collectively referred to herein as the “Agreement.”

2. Changes in Operating Parameters or Conditions. Customer acknowledges and agrees that EQuality Process, Inc. calculated the Fees based on and in reliance upon certain key assumptions or criteria supplied to EQuality Process, Inc. by or on behalf of Customer (“Operating Parameters”). Such assumptions may be set forth in the applicable work order and/or warehousing agreement. In the event that Customer requirements cause a change in any Operating Parameter (i.e., a change that is encountered over the course of time and is anticipated to be ongoing) or a “Changed Condition,” (as defined below), EQuality Process, Inc. will propose an appropriate adjustment to the Fees. Customer shall not unreasonably withhold or delay its approval of such adjustment. If the Parties are unable to agree upon the proposed adjustment within thirty (30) days of EQuality Process, Inc.’s notice of such adjustment, either Party may submit the Dispute for resolution as set forth in Section 15. “Changed Condition” means the enactment or promulgation of any new law or regulation or the imposition of a new material condition on the issuance or renewal of any permit, license or approval after the effective date hereof that: (a) materially increases the obligations or costs of EQuality Process, Inc. or adversely affects the ability of EQuality Process, Inc. to perform the services, or (b) materially decreases the Fees to which EQuality Process, Inc. would otherwise be entitled under a work order and/or warehousing agreement. EQuality Process, Inc. shall not be responsible for any liability for failure to meet performance commitments due to Changed Conditions, unless EQuality Process, Inc. specifically agrees in writing to the contrary.

3. Indemnification.

3.1 General Indemnification. Each Party (“Indemnitor”) shall indemnify, defend and hold harmless the other Party and any affiliated and controlling entities of such Party, and the directors, employees, officers, agents, subcontractors, licensors and suppliers of each of them (in each case “Indemnitee”) from and against all third party liabilities, claims, suits, demands, actions, fines, damages, losses, costs and expenses (including reasonable attorneys’ fees) (“Claims”) for injury to or death of any person or damage to or loss of improvements to real property or tangible personal property to the extent caused by or resulting from such Party’s negligent acts or omissions or willful misconduct, except to the extent caused by the Indemnitee.

3.2 Right to Store Goods. Customer represents and warrants that customer is lawfully possessed of the goods and has the right and authority to store them with EQuality Process, Inc.. Customer agrees to indemnify and hold harmless EQuality Process, Inc. from all loss, cost and expense (including reasonable attorneys' fees) which EQuality Process, Inc. pays or incurs as a result of any dispute or litigation, whether instituted by EQuality Process, Inc. 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 EQuality Process, Inc.'s lien.

3.3 Accurate Information. Customer will provide EQuality Process, Inc. with information concerning the stored goods, which is accurate, complete and sufficient to allow EQuality Process, Inc. to comply with all laws and regulations concerning the storage, handling and transporting of the stored goods. Customer will indemnify and hold EQuality Process, Inc. harmless from all loss, cost, penalty and expense (including reasonable attorneys' fees) which EQuality Process, Inc. pays or incurs as a result of customer failing to fully discharge this obligation.

3.4 Third Party Claims. Customer shall indemnify, defend and hold harmless EQuality Process, Inc. and its Indemnitees from and against any third party Claim (including any Claim brought by Customer’s customers) arising out of or in connection with the design, manufacture, packaging, distribution, delivery, marketing, use or sale of any goods or services or Customer’s instructions regarding any goods or services.

3.5 Indemnification Procedures. With respect to a Claim for which indemnification is sought under this Section 3, the Indemnitee shall provide Indemnitor with a) prompt written notice, b) tender of the defense or settlement, and c) full cooperation in the defense. Failure to give prompt written notice of a Claim shall not affect the Indemnitee's right to indemnification unless the failure materially and adversely affects the rights, remedies or liability of the Indemnitor. If the Indemnitor fails to honor a timely request for indemnification and has a binding legal obligation to do so, the Indemnitee shall be entitled to all costs (including reasonable attorneys' fees) incurred in the enforcement of its indemnification rights. The Indemnitor shall not make a compromise or settlement of a Claim without the Indemnitee's consent unless all of the following apply: (i) there is no finding or admission of any violation of law or any violation of any person's rights by Indemnitee, (ii) there is no effect on any other Claim by or against Indemnitee, (iii) the sole relief is monetary damages that are paid by the Indemnitor, and (iv) the compromise or settlement contains an unconditional requirement to provide by the claimant or the plaintiff to the Indemnitee a release from all liability in respect of such Claim. The Indemnitee shall have no liability for any compromise or settlement made without its consent.

