

WAREHOUSE SERVICES TERMS AND CONDITIONS

(AUSTRALIA AND NEW ZEALAND)



INTRODUCTION

- A. Customer is a supplier, manufacturer and/or distributor of certain products within Australia or New Zealand.
- B. Americold is engaged in the provision of warehousing, handling and logistics services, and if applicable, transportation.
- C. Customer wishes to engage Americold for Services in relation to the Products, and Americold:
 - (a) as the Storage Provider will provide Storage Services; and
 - (b) as the Logistics Provider will provide Logistics Services,to the Customer for the Products in accordance with these terms and conditions (**Terms and Conditions**).

1. DEFINITIONS AND INTERPRETATION

In these Terms and Conditions, unless the context indicates otherwise:

Agreement means the agreement between Customer and Americold made up of the Warehouse Services Schedule and these Terms and Conditions.

Americold means:

- (a) in relation to the provision of Storage Services – the Storage Provider; and
- (b) in relation to the provision of Logistics Services – the Logistics Provider, and

both the Storage Provider and the Logistics Provider in relation to Services generally.

Americold Liability Limit unless otherwise stated in the Warehouse Services Schedule, has the meaning set out in clause 9.5 of these Terms and Conditions.

Americold Representative is the contact person identified set out in the Warehouse Services Schedule.

Annual Rate Review is the annual rate review mechanism outlined in the Warehouse Services Schedule.

Applicable Law means all laws, regulations, rules, standards, statutes and by-laws of any kind, and any judgment, order, policy, or official directive or request of any government, government agency, or person charged with the administration of a law that are applicable to the Parties and the Services.

Business Day means a day between Monday and Friday, inclusive, that is not a public holiday or a bank holiday in the location of the Storage Facility.

Business Profile has the meaning given in the

Warehouse Services Schedule.

Confidential Information means any or all:

- (a) information or communications provided by one Party to the other relating to or in connection with the Services;
- (b) information of a confidential nature from one Party to another irrespective of whether such confidential information relates to or is in connection with the provision of Services for the Products;
- (c) information including but not limited to invoices, pricing, the Customer information and the contractual arrangement between the Parties; and
- (d) any notes or record (including electronic records) relating to information provided above.

Corporations Legislation means:

- (a) in Australia – *Corporations Act 2001 (Cth)*; and
- (b) in New Zealand – *Companies Act 1993*.

Customer Representative is the person identified in the Warehouse Services Schedule.

Dangerous Goods Legislation means any Applicable Law relating to the storage or carriage of dangerous goods.

Effective Date is as set out in the Warehouse Services Schedule or if not applicable, the date Americold commence providing Services to the Customer in respect of the Products at the Storage Facility.

Force Majeure Event affecting a Party means fire, storm, flood, earthquake, explosion, war, invasion, rebellion, civil unrest, sabotage, epidemic, pandemic, government-mandated lockdowns or quarantines or any event outside that person's reasonable control.

GST Act means:

- (a) in Australia – *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; and
- (b) in New Zealand – *Goods and Services Tax Act 1985*.

Information means ideas, data, customer lists, instructions, plans, specifications, formulae, know-how, inventions, techniques, technology, computer software, designs, copyright, drawings, process descriptions, reports, developments, results, technical advice and trade secrets whether in documentary, visual, oral, machine-readable and/or other form or samples, equipment and other tangible items.

Information Technology Specifications means the specifications describing the establishment of the electronic information transfer system and other computer related matters.

KPIs or Key Performance Indicators means if applicable, the performance indicators for the Services as set out in the Warehouse Services Schedule.

Legislative Rate Review has the meaning set out in clause 12.1.

Logistics Provider means:

- (a) in Australia – Americold Logistics Limited ABN 58 004 902 998; and
- (b) in New Zealand – Americold NZ Limited (Company Number 174139).

Logistics Services means all warehousing, handling and logistics services, including transportation (if applicable) other than Storage Services.

Pallet means:

- (a) in Australia – wooden pallet hired from CHEP Australia Ltd ACN 117 266 323 (item code 10001), or Loscam Australia Pty Ltd ACN 006 440 991 (item code WP) loaded to a maximum height of 1.2m, inclusive of height of the pallet; and
- (b) in New Zealand – a 2-way entry pallet measuring 1.2m x 1.0 m loaded to a maximum height of 1.2m, inclusive of height of the pallet.

