



## **GIVENS, INCORPORATED SERVICES TERMS AND CONDITIONS**

### **1. APPLICABILITY OF TERMS; SERVICE ORDERS AND AGREEMENT.**

(a) These Terms and Conditions (“Terms”) exclusively govern all storage, transloading, handling, packing, crating and related services (the “Services”) provided by Givens, Incorporated, a Virginia corporation (“Givens”), with respect to any and all goods, products and items (the “Goods”) that are tendered to Givens by or on behalf of the individual or legal entity that accepts these Terms (“Depositor”). Depositor accepts these Terms by (i) any written or electronic acknowledgment, (ii) entering into a Service Order (as defined below) in accordance with these Terms, or (iii) tendering, directly or indirectly, any Goods to Givens or using any Services provided by Givens. Unless otherwise expressly provided in these Terms or the applicable Service Order, these Terms apply equally to Services provided by Givens at all facilities owned or leased and operated by Givens or its contractors (each, a “Facility”).

(b) Givens may, in its sole discretion, issue to Depositor a proposal, quotation, rate sheet or other written documentation describing certain Services and the corresponding rates and charges being offered by Givens for the Services (each, a “Quote”), including in response to any request for proposals, purchase order or other form of request for Services submitted by Depositor. Each Quote is subject to change or revocation by Givens without notice and will not be binding upon Givens, unless and until the Quote is accepted by Customer. Customer may accept a Quote by (i) executing and delivering the Quote to Givens, (ii) beginning (or continuing) to tender to Givens any Goods or to use any Services that are described or referenced in the Quote, or (iii) providing to Givens any other written acknowledgment of the Quote, including by issuing to Givens a purchase order referencing the Quote or the Goods or Services described or referenced in the Quote. Each Quote that is accepted by Customer (each, a “Service Order”) will be deemed governed by these Terms, which are hereby incorporated into the Service Order by reference, irrespective of whether the Service Order expressly references these Terms by name. For purposes of applying these Terms to an individual Service Order, the “Agreement” between Depositor and Givens consists of the applicable Service Order together with these Terms. For any Goods and Services for which no Service Order is adopted by the parties, the “Agreement” means these Terms alone.

(c) Neither Givens’ issuance of a Quote nor the resulting adoption of a Service Order is a condition precedent to Depositor’s acceptance of these Terms or the applicability of these Terms to the purchase and provision of Services. When Goods are tendered by or on behalf of Depositor to Givens, Depositor accepts Givens’ offer to provide Services exclusively under and subject to these Terms and the applicable Service Order, if any.

(d) Except for purposes of identifying the Goods for which Services are requested by Depositor, no request, rates or charges, purchase order or other ordering document prepared by Depositor that purports to modify or supplement these Terms or any Service Order shall add to or vary the terms of the Agreement. ANY TERMS OR CONDITIONS SUBMITTED ON ANY FORM BY DEPOSITOR THAT DIFFER FROM OR ALTER THE TERMS AND CONDITIONS STATED HEREIN OR IN THE SERVICE ORDER ARE SPECIFICALLY REJECTED BY GIVENS. GIVENS’ FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM DEPOSITOR WILL NOT BE A WAIVER OR AMENDMENT OF THE PROVISIONS HEREOF OR THEREOF.



(e) Givens does not and will not provide Depositor any transportation or freight brokerage services (collectively, “Out of Scope Services”) under these Terms or any Service Order. Any rates for Out of Scope Services that are included in a Quote are provided for Depositor’s convenience only, on behalf of one or more affiliates of Givens who offer those Out of Scope Services, and Depositor acknowledges that such Out of Scope Services would be performed exclusively by an affiliate of Givens under separate agreement between such affiliate and Depositor, even if Givens provides warehousing or other services in partial fulfillment of such affiliate’s obligations to Depositor. All activities of Givens and its affiliates in performing such Out of Scope Services would be governed exclusively by the separate agreement between the Givens affiliate and Depositor and will be invoiced directly by the Givens affiliate.

## **2. TERM AND TERMINATION.**

(a) Unless sooner terminated in accordance with its terms, the term of this Agreement (the “Term”) shall be the period specified in the applicable Service Order or, if no duration or time for performance is so specified or if no Service Order applies to the relevant Services, then the Term shall begin upon Depositor’s acceptance of these Terms and shall continue until completion of all Services and Depositor’s removal of all Goods covered by this Agreement.

(b) Subject to and conditioned upon Depositor’s payment of all fees and charges accruing prior to termination plus all termination charges payable pursuant to Section 2(c) and/or any Service Order, this Agreement may be cancelled by either party upon at least 60 days’ prior written notice.

(c) Concurrently with termination of this Agreement for any reason, Depositor agrees to reimburse Givens for all costs incurred by Givens for minimum charges, including but not limited to monthly storage charges, facility lease, equipment and assets that are dedicated, purchased or leased by Givens for the purpose of providing the Services to Depositor. Additionally, if the Agreement is terminated prior to the end of the Term, Depositor shall reimburse Givens for all costs relating to the portion of the Facilities allocated to Depositor under this Agreement as they become due each month for the remainder of what would have been the Term. The monthly cost will be established by taking the average of all storage charges for the last three full months prior to the notice of termination. All past, present and future costs, expenses and charges for storage shall be subject to Givens’ general warehouse lien. In order to protect its lien, Givens reserves the right to require advance payment of all such charges prior to shipment of Goods.

## **3. RATES.**

(a) Unless otherwise agreed by the parties in writing, all charges for the Services shall be determined in accordance with the rates set out in the Quote that forms the basis of the applicable Service Order. If no rate for a particular Service or charge is specified in the applicable Quote, then Givens’ standard rates for such Services and charges shall apply.