4. Title to Goods. Unless otherwise specified in a schedule, title to goods shall remain with Customer. Notwithstanding anything herein to the contrary, nothing in the Agreement shall be deemed to waive or otherwise limit any lien rights that EQuality Process, Inc. may have under applicable law with respect to any goods.

5. Shipping. Customer agrees not to ship goods to EQuality Process, Inc. as the named consignee. If, in violation of this agreement, goods are shipped to EQuality Process, Inc. as named consignee, Customer agrees to notify carrier, with copy of such notice to EQuality Process, Inc., that EQuality Process, Inc. is named as consignee and EQuality Process, Inc. has no beneficial title or interest in such property. Customer further agrees to indemnify and hold harmless EQuality Process, Inc. from any and all claims for unpaid transportation charges, including undercharges, demurrage, detention or charges of any nature, in connection with goods so shipped. Customer further agrees that, if it fails to notify carrier as required by the preceding sentence, EQuality Process, Inc. 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.

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

7. Transfer, Termination of Storage, Removal of Goods. (a) Instructions to transfer goods on the books of EQuality Process, Inc. are not effective until delivered to and received by EQuality Process, Inc., and all charges up to the time transfer is made are chargeable to the customer of record. If a transfer involves re-handling the goods, such re-handling will be subject to a charge at EQuality Process, Inc.'s standard rates. (b) EQuality Process, Inc. reserves the right to move, at its expense, 14 days after notice is sent by certified or registered mail to the customer of record or to the 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 its warehouses located outside the warehouse complex. EQuality Process, Inc. will store the 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. (c) If as a result of a quality or condition of the goods of which EQuality Process, Inc. had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, EQuality Process, Inc. 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 and such action cannot occur within fifteen (15) days from the date of notice to customer. If EQuality Process, Inc. 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, EQuality Process, Inc. may remove the goods from the warehouse and shall incur no liability by reason of such removal.

8. Delivery Requirements. (a) No goods shall be delivered or transferred except upon receipt by EQuality Process, Inc. of complete written instructions. Written instructions shall include, but are not limited to, FAX, EDI, Email, or similar communication. However, when no negotiable receipt is outstanding, goods may be delivered upon instruction by telephone in accordance with a prior written authorization, but EQuality Process, Inc. shall not be responsible for loss or error occasioned thereby. (b) When Customer requests goods from the warehouse, a reasonable time shall be given EQuality Process, Inc. to carry out the applicable instructions, and if it is unable because of acts of God, war, public enemies, seizure under legal process, riots and civil commotion, or any reason beyond EQuality Process, Inc.'s control, or because of loss or destruction of goods for which EQuality Process, Inc. is not liable, or because of any other excuse provided by law, EQuality Process, Inc. shall not be liable for failure to carry out such instructions.

9. Limitation of Liability.

9.1 Limitation of Liability for Loss or Damage to Goods. Except as specifically provided in a warehousing agreement between the parties, EQuality Process, Inc.'s maximum liability to Customer arising out of or related to loss or damage to Goods shall not exceed EQuality Process, Inc.'s standard liability amounts which are as follows (the "EQuality Process, Inc. Standard Liability Limits"): for Claims arising from EQuality Process, Inc.'s warehousing, occurring in EQuality Process, Inc.'s facilities or premises, including owned or leased property, \$1.00 per component (microcircuit). Customer and EQuality Process, Inc. agree that they have negotiated a reasonable limit of liability based on the value of the goods and the Parties' respective business interests and rates charged. Customer may obtain additional protection in excess of the EQuality Process, Inc. Standard Liability Limits, up to the actual or declared value of the goods, by written request and payment of an additional charge prior to the provision of Services. Customer waives all rights of subrogation on behalf of its insurers for any loss or damage in excess of the EQuality Process, Inc. Standard Liability Limits set forth herein, or if applicable, such different limits of liability specified in a warehousing agreement between the parties. Notwithstanding the foregoing, EQuality Process, Inc. shall not be liable for delay, loss or damage of any kind which occurs while goods are in the care, custody or control of a third party unless otherwise provided for in a work order and/or warehousing agreement. "Third party" as used in the previous sentence includes, but is not limited to, carriers, warehouseman, forwarders, ocean transportation intermediaries, customs brokers, affiliates, brokers, or agents to which goods are entrusted for transportation, handling, delivery, and/or storage. All claims in connection with acts of a third party shall be brought against the third party. EQuality Process, Inc. shall reasonably cooperate with Customer regarding such claims.