Pallet Hire Account means an account for the hire of Pallets with a third-party Pallet hire provider and in Australia, it is CHEP Australia Ltd ACN 117 266 323 or Loscam Australia Pty Ltd ACN 006 440 991.

Party or Parties means the Customer and/or Americold, as the case may be.

Products means finished goods placed by the Customer or its contract manufacturer to be handled and stored by Logistics Provider and Storage Provider respectively.

Quarter means a three fiscal month period.

Rates means charges for the provision of

Storage by the Storage Provider and the provision of Logistics Services by the Logistics Provider as set out in Warehouse Services Schedule.

Services means Storage Services and/or Logistics Services (as the context requires) as set out in detail in the Warehouse Services Schedule.

Services Requirements are as agreed in writing between the Customer and Americold as set out in the Warehouse Services Schedule.

Statutory Liens Legislation means:

- (a) in Australia - the *Storage Liens Act 1935 (NSW)*, the *Storage Liens Act 1973 (Qld)*, the *Warehousemen's Liens Act 1958 (Vic)*, the *Warehousemen's Liens Act 1952 (WA)*, the *Disposal of Uncollected Goods Act 1968 (TAS)*; and
- (b) any other similar or equivalent legislation and/or regulations.

Storage Facility means the land and fixed improvements situated at the address or addresses identified in the Warehouse Services Schedule, owned or leased by Storage Provider and includes a warehouse facility together with associated fixed assets and plant.

Storage Provider is the freehold or leasehold owner of the land and fixed improvements comprising the Storage Facility and:

- (a) in Australia – is Americold Australian Holdings Pty Limited ABN 48 117 491 291; and
- (b) in New Zealand – is Icecap Properties NZ Limited (Company Number 3205892).

Storage Services means:

- (a) providing storage space; and
- (b) 'basic handling services', being the receipt, movement and placement of the Products into and around the Storage Facility for storage, and retrieval of the Products from storage; and
- (c) blast freezing, tempering and temperature reduction.

Term means the period for provision of Services for the Products as set out in the Warehouse Services Schedule, and if no such period set out, then monthly terms which can be terminated at any time by a party providing no less than 30 days prior notice.

Ullage Amount unless another amount is stated in the Warehouse Services Schedule, is 0.5% of the total carton throughput of all Products passing into and dispatched from the Storage Facility in a defined period (usually from stocktake to stocktake) based on carton count multiplied by the average wholesale replacement cost of lost or damaged cartons.

Warehouse Services Schedule means a document between the Customer and Americold setting out specific details of the engagement of Services, including business profile, rates etc.

2. ENGAGEMENT

2.1 The Customer engages Americold to provide it with Services for the Products for the Term from the Storage Facility, and more specifically:

- (a) the Storage Provider to provide the Storage Services; and
- (b) the Logistics Provider to provide the Logistics Services.

2.2 The Storage Facility is owned or leased by the Storage Provider, in relation to whom the Logistics Provider is an affiliated corporation, and both entities are wholly owned subsidiaries of Americold Realty Trust, Inc.

2.3 The Logistics Provider performs obligations under the Agreement to the extent it relates to:

- (a) Storage Services, as agent for the Storage Provider; and
- (b) Logistics Services, in its own capacity.

3. CUSTOMER'S OBLIGATIONS

3.1 The Customer shall (or in the event the Customer uses contract manufacturers, it shall ensure that its contract manufacturers) provide Products:

- (a) in a secure and good and merchantable condition, compliant with all Applicable Laws, regulations and any relevant industry guidelines; and
- (b) on Pallets and/or in shipping containers.

3.2 The Customer must:

- (a) provide to Americold a quarterly (or other period as agreed) forecast of expected Products in volumes and sales movements; and
- (b) use its best endeavours to provide any information reasonably requested by Americold to enable it to provide the Services efficiently.

3.3 The Customer represents and warrants that:

- (a) all information provided to Americold for the engagement of Services is reasonably true and correct, and any forecasts have been done in good faith using the best available information at the time on reasonable bases and assumptions; and
- (b) the Products it tenders for storage are not hazardous, infested with pests or bacteria or otherwise presents a danger to others, other products, or the Storage Facility.

4. SERVICES

4.1 In the performance of the Services, Americold, its agents, contractors and employees must:

- (a) use due care and skill normally expected to be provided by an operator involved in the warehousing of Products;
- (b) comply with the Applicable Law, including but not limited to, Dangerous Goods Legislation.
- (c) If applicable, satisfy the levels set in the Key Performance Indicators and as agreed in writing from time to time.