(b) This Agreement is subject to Givens’ verification of information provided by Depositor and inspection of the Goods upon receipt by Givens. Depositor acknowledges and agrees that rates and charges set forth in the underlying Service Order, if any, are estimates only based on the information and specifications provided by Depositor regarding the Goods. Charges will vary in the event of any inaccuracy with respect to such information and specifications, and additional charges not included in the original



Service Order may be added by Givens if, upon inspection and evaluation of the Goods, Givens determines such additional charges are necessary to perform the requested Services. Depositor hereby acknowledges and accepts responsibility for all such different and additional charges without the requirement of any prior notice from Givens.

(c) Rates and charges applicable under this Agreement may be amended from time to time, including for purposes of adding rates and charges for new Services or to specify or change rates for any charges permitted by this Agreement, by written notice to Depositor delivered at least 15 calendar days prior to effectiveness of the amendment. Depositor shall be deemed to accept the amendment unless Depositor notifies Givens within 15 calendar days of receipt that the amendment is not accepted. All charges are exclusive of all sales, use, excise or similar taxes applicable to the Services provided by Givens and all such taxes shall be paid by Depositor.

#### **4. INVOICING AND PAYMENT.**

(a) All invoices issued by Givens are due upon presentation, without deduction or setoff, within 30 days from the date of invoice or such earlier time as may be specified in this Agreement (including in the underlying Service Order) for particular Services. All amounts due for Services are payable to Givens at 1720 S. Military Highway, Chesapeake, VA 23320. If any amounts due are not paid within said period, interest at the rate of 1.5% per month of the outstanding amount shall be added to the sum due, unless a billing dispute is resolved in favor of Depositor in which case the disputed amount and any interest collected thereon will be returned to Depositor.

(b) If Depositor disputes any portion of any invoice, Depositor shall notify Givens within thirty (30) days of the date of the invoice as to the amount disputed and the reason that the amount is disputed. If Depositor does not notify Givens within 30 days of the date of the invoice, Depositor waives the dispute and agrees to pay the invoice in full. Any dispute as to the amount of the invoice shall be resolved promptly once it is paid. Claims for loss or damage to the Goods shall not be deducted from the invoices, but shall be handled separately.

(c) Depositor agrees to pay, in the event its account becomes delinquent and is turned over to any attorney for collection, reasonable attorneys' fees plus all court and attendant collection costs, and any costs and fees incurred during mediation and/or arbitration.

(d) Depositor agrees that Givens may refuse to ship any Goods and/or provide any other Services if (i) there are sums due on invoices that remain unpaid for a period of time in excess of sixty (60) days from the date of the invoice, and such amounts remain unpaid five (5) days after Givens' notice to Depositor of the nonpayment, and/or (ii) if Depositor orders out of the Facility all or substantially (in the reasonable business judgment of Givens) all of its Goods, either in one order or in a series of orders, without payment in full of all amounts due under this Agreement. Upon payment in full of all outstanding and unpaid invoices, including interest charges, Givens shall promptly recommence shipment of the Goods and provision of the other Services under this Agreement.



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

(a) Unless otherwise agreed by the parties in writing, all charges for storage are per package or other agreed unit per month. When based on weight, rates are computed on gross weight.

(b) The storage month and storage charges begin on the date that Givens accepts care, custody and control of the Goods, regardless of unloading date or date of issue of any warehouse receipt. A storage month shall extend from a date in one calendar month to, but not including, the same date of the next and all succeeding months.

(c) A full month's storage charge will apply to all Goods received during a calendar month and all Goods in storage on the first day of the next and succeeding calendar months. All storage charges are due and payable on the first day of storage for the initial month and thereafter on the first day of the calendar month.

## **6. HANDLING CHARGES.**

(a) Handling charges cover the ordinary labor involved in receiving Goods at warehouse door, placing Goods in storage and returning Goods to warehouse door, all during normal business hours.

(b) Transloading rates and charges include unloading of Goods from inbound conveyances at the Facility docks, sequencing Goods for outbound transloading, and loading of Goods onto outbound trailers from Facility docks.

(c) Unless otherwise agreed in writing, labor and materials for unloading and loading Goods will be subject to a charge. Additional expenses incurred by Givens in receiving and handling damaged Goods, unloading from or loading into rail cars, cars or vehicles unless such cars or vehicles are at the warehouse door, and labor and other charges in altering the manner of storage will all be charged to Depositor.

(d) When Goods are ordered out in quantities less than in which received, Givens may make an additional charge for each order or each item of an order.

(e) Givens shall not be liable for any demurrage or detention, any delays in unloading inbound cars, trailers or other containers, any delays in obtaining and loading cars, trailers, or other containers for outbound shipment, unless Givens has failed to exercise reasonable care.

## **7. CRATING & PACKING SERVICES AND CHARGES.**

(a) Givens shall provide packing and crating Services in accordance with reasonable industry standards and the specifications set forth in the Service Order.

(b) Depositor acknowledges and agrees that the average time to complete packing Services (the "Time of Completion") shall be as set forth in the Service Order or, if no Time of Completion is provided for in the Service Order, such time as Givens may reasonably require for the packing Services to



be performed after receipt by Givens of all of the Goods to be packed. The Time for Completion shall exclude any shipping or transit time. Depositor further acknowledges and agrees that the Time of Completion will vary by workload. Givens makes no representation or warranty as to its ability or commitment to provide the packing Services within a shorter Time of Completion.

(c) Depositor further acknowledges and agrees that to the extent the packing Services include design or construction Services, (i) Depositor has had the opportunity to review the crates and packages and the design thereof and Depositor warrants that such crates, packages and design thereof meet Depositor's requirements and specifications; and Givens is not making any representations or warranties with respect thereto; and (ii) Depositor has had the opportunity to inspect the methods and materials used in packing and Depositor warrants that such methods and materials meet Depositor's requirements and specifications; and Givens is not making any representations or warranties with respect thereto.