9.2 Shipment to Wrong Destination. If EQuality Process, Inc. negligently ships the goods to the wrong destination, EQuality Process, Inc. shall pay the reasonable transportation charges incurred to return the goods to the warehouse. If the consignee fails to return the goods, EQuality Process, Inc.'s maximum liability shall be for the lost or damaged goods as specified, and EQuality Process, Inc. shall have no liability for damages due to the consignee's acceptance or use of the goods whether such goods are those of Customer or another.

9.3 Mysterious Disappearance. EQuality Process, Inc. shall not be liable for loss of goods due to inventory shortage or unexplained or mysterious disappearance of goods, unless Customer establishes such loss occurred because of EQuality Process, Inc.'s failure to exercise the care required of EQuality Process, Inc. as described above, and the merchandise shortages are less than 0.625% of the cost of merchandise received by EQuality Process, Inc.. EQuality Process, Inc. shall be liable for any merchandise shortage in excess of 0.625% of the cost of merchandise received, such shortage determined by periodic physical inventory(s).

10. Exclusions. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PURELY ECONOMIC LOSSES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, USE, INCOME, BUSINESS OPPORTUNITIES, COSTS OF ALTERNATIVE MEANS OF TRANSPORT, MERCHANTABILITY, OR CUSTOMER GOODWILL, OR FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES, IN CONNECTION WITH THE AGREEMENT OR THE SERVICES PROVIDED HEREUNDER WHETHER PLED UNDER TORT, CONTRACT OR ANY OTHER LEGAL THEORY. EQuality Process, Inc. SHALL HAVE NO LIABILITY TO CUSTOMER IN CONNECTION WITH THE AGREEMENT EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT. THIS EXCLUSION APPLIES TO DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY AND PROPERTY DAMAGE, WHETHER OR NOT RELATED TO THE GOODS BEING TRANSPORTED.

11. Hazardous Materials, Dangerous Goods and Other Regulated Goods. Unless EQuality Process, Inc. expressly agrees in a schedule, EQuality Process, Inc. will not handle, receive, accept, ship, carry, dispose of, transport, store, or arrange for the handling, disposal, storage or transportation of: (a) any type of hazardous materials, dangerous goods, or goods containing hazardous materials or dangerous goods, or (b) any type of goods which may be regulated by a governmental body, entity or agency, including but not limited to those goods which are regulated by the United States Food and Drug Administration, the United States Department of Agriculture, the United States Drug Enforcement Administration, the United States Bureau of Alcohol, Tobacco, Firearms and Explosives, and analogous regulatory agencies in countries in which the Services are provided (collectively, "Hazardous, Dangerous or Regulated Goods"). Customer warrants and covenants that it will not itself or through others offer, present or otherwise tender any Hazardous, Dangerous or Regulated Goods to EQuality Process, Inc., its affiliates, assignees, agents or subcontractors under the Agreement. Notwithstanding the foregoing, EQuality Process, Inc. may take any action that EQuality Process, Inc., in its sole discretion, deems appropriate or necessary in relation to any actual or suspected Hazardous, Dangerous or Regulated Goods. Customer hereby fully and completely releases and

forever discharges EQuality Process, Inc. and its Indemnitees from and against all Claims arising out of or caused by actual or suspected Hazardous, Dangerous or Regulated Goods. Customer shall indemnify, defend, and hold harmless EQuality Process, Inc. and its Indemnitees from and against all Claims related to or arising out of any EQuality Process, Inc. action taken in relation to such actual or suspected Hazardous, Dangerous or Regulated Goods, Customer's noncompliance with applicable laws and regulations, or the breach of any covenant of Customer contained in or made pursuant to this Section.

