

## WAREHOUSE RECEIPTS REGULATIONS, 2014 MEMORANDUM

The object of these Regulations is to provide a legal and regulatory framework required to regulate licensing procedures for warehouses and warehouse receipt systems in Ghana. Currently, there is no such legal framework to regulate the warehouse receipting in Ghana.

The enactment of the Warehouse Receipts Regulations will also lead to increased credit to agriculture by creating secure collateral for the farmer, processor, and trader, smoothen market prices by facilitating sales throughout the year rather than just after harvests, reduce risk in the agricultural markets, improving food security and credit access in rural areas, contribute to lower post-harvest losses due to better storage conditions (i.e. induces farmers to store in more appropriate warehouses), and lower transRegulationsion costs by guaranteeing quantity and quality among other things.

Specifically, the Regulations will provide the legal framework required for the regulation of warehouses, licensing criteria for warehouses and warehouse operators, warehouse receipt systems and issues relating to liabilities of parties in a warehouse receipt system.

The Regulations is divided into six parts. **Part I** of the Regulations, *clause 1 to 5* deals with preliminary issues. *Clause 1* states what the short title of the Regulations will be. *Clause 2* makes the Securities and Exchange Commission herein after known as 'Commission' the regulatory authority under the Regulations. *Clause 3* spells out the functions of the Commission which includes the licensing of warehouses, warehouse operators, warehouse inspectors, warehouse specialized staff, approval of approve electronic warehouse receipt systems, issuance of negotiable warehouse Receipts books among other things. *Clause 4* deals with the powers of the Commission under the Regulations. The powers of the Commission under the Regulations includes the power to investigate the receiving, storing, conditioning and handling of goods and complaints with respect thereto, including the inspection of any warehouse, the goods stored therein and all property and records pertaining thereto; to determine whether the warehouse for which licences are applied or have been issued, are suitable for the receiving, storage, conditioning and handling of the goods which are, or are expected to be received, stored, conditioned, or handled, the power to require such reports as it may determine are necessary in the administration of the Regulations among other things. The Commission is empowered in *Clause 5* to delegate the performance of any of its functions or the exercise of any of its powers to a corporate body as the Commission may so determine, as being capable of exercising such functions or powers.

**Part II** of the Regulations deals with licensing conditions for warehousing businesses. The Part is divided into two sections namely licensing and Insurance and Bonds. The first section is provided for in clauses 6 to 18. *Clause 6* provides for the conditions for operating a warehouse business under the Regulations. *Clause 7* deals with conditions for the grant of a license under the Regulations. *Clause 8* deals with the requirements for the grant of a warehouse operational license. The licensing requirement for the licensing of a warehouse operator's specialized staff is provided for in *Clause 9*. The licensing of warehouse inspectors is provided for in *Clause 10*. *Clause 11* spells out the powers of warehouse inspectors. *Clause 12* provides for the procedure by which the Commission may issue a license under the Regulations. The period of validity of a license is provided for in *Clause 13* whilst *Clause 14* deals with the designation of warehouses as licensed and

bonded warehouses. *Clause 15* provides for the posting of licenses, rates and signs by warehouse operators. *Clause 16* requires that the Commission shall from time to time publish names of licensees, results of investigations carried out and list of persons whose licenses have been revoked. *Clause 17* deals with the revocation, suspension and non-renewal of licenses. *Clause 18* deals with instances where a revoked, suspended or expired license may be permitted under the direction of the Commission or the Commission's appointed collateral manager may oversee the delivery of deposited goods previously received.

The second section on insurance and bonds is provided in Clauses 19 to 21. *Clause 19* deals with the cancellation of insurances or bonds. Under this Clause, no licensed warehouse operator shall cancel or suspend an approved insurance policy or Bond or arrange for substitution of insurance policy or Bond without prior written approval of the Commission. *Clause 20* provides for conditions by which a person who is injured by reason of any obligation for which a Bond is given to sue on the Bond in his or her own name in court, to recover the damages he or she has sustained by the breach. *Clause 21* deals with how claims under casualty insurance may be treated.