(d) Unless otherwise provided in the Service Order, rates described herein and in the Service Order for packing Services cover the ordinary labor and materials involved in providing such packing Services. Failure by Depositor to adhere to this Agreement may result in forfeiture of all discounts, rebates and commissions.

#### **8. EXTRA SERVICES, ADDITIONAL CHARGES.**

(a) Any rates for quoted Services provided hereunder account for ordinary handling, storage, or packing, as applicable and any additional Services other than ordinary Services will be charged to Depositor. Examples of special Services requested by Depositor, such as but not limited to, compiling of special stock statements previously undescribed labor, product manipulation, modification, repair, reporting marked weights, serial numbers or other data from packages, physical check of Goods, and handling transit billing will be subject to additional charges.

(b) Dunnage, bracing, packing materials or other special supplies may be provided for Depositor at a charge in addition to Givens' cost.

(c) All inbound shipments must be scheduled. By prior written arrangement, Goods may be received or delivered during other than usual business hours, subject to a charge.

(d) If Services include transloading, Depositor shall be solely responsible for communicating to Givens, prior to the arrival of Goods, the outbound order sequencing so as to allow Givens to properly sequence outbound pallets of Goods. Additional handling will be subject to additional charges.

(e) Communication expense, including postage, overnight delivery, or telephone, will be charged to Depositor if such concern more than normal inventory and warehouse reporting or if, at the request of Depositor, communications are made other than by electronic means or regular United States Mail.

(f) Trash removal and disposal related to handling the Goods shall be charged to Depositor at a charge in addition to Givens' Service rates, and Depositor shall pay all landfill and similar charges. Any



and all charges related to environmental remediation, including reasonable attorney fees, shall be paid by Depositor and shall be Depositor's sole responsibility and cost.

**9. MINIMUM CHARGES.**

(a) For warehousing Services, a minimum handling charge per lot and a minimum storage charge per lot per month may be made. When a lot is in assortment, a minimum charge per mark, brand, or variety will be made.

(b) For warehousing Services, a minimum monthly charge to one account for storage and/or handling may be made. If Depositor maintains more than one account, the monthly charge shall apply to each individual account as each account requires separate records and billing.

**10. BONDED AND FOREIGN TRADE ZONE STORAGE.**

(a) A charge in addition to regular rates will be made for merchandise in bond or in a foreign trade zone.

(b) Givens shall have no liability for Goods seized or removed by U.S. Customs.

**11. SHIPMENTS TO AND FROM WAREHOUSE.**

(a) Depositor agrees that all Goods shipped to and from Givens shall identify Depositor on the bill of lading or other contract of carriage as the named consignee, in care of Givens, and shall not identify Givens as the consignee. If, in violation of this Agreement, Goods are shipped to Givens as named consignee on the bill of lading or other contract of carriage, Depositor agrees to immediately notify carrier in writing, with copy of such notice to Givens, that Givens named as consignee is the "in care of party" only and has no beneficial title or interest in the Goods. Furthermore, Givens shall have the right to refuse such Goods and shall not be liable for any loss, mis-consignment, or damage of any nature to, or related to, such Goods. The parties agree that, regardless of whether Givens is incorrectly identified as named consignee, or Depositor fails to notify carrier of the incorrect identification on the bill of lading or other contract of carriage, under no circumstances shall Givens be considered the consignee for purposes of identifying the "importer" under 21 U.S.C. § 384a. The parties further agree that, regardless of whether Givens is named as an "agent" for purposes of 21 U.S.C. § 350d or receives notification from the U.S. government with respect to confirmation of Givens' status as "agent" under 21 U.S.C. § 350d, under no circumstances shall Givens be an agent for purposes of identifying the "importer". Givens shall not be responsible for complying with or performing the duties required of an "importer" under 21 U.S.C. § 384a. Whether Givens accepts or refuses Goods shipped in violation of this Section, Depositor agrees to indemnify and hold Givens harmless from all claims for transportation, storage, handling and other charges relating to such Goods, including undercharges, rail/port demurrage, truck/intermodal detention, and any Damages and other charges of any nature whatsoever, resulting from Depositor's failure to comply with the requirements of this Section.

(b) In connection with any outbound shipment of Goods from the Facility arranged by Givens, Givens shall use reasonable care in its selection of third parties used for the handling, transportation, and



delivery of the Goods. Givens assumes no liability as a carrier, and is not to be held responsible for any loss, damage, expense or delay to the shipment. Advice by Givens that a particular person or firm has been selected to render services with respect to the Goods shall not be construed to mean that Givens warrants or represents that such person or firm will render such services, nor does Givens assume responsibility or liability for any action(s) and/or inaction(s) of such third parties and/or its agents, nor shall Givens be liable for any delay or loss of any kind that occurs while the Goods are in the custody or control of a third party or the agent of a third party. All claims in connection with the act of a third party shall be brought solely against such party and/or agents.

## **12. TENDER OF GOODS.**

(a) Depositor represents and warrants that it lawfully possesses the Goods and has the right and authority to tender the Goods to Givens for its performance of Services under this Agreement. Depositor shall defend, indemnify and hold Givens harmless from all Damages that Givens pays or incurs as a result of any claim, dispute or litigation, whether instituted by Givens or others, respecting Depositor's right, title or interest in the Goods. Such amounts shall be charges in relation to the Goods and subject to Givens' lien.