4.2 Americold shall ensure that the Products will be:

- (a) rotated on a first in first out basis unless otherwise specified by the Customer; and
- (b) identified in such manner as satisfies the reasonable requirements of the Customer.

4.3 Americold must:

- (a) provide the Customer any information relating to Products in the Storage Facility which the Customer reasonably requests;
- (b) maintain a Product manifest for a minimum of 12 months following the dispatch of any Products, and provide it to the Customer upon request;
- (c) supply sufficient and capable staff and the necessary equipment that are in good mechanical condition suitable for the Services; and
- (d) be responsible for the payment of its employees, contractors and agents engaged by it in the performance of the Services.

4.4 Americold will allow the Customer's representatives or agents reasonable access to its Products in the Storage Facility:

- (a) on Business Days; and
- (b) at other times will be with consent of Logistics Provider (on behalf of the Storage Provider) and at the Customer's cost,

subject to the Customer, its representatives or agents, adhering at all times to Americold's reasonable instructions, signage and warnings and working within the parameters of such instructions.

4.5 Americold's responsibility with respect to the care, custody and control of the Products:

- (a) shall not begin until the Products have been physically unloaded from trailers or railcars and Americold has begun receiving the Products into the Storage Facility; and
- (b) for outbound loads shall terminate immediately upon the loading of the Products onto any trailer or rail car,

regardless of the length of time the trailer or rail car spends at the Storage Facility parking area or rail spur.

4.6 If required for operational purposes, Americold may, on at least 60 days prior notice, relocate the Customer's Products to another facility operated by Americold, provided that the relocation will not materially adversely affect the Customer. Americold will bear all reasonable costs of relocating the Products to the alternative facility

5. KEY PERFORMANCE INDICATORS

- 5.1 The Parties will cooperatively define the Key Performance Indicators to set minimum service delivery levels, and the Logistics Provider will periodically provide the Customer with necessary reports to measure service delivery for purposes of the KPIs.
- 5.2 After the Parties have agreed that operations have reached steady state, if Americold fails at any time to achieve two or more KPI goals for two consecutive months at a Storage Facility, the Customer may issue a written notice of such failure(s) (a **KPI Deficiency Notice**) to Americold and the Logistics Provider must promptly investigate the cause of the identified failure(s).
- 5.3 Within 14 days after receipt of the KPI Deficiency Notice, the Parties must consult on any proposed corrective action to resolve such deficiencies, and Americold will implement the agreed action(s) under a corrective action plan (**Corrective Action Plan**).
- 5.4 If Americold continues to fail to meet KPI goals identified in the KPI Deficiency Notice by the end of the two following consecutive months after the Corrective Action Plan has been implemented, the Parties shall escalate the issue and the proposed solution to the Customer Representative and Americold Representative. These representatives shall meet within 20 days to develop a remedial action plan to resolve the identified failure (**Remedial Corrective Action Plan**). Such plan must be implemented within 30 days after the plan has been agreed by the Parties.
- 5.5 If Americold continues to fail to meet KPI goals identified in the KPI Deficiency Notice for two consecutive months after the Remedial Corrective Action Plan has been implemented, such failure shall constitute a default under the Agreement entitling Customer to terminate the Services with respect to the Storage Facility pursuant to clause 21.3.
- 5.6 In measuring Americold's performance against the KPIs, Americold will not be penalised in its assessed service levels for:
- (a) delivery occurring outside of the appointment window;
 - (b) improper interference in the Services by the Customer or its representatives, agents or carriers,
 - (c) receipt of transportation or equipment which exceeds the pre-agreed daily capacity, dimensions or operating parameters;
 - (d) inadequate or improper packaging of Products; or
 - (e) issues attributable to the Customer's warehouse management system.