**Part III** of the Regulations deals with warehouse operators. This part is divided into three sections namely Duties and Obligations of Warehouse Operators, Liabilities of a Warehouse Operator and Warehouse Operator's Lien. Duties and Obligations of Warehouse Operators is provided for in Clauses 22 to 30. *Clause 22* deals with duties of a warehouse operator to receive goods and issue receipts. *Clause 23* deals with the prohibition of rebates and preferences. *Clause 24* entrusts a warehouse operator with the duty to keep goods separately. *Clause 25* deals with issues of commingling. *Clause 26* mandates a warehouse operator to exercise such care and diligence in regard to deposited goods as a careful and vigilant owner of similar goods would exercise in the custody of the goods in similar circumstances. *Clause 27* mandates a warehouse operator to keep records and accounts of all transactions pertaining to the operation of a warehouse and shall make available to the Commission for inspection the records and accounts of the warehouse business at any time as may be desired by the Commission. *Clause 28* mandates the warehouse operator in the absence of lawful excuse, to deliver goods referred to in a negotiable Receipt, to the bearer of the Receipt on demand made by the bearer in accordance with the Regulations. *Clause 29* deals with the duty of a warehouse operator to deliver goods to persons with valid titles or rights. *Clause 30* mandates a warehouse operator to ascertain the validity of titles to goods in the event that there is an adverse claim of the title of a holder of a receipt.

Liabilities of a Warehouse Operator are provided for in Clauses 31 to 35. *Clause 31* imposes a liability on warehouse operators for late delivery of goods. *Clause 32* imposes a liability on warehouse operators for mis-delivery of goods. A liability for nonexistent or mis-described goods is provided for in *Clause 33*. Liability for failure to cancel warehouse receipt after delivering goods is imposed on warehouse operators in *Clause 34*. *Clause 35* imposes a liability on warehouse operators who fail to deliver goods to persons to whom a lost, stolen or destroyed warehouse Receipt has been or negotiated for value in good faith.

Warehouse operator's lien is provided for in Clauses 36 to 43. *Clause 36* provides for a warehouse operator's right to lien. *Clause 37* provides for instances where a warehouse operator shall have lien on goods, where a negotiated receipt is issued for the goods. *Clause 38* provides that a warehouse operator having a lien valid against the person

demanding the goods may refuse to deliver the goods to him until the lien is satisfied. *Clause 39* deals with the enforcement of lien by warehouse operators. *Clause 40* deals with perishable and hazardous goods. *Clause 41* deals with the effects of a sale of goods to satisfy a warehouse lien. Under this Clause if goods have been lawfully sold to satisfy a warehouse lien, or have been lawfully sold or disposed of under the Regulations, the warehouse operator is not liable for failure to deliver the goods to the holder of the Receipt. *Clause 42* deals with situations under which a warehouse operator shall lose the right of his lien. *Clause 43* entitles a warehouse operator to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouse operator notwithstanding the presence or otherwise of a lien.

**Part IV** of the Regulations deals with warehouse receipts. *Clause 44* deals with who may issue a warehouse receipt. *Clause 45* defines what a negotiable warehouse receipt is. Per this Clause, a warehouse Receipt in which it is stated that the goods received will be delivered to the person named in the Receipt or his order shall be known as a negotiable warehouse Receipt. *Clause 46* defines what a non-negotiable warehouse receipt is. Per this Clause, a warehouse Receipt in which it is stated that the goods received will be delivered to the depositor or to any other specified person is a non-negotiable Receipt. *Clause 47* deals with the form of a warehouse receipt. *Clause 48* deals with the statements and terms that shall be embodied in an issued warehouse receipt. *Clause 49* provides for description of goods by marks. *Clause 50* mandates a warehouse operator to register all negotiable warehouse Receipts issued by him with an automated depository approved by the Commission. *Clause 51* deals with issues of delivery of warehouse receipts to owners or bailers of goods. *Clause 52* mandates the warehouse operator to in the absence of a lawful excuse, to deliver the goods referred to in a negotiable Receipt, to the bearer of the Receipt on demand made by the bearer and upon the bearer satisfying some conditions.