(b) Goods shall be delivered to the Facility in a segregated manner, properly marked, individually identified by means of a part number, tag, or other identifying mark, and packaged for storage and handling, as applicable, and adequately protected or covered for further transport via the means selected by Depositor, if applicable. Depositor will include a detailed packing list with each delivery of Goods that will include part numbers, order numbers, quantities, number of boxes, skids, dimensions and weights. Goods arriving with incomplete or inaccurate information or Goods that do not match the Service Order or Depositor's purchase order or other form of instructions may be subject to additional handling charges. The packing list provided by Depositor will be deemed to be correct for purposes of inventory reconciliation and determining responsibility for loss of Goods.

(c) All deliveries to the Facility will be made during normal business hours at Depositor's cost and risk. No Goods shall be delivered or transferred to Givens except upon receipt by Givens of Depositor's complete written instructions at least twenty-four (24) hours prior to delivery or transfer of the Goods to Givens. Written instructions shall include, but are not limited to, FAX, EDI, TWX, electronic mail (E-Mail) or similar electronic communication. Instructions shall not be accepted by telephone or voice mail.

(d) Givens is not a guarantor of the condition of such Goods under any circumstances, including, but not limited to hidden, concealed, or latent defects in the Goods. Concealed shortages, damage, inherent vice or tampering will not be the responsibility of Givens. Unless otherwise expressly provided in the Service Order, Depositor shall be solely liable the packaging requirements for its Goods, Givens shall have no duty and no liability, whatsoever, to inspect packaging or advise Depositor with respect to the adequacy of its packaging and no liability, whatsoever, for any damage to Goods as a result of inadequate, defective or improper packaging.

(e) Depositor shall additionally furnish, at or prior to delivery, a manifest showing marks, brands or sizes to be kept and accounted for separately and other Services desired. Otherwise, the Goods may be shelved, stored in bulk or assorted lots at the sole discretion of Givens.



### **13. TRANSFER, TERMINATION OF STORAGE, REMOVAL OF GOODS.**

(a) Instructions to transfer Goods on the books of Givens are not effective until delivered to and accepted by Givens. All charges up to the time transfer is made are chargeable to Depositor. 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 warehouse receipt, a new storage date is established on the date of transfer.

(b) Givens reserves the right to require advance payment of all past, present, and future charges prior to removal of the Goods from the Facility. Notwithstanding any provisions in this Agreement to the contrary, in the event Depositor orders the removal of all, or substantially all, Goods, from the Facility, including any series of orders for removal of Goods which would, in the reasonable judgment of Givens, result in the removal of all, or substantially all, Goods from the Facility, all charges must be paid in full before any Goods are removed from the Facility.

(c) When Goods are ordered out, a reasonable time shall be given to Givens to carry out instructions and if it is unable to do so because of a Force Majeure Event, or because Depositor has not paid Givens' invoices, or because of any other excuse provided by law, Givens shall not be liable for failure to carry out such instructions and Goods remaining in storage shall continue to be subject to storage and other charges under this Agreement.

(d) By at least seven days' prior written notice to Depositor, at Givens' expense and at any time, and from time to time, Givens may move any Goods in storage from the Facility in which they are stored within and between, any one or more of the other warehouse buildings that comprise Givens' warehouse facilities, and any new location shall be deemed included within the term "Facility".

(e) Givens may, upon written notice of not less than 30 days to Depositor and any other person known by Givens to claim an interest in the Goods, require the removal of any Goods. 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 the notice period, Givens may sell them in accordance with applicable law.

(f) If Givens in good faith believes that the Goods are about to deteriorate or decline in value to less than the amount of Givens' lien before the end of the 30-day notice period referred to above, Givens 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.

(g) If as a result of a quality or condition of the Goods of which Givens had no notice at the time of deposit the Goods are a hazard to other property or to the Facility or to persons, Givens may (i) sell the Goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the Goods, (ii) return Goods freight collect, or (iii) dispose of Goods. Pending such disposition, sale or return of the Goods, Givens may remove the Goods from the Facility and shall incur no liability by reason of such removal.



(h) If, after a reasonable effort, Givens is unable to sell the Goods pursuant to this Section, Givens may dispose of the Goods in any lawful manner and shall incur no liability by reason of such disposition.

#### **14. HAZARDOUS GOODS.**

(a) Depositor shall notify Givens in writing, prior to the delivery of any Goods to the Facility, of the characteristics of any Goods that (i) require special handling instructions, material, equipment or precautions; (ii) may be hazardous or dangerous to Givens' employees or agents, whether by handling or exposure; (iii) are defined as hazardous materials under any federal, state or local law or regulation governing the environment, including, without limitation, The Resource Conservation and Recovery Act (RCRA) and The Comprehensive Environmental Response, Compensation and Liability Act of 1960, as amended (CERCLA); or (iv) are or should be reasonably believed or known to be likely to cause damage to the warehouse, Goods, or to other goods that may be stored by Givens. Depositor shall additionally provide a current copy of the Safety Data Sheet (SDS) with all hazardous materials. Givens may, in its sole discretion, refuse to accept any such Goods and shall incur no liability for such refusal.

(b) Depositor represents and warrants that all hazardous materials provided to Givens have been prepared, labeled, shipped, packed and declared in accordance with the provisions of all applicable federal and state laws and regulations, as well as any other jurisdictional body having control over the labeling, packing or shipping of hazardous materials for transport to the Facility. In the event that the above conditions are not satisfied, Depositor shall be fully liable for and shall indemnify and hold harmless Givens against any and all Damages that Givens may sustain as a result of Depositor's breach of the foregoing representations and warranties.

(c) If, as a result of a quality or condition of the Goods, of which Givens had no notice at the time of deposit, the Goods are a hazard to other property or to the Facility or to persons, Givens (i) shall not be obligated to perform any of the Services or any other obligations hereunder with respect to such Goods, and (ii) may, at its option, demand prompt removal of such Goods from the Facility and/or 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 Givens, after a reasonable effort, is unable to sell the Goods, Givens may dispose of them in any manner lawful in Virginia and shall incur no liability by reason of such disposition. Pending such disposition, sale or return of the Goods, Givens may remove the Goods from the Facility and shall incur no liability by reason of such removal.