6. STORAGE OF PRODUCTS

- 6.1 The Storage Provider will store Products in accordance with the Services Requirements, applicable industry standards and these Terms and Conditions.
- 6.2 If the Customer wishes to change the Services Requirements during the Term, this may occur only with the Storage Provider's agreement in writing and in consultation with all parties exercising reasonable commercial endeavours.
- 6.3 Where the Customer requests storage arrangements for Products in excess of the Services Requirements, the Storage Provider agrees to use reasonable commercial endeavours to:
- (a) store Products at its sites where there is capacity; or
 - (b) other third-party sites, on terms and rates acceptable to the Customer, with the Storage Provider using its best endeavours to achieve rates similar to those payable under this Agreement,
- provided that any additional costs reasonably incurred by the Storage Provider and resulting from the application of this clause must be borne by the Customer.
- 6.4 At the request of, and with the support of the Customer, Logistics Provider must conduct one audited full physical stocktake in each year of the Term. During the Term, the Customer and Logistics Provider will develop a system of cycle counting and perpetual inventory accuracy with the aim of eliminating the requirement for full physical stocktakes. The costs associated with the stocktake, including the hire of specialist equipment (if required) will be borne by the Customer unless otherwise agreed between the Parties.
- 6.5 Customer grants Americold the Ullage Amount, this being the Product shortfall by carton number during a year for which Logistics Provider is not liable (or for a lesser period, a proportionally lesser amount).

7. PALLETS

- 7.1 Customer agrees that the Products will be transported and stored in Pallets.
- 7.2 Americold will not commence the provision of Services until the parties have exchanged details of the relevant active Pallet Hire Accounts (whether these accounts belong to the parties or to third parties).
- 7.3 Where Products are received by Americold on Pallets, Logistics Provider will accept transfer of these Pallets to the Logistics Provider's Pallet Hire Account within 30 days after receipt the Pallets into the Storage Facility.
- 7.4 When the Products leave the Storage Facility on Pallets, the Logistics Provider will transfer hire of the relevant Pallets to the Pallet Hire Account/s nominated by the Customer, and the Customer will accept (or procure that its nominated third party accept) the transfer.

7.5 The Customer will be liable for all charges relating to Pallet hire for Pallets that have been transferred out of the Storage Facility at the direction or request of the Customer.

8. INFORMATION SYSTEMS

8.1 Americold will provide and maintain a satisfactory electronic storage management system to record and manage the Products received and stored at the Storage Facility, and provide to Customer in an appropriate format, the following minimum functionality:

- (a) inbound and outbound Product receipt and processing management (including for returned Products);
- (b) Product inventory management;
- (c) Product location management; and
- (d) stocktake and other Product counting adjustments.

8.2 The parties will establish as soon as reasonably practicable following the Effective Date, an electronic system interface to facilitate the transfer of relevant information between Customer's and Americold's computer systems in accordance with Americold's standard integration offering.

8.3 Each Party must bear its own costs in developing, maintaining and establishing the interface.

8.4 Any Customer specific integration requirements beyond the standard offering shall be subject to review by Americold for suitability and the Parties must agree a commercial proposal for delivery and funding any such additional development.

8.5 Americold shall ensure that any computer system it uses to provide the Services shall be supported by adequate disaster recovery procedures and shall validate the processes to ensure they meet internal recovery guidelines.

9. RISK

9.1 As between Customer and Americold, title in the Products remains with the Customer subject to Americold's warehouseman's lien at law, if applicable.

9.2 Americold must reimburse the Customer for the average wholesale replacement cost for any Product that is damaged or lost (to the extent that such Product is no longer in reasonably saleable condition) over and above the Ullage Amount where the damage or loss was caused directly by a negligent act or omission or breach of these Terms and Conditions by Americold, its employees, agents, or contractors.

9.3 For the avoidance of doubt, Americold will only be liable for the net aggregate negative variance that is a sum of all surpluses and shortfalls across all Product SKUs combined, valued at average replacement cost of all missing or damaged Products.

9.4 The liability of Americold under clause 9.2 will be reduced to the extent that the damage or loss to the Product was caused or contributed to by the negligence or default of the Customer, its employees, agents, representatives or invitees.

9.5 Americold will not be liable for a claim with respect to Product unless it is presented in writing within a reasonable time and in no event exceeding 30 days from the earlier of (1) the date of delivery, or (2) the date when the Customer learned, or in the exercise of reasonable care should have learned, of the loss, damage, destruction or other event giving rise to the claim.

9.6 To the extent permitted by law and notwithstanding anything contrary in these Terms and Conditions, no party is liable for any economic, indirect, special or consequential loss or damage, or any loss of profits, revenue, business, production or opportunity.

9.7 To the extent permitted by law and notwithstanding anything contrary in these Terms and Conditions, Americold's total liability to the Customer under the Agreement and in negligence (**Americold Liability Limited**), is limited to the lower of:

- (a) the replacement cost for any Product or part thereof, that is damaged or lost above the Ullage Amount up to the value of 10% of all charges paid to Americold for the Services in a calendar year; or
- (b) A\$1.70 in Australia or NZ\$1.80 in New Zealand, per kilogram of the damaged or lost Product.