12. Warranties. ANY WARRANTIES OF THE PARTIES EXPRESSLY SET FORTH IN THE AGREEMENT ARE THE SOLE WARRANTIES MADE BY THE PARTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, OF TITLE OR NONINFRINGEMENT, OF FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. IN ANY JURISDICTION WHICH DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, ANY IMPLIED WARRANTIES, TO THE MAXIMUM EXTENT PERMITTED BY THE APPLICABLE LAWS OF ANY SUCH JURISDICTION, SHALL BE LIMITED TO THE TERM OF THE AGREEMENT. EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN THE APPLICABLE SCHEDULE, CUSTOMER'S SOLE REMEDY FOR BREACH OF ANY SUCH WARRANTY SHALL BE LIMITED TO THE REPERFORMANCE OF THE SERVICE AT ISSUE.

13. Import and Export Laws.

13.1 The Parties acknowledge and agree that all activities hereunder, including the export, re-export, import, transshipment, transfer, release, delivery, or pickup of all Goods, as well as any software and technology provided to EQuality Process, Inc. by Customer or on behalf of Customer ("Software and Technology"), are subject to all applicable U.S. and non-U.S. laws, including any statutes, executive orders, regulations, governmental agency decisions, judicial decisions, or any other written decrees that have the force and effect of law in the country in question (collectively defined as "Laws" for purposes of this Section 15) governing the import and export of Goods, Software, and Technology, including, but not limited to, laws concerning exports and economic sanctions, and customs Laws, (collectively, "Import and Export Laws"). Unless otherwise expressly set forth herein, all of warehouseman's acts carried out in its performance of services hereunder and any liability hereunder shall be governed by the provisions of the Uniform Commercial Code, Mo. Rev. Stat. Section 400.7-101 et seq.

13.2 Customer agrees:

- (i) to act as the importer, exporter, or other principal party (as the case may be) under all Import and Export Laws;
- (ii) that Customer is responsible for complying with all Import and Export Laws applicable to the export, re-export, import, transshipment, transfer, or release of any Goods, Software, and Technology from any country;
- (iii) that Customer is solely responsible for (a) properly classifying under the Import and Export Laws all Goods, Software, and Technology; (b) obtaining any required licenses and other authorizations for export, re-export, import, transshipment, transfer, or release; (c) correctly completing and filing with any government, as appropriate, all documents required under the Import and Export Laws; and (d) ensuring that all export-related documents, including shipping and sales documents, generated in connection with the Services performed pursuant to this Agreement conform to and are maintained in accordance with the Import and Export Laws;
- (iv) that Customer is solely responsible for providing accurate written instructions to EQuality Process, Inc. and the carrier in advance of any export, re-export, import, transshipment, transfer, release, delivery,
- (v) pickup, or other activity in relation to any Goods, Software, and Technology, which instructions shall be in compliance with all Import and Export Laws and shall set forth all information required for EQuality Process, Inc. to comply with those Laws in connection with that export, re-export, transshipment, transfer, release, delivery, pickup, or other activity;

- (vi) that, notwithstanding any other provision in this Agreement to the contrary, Customer will indemnify, defend, and hold harmless EQuality Process, Inc. and its Indemnitees from and against all Claims or investigations arising out of or in connection with: (a) Customer's breach of this Section; (b) EQuality Process, Inc.'s or the carrier's compliance with Customer's instructions in the export, re-export, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology; or (c) error on the part of any government official, including any person employed by, representing, or acting on behalf of any government agency in the United States or any other country, in connection with the export, re-export, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology

14. General Provisions.

14.1 Amendments; Waiver; Severability. The Agreement can only be modified or amended by a written instrument signed by the Parties. A waiver of any right by either Party will not constitute a waiver of such right on any subsequent occasion. Acceptance by EQuality Process, Inc. of the amounts (or lesser amounts) payable under the Agreement shall not be deemed a waiver of any default. If any provision of the Agreement is determined to be invalid, such invalidity will not affect the validity of the remaining portions of the Agreement.

14.2 Survival. The rights and obligations of the Agreement which by their nature are intended to survive expiration or termination shall so survive, including but not limited to: Sections 3, 4, 9, 10, 11 and 12.