**15. INDEMNIFICATION.** Depositor agrees to defend and hold Givens and its affiliated entities, and their respective officers, directors, employees, agents and representatives (each a "Givens Indemnified Party") harmless from any claims, actions, demands, allegations, suits, actions or other proceedings (collectively, "Claims") arising out of or resulting from (i) the importation or exportation of Depositor's Goods, (ii) any negligent or intentional acts or omissions of Depositor, (iii) any breach of this Agreement by Depositor or its employees, agents or representatives, or (iv) any acts or omissions by Depositor which violate any Federal, State and/or other laws, and further agrees to indemnify each Givens Indemnified Party against any and all liability, loss, damages, costs, claims and/or expenses, including but not limited to reasonable attorney's fees (collectively, "Damages"), which a Givens Indemnified Party may hereafter



incur, suffer or be required to pay by reason of such Claims. In the event that any Claim is brought against Givens, it shall give notice in writing to Depositor of the Claim.

**16. DISCLAIMERS AND LIMITATION OF LIABILITY AND DAMAGES.**

(a) EXCEPT AS SPECIFICALLY SET FORTH HEREIN, GIVENS MAKES NO EXPRESS OR IMPLIED WARRANTIES IN CONNECTION WITH ITS SERVICES, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

(b) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, GIVENS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO GOODS TENDERED, STORED, PACKAGED, CRATED, OR HANDLED HOWEVER CAUSED, UNLESS SUCH LOSS OR DAMAGE RESULTED FROM THE FAILURE BY GIVENS TO EXERCISE SUCH CARE IN REGARD TO THEM AS A REASONABLY CAREFUL MAN WOULD EXERCISE UNDER LIKE CIRCUMSTANCES AND GIVENS IS NOT LIABLE FOR DAMAGES WHICH COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF SUCH CARE. Depositor acknowledges that under the standard established by this provision, Givens will not be responsible for loss in weight nor for loss or damage to Goods resulting from improper packing, insufficient cooperage, boxing or crating, breakage, wear and tear or inherent characteristics or qualities of the Goods. Nor under such standard shall Givens be responsible or liable for loss of Goods by leakage or through failure to detect leakage or for latent or concealed damage. All Goods are tendered at the owner's risk of loss, damage, destruction or delay caused by acts of God, civil or military authority, enemies of the government, insurrections, riots, strikes, civil commotions, acts of terrorism, seizure under legal process, labor disputes, lockouts, or intentional, criminal or malicious acts of third persons or any other organized opposition, by water sprinkler and other pipeline or plumbing leakage or malfunction, fire, flood, windstorm, cyclone, moths, vermin, insect, corruption, earthquakes, tidal waves, tornadoes, or depredation or any cause beyond the reasonable control of Givens.

(c) DEPOSITOR DECLARES THAT DAMAGES ARE LIMITED TO THE LESSER OF (I) FIFTY CENTS (\$.50), PER POUND, PER GOOD LOST OR DAMAGED, (II) THE COST TO REPAIR OR REPLACE THE APPLICABLE GOODS, (III) IN THE CASE OF LOSS OR DAMAGE INCURRED DURING TRANSLOADING ON PORT PROPERTY ONLY, FIVE HUNDRED DOLLARS (\$500) PER BILL OF LADING, OR (IV) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) IN ANY ONE OCCURRENCE, AND DEPOSITOR AGREES TO CAUSE ITS INSURANCE CARRIERS TO WAIVE SUBROGATION FOR DAMAGES IN EXCESS OF SUCH DOLLAR LIMITATION. THE DAMAGES LIMITATION IN THE PRECEDING SENTENCE MAY, HOWEVER, BE INCREASED BY DEPOSITOR ON PART OR ALL OF THE GOODS TENDERED BY DEPOSITOR UNDER THIS AGREEMENT BY DEPOSITOR'S WRITTEN NOTICE DELIVERED TO GIVENS WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE OF THE APPLICABLE SERVICE ORDER OR, IF NO SERVICE ORDER EXISTS, DEPOSITOR'S FIRST ACCEPTANCE OF THESE TERMS, IN WHICH EVENT AN ADDITIONAL MONTHLY CHARGE WILL BE CHARGED BY GIVENS AND PAID BY DEPOSITOR, IN GIVENS' SOLE DISCRETION, BASED UPON SUCH INCREASED DAMAGES LIMITATION. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY IN THE



EVENT OF ANY LIABILITY FACED BY GIVENS FOR CONVERSION OF GOODS TO GIVENS' OWN USE IN VIOLATION OF APPLICABLE LAW.

(d) WHERE LOSS OR INJURY OCCURS TO STORED GOODS FOR WHICH GIVENS IS NOT LIABLE, DEPOSITOR 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) WITH RESPECT TO ANY CLAIM ARISING FROM OR RELATED TO THIS AGREEMENT, OR OTHERWISE ARISING FROM THE RELATIONSHIP OF THE PARTIES, IN NO EVENT WILL GIVENS BE LIABLE FOR SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST SALES, OR DAMAGES DUE TO BUSINESS INTERRUPTION, NOR SHALL GIVENS BEAR ANY LIABILITY FOR THE ACTS OR NEGLIGENCE OF ANY THIRD PARTIES, REGARDLESS OF CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT, AND EVEN IF CAUSED BY GIVENS' NEGLIGENCE, AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR GIVENS HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

(f) Third parties to whom the Goods are entrusted may limit liability for loss, delay or damage to Goods and Depositor acknowledges and agrees that it is bound by such caps. If Depositor has requested that Givens assume additional liability with respect to loss or damage to Goods in accordance with this Agreement, Givens will request that such third parties agree to assume liability up to the lesser of the value declared by Depositor, or the cost to repair or replace the Goods. In the absence of written instructions or the refusal of the third party to agree to a higher declared value, at Givens' discretion, the Goods may be tendered to the third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.