*Clause 53* mandates a warehouse operator to deliver goods upon presentation of a negotiable receipt that has been endorsed. *Clause 54* mandates a warehouse operator to cancel receipts upon delivery of the goods. *Clause 55* imposes a liability on warehouse operators for failure to deliver goods. *Clause 56* gives instances whereby an altered warehouse receipt will be treated and rejected. *Clause 57* provides that a purchaser of a warehouse Receipt for value without notice of alteration shall acquire the same proprietary rights against the warehouse operator which the purchaser would have acquired if the Receipt had not been altered at the time of purchase. *Clause 58* deals with lost or destroyed warehouse receipts. *Clause 59* deals with duplicate receipts. *Clause 60* provides that a warehouse operator who has information that a person other than the holder of a Receipt claims to be the owner of or entitled to the goods, may refuse to deliver the goods until he has had a reasonable time, not longer than [7] days, to determine the validity of the adverse claim or to commence interpleader proceedings. *Clause 61* provides that negotiable receipts shall expressly state the charges for which a lien may be claimed.

*Clause 62* provides that in the hands of a holder who has purchased a negotiable receipt for valuable consideration the receipt is conclusive evidence of the Receipt by the warehouse operator of the goods described in it as against the warehouse operator and any person signing it on the warehouse operator's behalf or any person claiming through him. *Clause 63* deals with the negotiation of negotiable receipts by delivery and by endorsement. *Clause 64* deals with persons capable of negotiating warehouse receipts.

*Clause 65* deals with rights of a person to whom a negotiable receipt is duly negotiated. *Clause 66* deals with warranties on negotiation of warehouse receipts. *Clause 67* deals with the liability of an endorser of a receipt. *Clause 68* deals with issues of validity of the negotiation of a receipt. *Clause 69* deals with instances where the negotiation of a receipt defeats the lien of a seller of the goods. *Clause 70* provides for the transfer of a negotiable receipt without endorsement. *Clause 71* deals with subsequent negotiations of a warehouse receipt. *Clause 72* deals with instances where a warehouse receipt may be transferred without negotiation. *Clause 73* provides that goods covered by a non-negotiable Receipt may be transferred by the holder by delivery to a purchaser or donee a transfer of the goods in writing executed by the holder, but the transfer does not affect or bind the warehouse operator until the warehouse operator is notified in writing of it. *Clause 74* deals with the rights of persons to whom goods are transferred.

**Part V** of the Regulations deals with offences and penalties. *Clause 75* provides for the offences and penalties thereof.

**Part VI** deals with the miscellaneous provisions. *Clause 76* deals with the effect of revocation or termination of licenses on receipts issued. *Clause 77* provides for instances where a statutory lien will be created. *Clause 78* deals with the powers of the Commission to make Regulations. *Clause 79* deals with the interpretation of the provisions of the Regulations

The passage of these Regulations will create the requisite legal framework for the licensing and operations of warehouse receipts systems needed to complement the operations of a commodity exchange in Ghana.

**Signed.....**

**Hon. Seth Terkper,**

*Minister of Finance*

**Date .....**

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# WAREHOUSE RECEIPTS REGULATIONS, 2014

IN the exercise of the powers conferred on the Minister responsible for Finance by Section 214 the Securities Industry Regulations 2014 (Regulations.....) and on the recommendation of the Securities and Exchange Commission, these Regulations are made this .....day of .....2014.

## PART I - PRELIMINARY

### 1. Scope of application of Regulations

These Regulations apply to the operations of warehouses and warehouse receipt systems under the Securities Industry Regulations, 2014 (Regulations.....)