10. INSURANCE

10.1 Americold must maintain and keep current adequate insurance policies for:

- (a) workers' compensation insurance (and in New Zealand, to the extent legally required over and above the Accident Compensation Corporation's compulsory personal injury insurance); and
- (b) public liability insurance to cover Americold's legal liability under the Agreement to the value of:
 - (i) A\$20,000,000 in Australia; and
 - (ii) NZ\$5,000,000 in New Zealand.

10.2 Logistics Provider must ensure that each of its agents and subcontractors carrying out work in relation to Services have insurance policies similar to those described in clause 10.1.

10.3 If requested by the Customer, Logistics Provider must produce copies of certificates of insurance evidencing policies in this clause.

11. RATES AND CHARGES FOR SERVICES

11.1 The Logistics Provider may issue tax invoices to the Customer for the provision of:

- (a) Storage Services – as agent for the Storage Provider; and
- (b) Logistics Services – in its own capacity.

11.2 The Customer will pay all charges under the Agreement to the Logistics Provider and the Logistics Provider accepts all such charges (for itself and as agent, as the case may be) and will separately remit the charges for Storage Services directly to the Storage Provider and retain for its own account, the charges for Logistics Services.

11.3 Rates for the Services are as specified in, and based on the Business Profile outlined in the Warehouse Services Schedule, and will be reviewed in accordance with the Annual Rate Review, if applicable.

11.4 Where no rate is specified for a Service required by the Customer, a rate will be agreed in writing between Americold and the Customer, acting reasonably.

12. VARIATION OF RATES FOR SERVICES

12.1 In addition to the Annual Rate Review, the rates for Services provided will be subject to change at any time due to variations in the cost to Americold of providing the Services to the extent resulting from the introduction or revision of any Applicable Law (**Legislative Rate Review**).

12.2 The Logistics Provider (for itself and as agent, as the case may be) will give the Customer two weeks' written notice of a Legislative Rate Review.

12.3 In the event of a Legislative Rate Review, the rates for Services shall be adjusted in direct proportion to the impact of any such additional or reduced cost, and at the request of the Customer, the Logistics Provider will provide such information reasonably required by the Customer to substantiate a Legislative Rate Review.

12.4 The rates for Services are also subject to change where there:

- (a) are variations from the profile assumptions in the Business Profile upon which the rates are based, which may be, but is not limited to, the SKU count, pallet holdings, cartons delivered or orders picked; and
- (b) where there is a material change in any of the components of the costs to Americold of providing the Services, such costs may include, but not be limited to, energy costs,

(an **Extraordinary Rate Review**).

12.5 The Logistics Provider (for itself and as agent, as the case may be) will give the Customer one months' written notice of an Extraordinary Rate Review.

12.6 In the event that the Customer disputes an Extraordinary Rate Review, it shall notify the Logistics Provider within 30 days of the Extraordinary Rate Review notice by contacting the relevant account manager; and the Parties shall negotiate in good faith on the change to the rates and fees for Services.

12.7 In the event that negotiations under clause 12.6:

- (a) are successful, the changes to the rates shall take effect one month from the date of the initial notice of the Extraordinary Rate Review; or
- (b) are not successful within 30 days of commencement, either Party may terminate the Services on reasonable notice.

13. PAYMENT

13.1 The Customer will, upon receipt of a GST-compliant tax invoice, pay the amounts due within the following timeframe, via electronic funds transfer to the Logistics Provider's nominated bank account, and provide a remittance advice detailing invoices paid:

- (a) In Australia – 7 days from the date of invoice; and
- (b) In New Zealand – within 20 days from the start of the calendar month following the month of the date of invoice.

13.2 If any payment required to be paid to Americold is not received by Logistics Provider by the due date, interest shall accrue on the amount payable at the Logistics Provider's bank overdraft rate from the due date until paid in full. Acceptance by Logistics Provider of any payment in an amount less than that which is currently due shall in no way affect Americold's right to full payment of all charges, fees and interest due.

14. GOODS AND SERVICES TAX AND OTHER TAX

14.1 'GST' refers to goods and services tax under the GST Act and the terms used have the meanings as defined in the GST Act.