## **17. NOTICE OF CLAIM AND FILING OF SUIT.**

(a) Claims by Depositor and all other persons must be presented in writing to Givens within a reasonable time and in no event any later than the earlier of: (i) 60 days after delivery of the Goods by Givens, or (ii) the later of (A) 90 days after the event giving rise to the claim or (B) in the case of claims relating to loss or damage to part or all of the Goods, 60 days after Depositor is notified by Givens that loss or damage has occurred. For any claim, Depositor must provide photographs of the damaged items and any packaging material associated with the Goods and must grant Givens the ability to inspect the Goods and any packaging materials as requested by Givens.

(b) No lawsuit or other action, including, without limitation, mediation or arbitration, may be maintained by Depositor or others against Givens for loss or damage to the Goods unless (i) timely written notice of all relevant claims has been given as provided in paragraph (a) of this Section, and (ii) such lawsuit or other action is commenced by no later than the earlier of (A) nine months after delivery of the relevant Goods by Givens, or (B) nine months after Depositor is notified that loss or damage to part or all of the Goods has occurred. The failure to give Givens timely notice shall be a complete defense to any lawsuit or action commenced by Depositor.



(c) When Goods have not been delivered, Givens may give Depositor notice of known loss or damage to the Goods and the time limitations for presentation of claim in writing and maintaining of a lawsuit or other action after notice begin with such notice.

(d) The notice requirements of this Section shall not apply to any action brought under Section 24 (CONFIDENTIALITY) or Section 25 (NON-SOLICITATION OF EMPLOYEES).

#### **18. LIABILITY FOR MISSHIPMENT AND CHARGEBACKS.**

(a) If Givens negligently misships Goods, Givens shall pay the reasonable transportation charges incurred to return the misshipped Goods to the Facility. If the consignee fails to return the Goods, Givens' maximum liability shall be for the lost or damaged Goods as specified in Section 16 (DISCLAIMERS AND LIMITATION OF LIABILITY AND DAMAGES), and Givens shall have no liability for damages due to the consignee's acceptance or use of the Goods whether such Goods be those of Depositor or another.

(b) Depositor acknowledges and agrees that Givens is not responsible for any loss caused by improper loading unless Givens loads a trailer when no representative of the outbound carrier is available to monitor loading, Givens seals the trailer prior to a representative of the outbound carrier having an opportunity to inspect the load, and the outbound carrier designates on the relevant paperwork that the shipment was loaded as "shipper load and count" or some similar designation.

(c) Givens shall not be responsible for chargebacks of any kind.

(d) Any and all claims made pursuant to this Section must be in accordance with Section 17 (NOTICE OF CLAIM AND FILING OF SUIT).

**19. MYSTERIOUS DISAPPEARANCE AND SHRINKAGE ALLOWANCE.** Any presumption of conversion imposed by law shall not apply to any loss of Goods by mysterious disappearance and a claim by Depositor of conversion must be established by affirmative evidence that Givens converted the Goods to Givens' own use. Givens shall be liable for loss of Goods due to inventory shortage or unexplained or mysterious disappearance of Goods only if Depositor establishes such loss occurred because of Givens' failure to exercise the care required of Givens under Section 16 (DISCLAIMERS AND LIMITATION OF LIABILITY AND DAMAGES). Givens shall have a shrinkage allowance of one half of one percent (00.50%) of the annual landed cost throughput which shall be prorated monthly if storage period is less than one year.

#### **20. ACCURATE INFORMATION; NO DUTY TO MAINTAIN RECORDS BY GIVENS.**

(a) Depositor agrees that Depositor has an affirmative non-delegable duty to disclose any and all information required to properly pack, package, store, transport, import or export the Goods. In Givens' performance of the Services, including preparing supporting documentation and/or export data to regulatory entities or third parties, Givens relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Depositor and Depositor's suppliers. As such, Depositor will provide Givens with information concerning the Goods which is accurate, complete and sufficient to



allow Givens to comply with all laws and regulations concerning the Services. Depositor will defend, indemnify and hold Givens harmless from all Damages which Givens pays or incurs as a result of Depositor failing to fully discharge this obligation.

(b) Depositor additionally acknowledges that it is required to review all documents and declarations prepared by Givens and/or filed with regulatory entities, and will immediately advise Givens of any errors, discrepancies, incorrect statements, or omissions on any document or declaration prepared by Givens on Depositor's behalf.

(c) Depositor acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC § 1508 and 1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other Laws and Regulations of the United States; unless otherwise agreed to in writing, Givens shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as "recordkeeper" or "recordkeeping agent" for Depositor.

**21. INSURANCE AND TITLE.** Title to and ownership of and risk of loss for all Goods shall remain vested with Depositor, and at no time shall title or ownership or any risk of loss ever vest in Givens. Depositor shall maintain at all times, at Depositor's expense, a policy of property insurance against fire, theft, vandalism, malicious mischief, acts of God, and such other hazards as are from time to time included in a standard extended coverage endorsement insuring all Goods of Depositor located at the Facility equal to the value of the Goods stored and Givens has no obligation to maintain property insurance insuring such Goods against such risk of loss while at the Facility. Depositor agrees to waive subrogation in favor of Givens as respects Depositor's property insurance policy. At any time upon request of Givens, Depositor shall provide Givens with an insurance certificate as proof of the coverage required under this Section. Unless requested to do so in writing and confirmed to Depositor in writing, Givens is under no obligation to procure insurance on Depositor's behalf; in all cases, Depositor shall pay all premiums and costs in connection with procuring requested insurance.

**22. RECALL.** In the event a recall, field alert, product withdrawal or field correction (together, "Recall") may be necessary with respect to any Goods provided under this Agreement, Depositor shall immediately notify Givens in writing. Givens will not act to initiate a Recall without the express prior written approval of Depositor unless otherwise required by applicable laws. The cost of any Recall shall be borne by Depositor. Depositor shall indemnify and hold harmless Givens from all Damages that Givens pays or incurs as a result of a Recall.

**23. LIEN.**

(a) Givens shall have a general warehouse lien for all lawful charges for storage and preservation of all of the Goods in storage at any time; on any and all property (and documents relating thereto) of Depositor, including any proceeds thereof, in its possession, custody, control, or en route / in transit, or coming into Givens' actual or constructive possession or control; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such Goods, and for the balance on any other accounts that may be due. Givens further claims a general warehouse lien for all such charges, advances and expenses with respect to any



other Goods stored by Depositor at any time in any other facility owned or operated by Givens. In order to protect its lien, Givens reserves the right to require advance payment of all charges prior to shipment of Goods.

(b) Givens shall provide written notice to Depositor of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges. Depositor shall notify all parties having an interest in its shipment(s) of Givens' rights and/or the exercise of such lien.

(c) **Unless, within thirty days of receiving notice of lien, Depositor posts cash or letter of credit at sight, or an acceptable bond equal to 110% of the value of the total amount due, in favor of Givens, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Givens shall have the right to sell such Goods, as may be necessary to satisfy such lien, at public auction or private sale and any net proceeds remaining thereafter, after payment of amounts due Givens, shall be refunded to Depositor, provided that Depositor shall remain liable for any deficiency arising from the sale. Depositor hereby grants Givens, and any auctioneer or other party selling Goods for Givens, a license to use any trademark, trade name, service mark, copyright or similar intellectual property in the advertising of Goods for sale in the event Givens advertises Goods for sale in connection with the exercise of its lien or in connection with any other sale of Goods permitted by this Agreement. This license shall not expire until all Goods have been sold.**

**24. CONFIDENTIALITY.** Each party agrees to maintain as confidential the terms and conditions of this Agreement and all information concerning the other party's sales, customers, business, and any other aspect of such party's operations ("Confidential Information") which is learned as a result of performance under this Agreement. Confidential Information does not include information that is publicly available. The party receiving Confidential Information (the "Receiving Party") will not disclose such Confidential Information to any third party without the written authorization of the party disclosing the Confidential Information (the "Disclosing Party"), except to the extent that such disclosure is necessary to the performance of the Receiving Party's obligations under this Agreement or is required to be disclosed pursuant to a properly executed subpoena or other regulatory or court order ("Court Order") provided the Receiving Party (i) gives reasonable written notice to the Disclosing Party, and (ii) limits disclosure to that portion of the Disclosing Party's Confidential Information required by the Court Order. Notwithstanding any provision in this Agreement to the contrary, in the event of a violation of this Section, the injured party shall, in addition to any other remedies available at law or equity, be entitled to obtain injunctive relief in the Circuit Court for the City of Chesapeake, Virginia.

**25. NON-SOLICITATION OF EMPLOYEES.** Depositor, independent of any other obligation under this Agreement, during the term of the Agreement and for a period of two (2) years following the termination of the Agreement, shall not, directly or indirectly, induce any employee of Givens to terminate his or her employment with Givens or to interfere in any manner with a contractual relationship between Givens and any third party. Notwithstanding any provision in this Agreement to the contrary, in the event of a violation of this Section, Givens shall, in addition to any other remedies available to it at law or equity, be entitled to obtain injunctive relief in the Circuit Court for the City of Chesapeake, Virginia.



**26. INDEPENDENT CONTRACTOR.** Givens shall act as an independent contractor under this Agreement. It shall perform its obligations under this Agreement using its own employees or agents. Givens shall decide on the manner and means of accomplishing its obligations and shall direct, control and supervise its employees. Givens shall comply with all payroll tax, withholding, social security, unemployment and related employer tax obligations.

**27. SEVERABILITY; WAIVER.** If any provision of this Agreement, 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 provisions of this Agreement shall not be affected thereby but shall remain in full force and effect. The failure of either party to require strict compliance with any provision of this Agreement shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of this Agreement.

**28. FORCE MAJEURE.** Neither party shall be liable to the other for default in the performance or discharge of any duty or obligation under this Agreement, except for Depositor's obligation to pay for Services rendered by Givens, when caused by acts of God, hurricanes, tidal waves, flood, tornadoes, cyclone, wind storm, earthquake, public enemy, civil commotion, strikes, labor disputes, work stoppages or other difficulties within the workforce, failure to provide power by the utility provider, intentional or malicious acts of third persons or any other organized opposition, cyber-attacks, viruses, corruption, depredation, accidents, explosions, fire, water sprinkler leakage, moths, vermin, insect, seizure under legal process, embargo, prohibition of import or export of Goods, closure of public highways, railways, airways or shipping lanes, governmental interference, order, regulation, or other action(s) by governmental authority, national, regional, or local emergency(ies), plague, epidemic, pandemic, outbreaks for infectious disease or any public health crisis, including but not limited to compliance with related practices required or recommended by governmental or health organizations (including but not limited to quarantine or other employee restrictions) or other contingency(ies), similar or dissimilar to the foregoing, beyond the reasonable control of the affected party (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the party seeking to rely on this provision shall promptly give written notice to the other party of the nature and consequences of the cause. If the cause is one which nevertheless requires Givens to continue to protect the Goods, Depositor agrees to pay the storage, crating, packing, or similar charges associated with Givens' obligation during the continuance of the Force Majeure Event. All Goods are stored, handled, and transported at Depositor's sole risk of loss, damage, or delay caused by any of the above.