14.2 All amounts specified for payment under the Agreement are exclusive of GST.

14.3 If any GST is payable by a Party in respect of a payment under or in connection with the Agreement, that Party shall, as long as it receives a valid tax invoice for the purposes of the GST Act, pay to the other Party an amount equal to the amount of the GST in addition to and together with all money payable to the other Party.

15. CONFIDENTIALITY

15.1 Each Party will:

- (a) only use or disclose the Confidential Information for the purpose of carrying out the Services and/or obtaining professional advice (for example from its legal advisers or auditors) in relation to the Agreement and these Terms and Conditions;

- (b) maintain strict confidence in the Confidential Information for the Term or the period of 5 years from the date of disclosure whichever is the longer period;
 - (c) not cause or permit to be made otherwise than in connection with the Services, any notes, memoranda, databases (electronic or otherwise), analyses, spreadsheets or other records relating to the Confidential Information or any part thereof;
 - (d) not communicate or cause to be communicated to any other person otherwise than in connection with the Services any opinion regarding the Confidential Information or any part thereof;
 - (e) not disclose or cause the Confidential Information or any part of it to be disclosed to any person otherwise than in connection with the Services without the specific prior written consent of the other Party;
 - (f) not copy or duplicate the Confidential Information or any part of it without the prior written consent from the other Party;
 - (g) use its best endeavours to take all reasonable action with respect to use, copying, duplication, access, security and protection of the Confidential Information (or any part of it) and to prevent disclosure by its employees and agents of the Confidential Information (or any part of it); and
 - (h) return or destroy all Confidential Information of the other Party on termination or expiration of the Agreement, at the direction of that other Party.
- 15.2 Notwithstanding anything contained in this clause, disclosure is permitted if:
- (a) disclosure is required by law;
 - (b) the relevant Confidential Information is no longer confidential having entered public domain other than through unlawful disclosure by the Party who has been the recipient of the Confidential Information in question; or
 - (c) disclosure is required to be made to a Party's employees, agents or contractors (strictly on a need to know basis) for the performance of that Party's obligations under this agreement.

16. FORCE MAJEURE

- 16.1 If a Force Majeure Event affecting a Party precludes that Party (**Affected Party**) partially or wholly from complying with its obligations under the Agreement then as soon as reasonably practicable after that Force Majeure Event arises, the Affected Party must notify the other Party of:

- (a) the Force Majeure Event;
- (b) which obligations the Affected Party is precluded from performing;
- (c) the extent to which the Force Majeure Event precludes the Affected Party from performing its obligations; and
- (d) the expected duration of the delay arising directly out of the Force Majeure Event.

16.2 The Affected Party's obligations under the Agreement will be suspended for the duration of the actual delay arising out of the Force Majeure Event (**Actual Delay**).

16.3 The other Party's obligations to perform any of its obligations under the Agreement will also be suspended to the extent that these obligations are reliant on the Affected Party until the Affected Party resumes performance.

16.4 If the Affected Party is Americold, the Customer may engage another person to provide the Services for the duration of the Actual Delay.

16.5 If the Actual Delay continues for more than 21 days, the other Party may terminate the Agreement immediately by giving notice to the Affected Party.

16.6 If a Party terminates the Agreement under this clause, any accrued rights or remedies of a Party are not affected.

17. SUB-CONTRACTORS

Americold may sub-contract any part of the Services to a third party or use a person to provide the Services, in which case, Americold will provide prior notification to the Customer in writing.

18. WAREHOUSEMAN'S LIEN

Americold reserves its rights or remedies in connection with any warehouseman's lien or storer's lien arising under any Statutory Liens Legislation.

19. INTELLECTUAL PROPERTY AND MARKETING

19.1 Each Party acknowledges that all intellectual property rights in any equipment, software, system, trademark, information or other concept or thing supplied or divulged by the disclosing Party in connection with the Services or the Agreement (including any improvements or modifications to such intellectual property), are owned by the disclosing Party and will remain the property of the disclosing Party.

19.2 Each Party acknowledges that no right is given to it to use any equipment, software, system, trademark, information or other concept or thing supplied or divulged by the disclosing Party under the Agreement, except in connection with the provision of Services and no intellectual property rights are granted to the receiving Party under the Agreement.

19.3 Prior to any reference to a Party in any publication or other promotional material published prepared or issued by the other Party, the publishing Party shall first obtain the written authorization from the other Party to be referenced.