**29. NOTICES.**

(a) Any notice to Givens by Depositor shall be by certified mail, return receipt requested, or by overnight delivery by the United States Postal Service or other recognized courier, at the address listed below, and shall be deemed given at the earliest of receipt by Givens, two days after delivery to the United States Postal Service or one day after delivery to a recognized overnight courier, postage prepaid, addressed to such address below. All notices under this Section shall be provided to Givens at the following address:

Givens, Incorporated  
1720 S. Military Highway, Chesapeake, VA 23320  
Attention: Trevor Dunlap, President



(b) Givens may give notices applicable to the services Givens provides generally to its customers or any Updated Terms by means of a general notice on Givens' website, and notices specific to Depositor by electronic mail to Depositor's e-mail address on record in Givens' account information or by written communication sent by first class mail or pre-paid post to Depositor's address on record in Givens' account information.

(c) Either party may give the other party notice of any address change for future notices in the manner set forth above.

**30. MEDIATION.** Except for enforcement of Givens' general warehouseman's lien, actions seeking injunctive relief in the case of breaches of the obligations under Section 24 (CONFIDENTIALITY) or Section 25 (NON-SOLICITATION OF EMPLOYEES), and the collection of sums due hereunder, all of which shall be brought in a court of competent jurisdiction in the City of Chesapeake, Virginia, the parties agree to attempt to resolve any breach under this agreement by good faith negotiation. Actions under Section 24 (CONFIDENTIALITY) or Section 25 (NON-SOLICITATION OF EMPLOYEES) may be brought without notice of breach and any action to collect any sums due hereunder may be brought following ten (10) days' notice of the failure to pay. A party believing there has been a breach of this Agreement shall give the other a written notice setting forth the nature of the breach or dispute (the "Breach Notice"). If the parties cannot settle the breach by good faith negotiation within ten (10) days after delivery of the Breach Notice, the parties shall then attempt, in good faith, to resolve the breach by mediation to be held in the City of Chesapeake, Virginia. If the parties cannot agree on the selection of a mediator within twenty (20) days after delivery of the Breach Notice, the Chief Judge of the Circuit Court of the City of Chesapeake, Virginia, shall select a mediator. Each party shall pay for its own legal counsel, experts, travel costs and other fees and costs.

**31. ELECTRONIC TRANSACTIONS.** Depositor and Givens agree to conduct the transactions contemplated in this Agreement by electronic means, except, telephone or voice mail shall not constitute an electronic record. Quotes, Service Orders, warehouse receipts, invoices, instructions to transfer Goods, damage reports, claims and notices may all be created, generated, sent, communicated, received or stored by electronic means, except telephone or voice mail. Any requirement in this Agreement for written instructions or written notice may be accomplished by electronic records, except voice mail or telephone. EXCEPT, notices shall not be given by electronic mail.

**32. ENTIRE AGREEMENT; UPDATES TO AGREEMENT.** This Agreement includes these Terms and the relevant Service Order adopted by the parties and embodies the entire agreement and understanding between the parties and supersedes all prior agreements and understandings between them relating to the subject matter hereof. In the event of a conflict between these Terms and the relevant Service Order or Quote, or any other purchase order, confirmation, acknowledgements, shipping order, or any other document, this Agreement will control, unless the Quote underlying the relevant Service Order states an express intention of the parties to deviate from a specified provision of this Agreement. This Agreement cannot be modified except in a writing signed by an authorized representative of each party hereto; provided however that Givens may unilaterally amend the terms and conditions herein from time to time by posting an updated version of this Agreement on Givens' website (the "Updated Terms"). Givens shall provide Depositor with reasonable notice of any material changes to the Updated Terms, which notice may be provided



electronically. Any Updated Terms shall apply on a prospective basis and shall be accepted by Depositor upon the earlier of (i) Depositor's continued request for or receipt of Services after the effective date of the Updated Terms, or (ii) the expiration of the notice period specified by Givens, provided that such notice period shall be no less than thirty (30) days. If Depositor does not agree to the Updated Terms, Depositor must provide Givens written notice of non-acceptance and terminate this Agreement and remove Depositor's Goods within thirty (30) days of the effective date of the Updated Terms. In such event, the prior version of this Agreement shall continue to govern through the effective date of such termination.

**33. GOVERNING LAW.** The provisions of this Agreement shall be governed by, construed and interpreted according to the laws of the Commonwealth of Virginia. For all disputes that are not addressed under Section 30 (MEDIATION), both parties irrevocably consent to the jurisdiction of the United States District Court and the State courts where Givens performs its Services for Depositor; agree that any action relating to the Services performed by Givens, shall only be brought in said courts; consent to the exercise of in personam jurisdiction by said courts over it, and further agree that any action to enforce a judgment may be instituted in any jurisdiction.

**34. ASSIGNMENT.** Neither party shall assign this Agreement or any of its rights or obligations hereunder without the other party's prior written consent; provided, however, that Givens may assign this Agreement and all of Givens' rights and obligations under this Agreement to (i) any entity that is directly or indirectly controlled by or under common control with Givens, or (ii) any entity, or the affiliate of any entity, that acquires substantially all of Givens' assets associated with this Agreement. This Agreement shall be binding upon each party's successors and permitted assigns.

**35. INTERPRETATION.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. Whenever the words "include," "includes" or "including" are used in the Agreement, they will be deemed to be followed by the words "without limitation."

**Last updated March 24, 2026**