20. DISPUTE RESOLUTION

- 20.1 In the event of any dispute or difference arising in connection with the Agreement or these Terms and Conditions, a Party may issue a written notice to the other Party, accurately identifying and describing the matter or matters in dispute, (**Notice of Dispute**).
- 20.2 Where a Notice of Dispute has been issued, two (2) representatives of each Party (at least one (1) of whom shall be a senior manager in each case) shall meet within 14 days and use their respective best endeavours to resolve the dispute. If the dispute is not resolved through this meeting or in absence of a resolution after 21 days from the date of service of the Notice of Dispute, the Parties may pursue other avenues, including formal mediation or litigation.
- 20.3 Each Party must continue to perform their respective obligations, including payment of any undisputed amounts invoiced, under the Agreement pending dispute or any proceedings under this clause 20.

21. TERM AND TERMINATION

- 21.1 The Agreement commences on the Effective Date and will continue for the Term unless terminated earlier or extended in accordance with these Terms and Conditions.
- 21.2 Unless a Party gives the other a notice to terminate no less than 120 days' notice prior to the expiry of the Term, then the Services shall extend for consecutive monthly terms which can be terminated at any time by a party providing no less than 30 days prior notice.
- 21.3 A Party may terminate the Services at any time and with immediate effect by giving notice to the other Party if:
- (a) that other Party commits a material breach of the Agreement and fails to remedy the breach within 30 days after receiving notice requiring it to do so, or where that breach is not capable of remedy; or
 - (b) an event referred to in clause 21.4 happens to that other Party.
- 21.4 Each Party must notify the other Party immediately if:
- (a) there is a change in business other than in the ordinary course of business in a way that prevents satisfaction of the Party's obligations under the Agreement;
 - (b) that Party ceases to carry on business;
 - (c) that Party ceases to be able to pay its debts as they become due;
 - (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of that Party's assets, operations or business such that the Party is no longer able to satisfy its obligations under the Agreement;

- (e) any step is taken to enter into any arrangement between that Party and its creditors (other than for the purposes of a solvent reconstruction); or
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person over the whole or part of that Party's assets, operations or business or to wind that Party up.

- 21.5 Termination of the Services under this clause 21 does not affect any accrued rights or remedies of either Party.

22. OBLIGATIONS AFTER TERMINATION

- 22.1 Upon termination of the Services for any reason, Americold will release to the Customer all Products, subject to payment of all outstanding invoices and Americold's warehouseman's lien (if applicable).
- 22.2 Clauses 15, 18, 19 and 20 continue to bind the Parties after termination of the Agreement.

23. COMPLIANCE WITH APPLICABLE LAWS AND ACCEPTABLE BUSINESS CONDUCT

In the performance of its obligations under the Agreement, each Party will comply with all Applicable Laws (including but not limited to any law prohibiting corruption and modern slavery), and conduct its business in accordance with sound and generally accepted business practices.

24. NO PARTNERSHIP

This Agreement nor these Terms and Conditions does not create any partnership, joint venture or fiduciary relationship between the Parties.

25. ASSIGNMENT

- 25.1 Americold may assign, novate or transfer this Agreement to any person without the Customer's consent, provided Americold notifies the Customer as soon as reasonably practicable. The Customer must not assign, novate or transfer its rights or obligations under this Agreement without Americold's prior written consent.
- 25.2 A Party must notify the non-assigning Party of any permitted assignment prior to, or as soon as practicable after, such assignment taking place. If reasonably requested, the non-assigning Party must execute all documents necessary to give effect to any such assignment (including executing a novation agreement).

26. WAIVER

No failure to exercise nor any delay in exercising any right, power or remedy by a Party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

27. NOTICES

- 27.1 Any notice given under the Agreement must be in writing.
- 27.2 Contact details for service of notices are as set out in the Warehouse Services Schedule.

28. GOVERNING LAW

The Agreement incorporating these Terms and Conditions is to be governed by the laws in:

- (a) for Services in Australia, the laws of New South Wales; or
- (b) for Services in New Zealand, the laws of New Zealand.

29. ENTIRE AGREEMENT

The Agreement constituted by the Warehouse Services Schedule and these Terms and Conditions represents the entire agreement between the Parties in relation to its subject matter and supersedes and replaces all prior agreements, memoranda and understandings. In the event of a conflict between a provision of these Terms and Conditions and the Warehouse Services Schedule, the provisions of the Warehouse Services Schedule takes precedence.