### 2. Regulatory Authority under these Regulations

The Securities and Exchange Commission shall be the regulatory authority under this Regulations.

### 3. Functions of the Commission

The functions of the Commission are:-

- a) To licence warehouses;
- b) To license warehouse operators;
- c) To license warehouse inspectors;
- d) To license warehouse specialized staff;
- e) To approve electronic warehouse receipt systems
- f) To issue negotiable warehouse Receipts books; and
- g) To carry out and perform such other functions as are conferred or imposed on it by this Regulations.

### 4. Powers of the Commission

For the carrying out of its functions under section 3 of this Regulations, the Commission shall have power:-

- a) to investigate the receiving, storing, conditioning and handling of goods and complaints with respect thereto, including the inspection of any warehouse, the goods stored therein and all property and records pertaining thereto; to determine whether the warehouse for which licences are applied or have been issued, are suitable for the receiving, storage, conditioning and handling of the goods which are, or are expected to be received, stored, conditioned, or handled;
- b) to require such reports as it may determine are necessary in the administration of this Regulations;

- c) to require a licensed warehouse operator to terminate receiving, storage, conditioning and handling agreements upon revocation of his licence;
- d) to administer oaths and issue subpoenas to compel the attendance and testimony of witnesses and/or the production of records in connection with any investigation or hearing under this Regulations;
- e) to prescribe all forms, within the limitations set forth in this Regulations, including the forms of Receipts, tickets, and applications for licences;
- f) to describe all necessary rules and regulations for carrying out the provisions of the Regulations.
- g) to issue to an applicant fulfilling the requirements for warehouse operator, a licence in respect of warehouses, or renew, modify, withdraw, suspend or cancel such licence;
- h) to determine the rate of, and levy the fees and other charges for carrying out the provisions of this Regulations;
- i) to specify the qualifications, code of conduct and practical training for a warehouse operator and staff engaged in warehousing business;
- j) to license warehouses and warehouse Inspectors meeting the minimum requirements;
- k) to approve negotiable warehouse Receipts books;
- l) to provide guidelines and standards for the proper storage of goods for which a licence is applied;
- m) to carry out any other activity incidental or conducive to the carrying out of its functions under this Regulations.

## **5. Powers of the Commission to delegate Functions**

- (1) The Commission may delegate the performance of any of its functions or the exercise of any of its powers to a corporate body as the Commission may so determine, as being capable of exercising such functions or powers.
- (2) A delegation under this section shall not prevent the concurrent performance or exercise of the powers and duties of the Commission.
- (3) Notwithstanding the delegation of any of its powers under this section, the Commission shall remain responsible for the carrying out of its powers and duties under this Regulations.

## **PART II - LICENSING CONDITIONS FOR WAREHOUSING BUSINESS**

### *Licensing*

## **6. Conditions for operating under the Regulations**

- (1) No person shall commence or carry on the business of maintaining a warehouse issuing negotiable warehouse Receipts unless he has obtained a licence granted by the Commission under this Regulations in respect of the warehouse or warehouses;
- (2) Any person desirous of commencing or carrying on the business of maintaining a warehouse issuing negotiable warehouse Receipts may make an application to the Commission for a licence in respect of one or more warehouses owned or occupied by him:-

- a. Two or more warehouses, which constitute a station, may be licensed under a single licence.
  - b. All warehouses licensed under a single licence shall be treated as a single warehouse for all the purposes of this Regulations, including issuance of Receipts and delivery of goods.
- (3) Every application for a licence under sub-section (2) shall be in such form and shall be accompanied by such fees as may be prescribed by the Commission.
- (4) The Commission may not grant a licence under this section unless it is satisfied that the warehouse in respect of which the application has been made has adequate facilities and safe guards required to warehouse the goods of the nature specified in the application and the applicant satisfies the financial, managerial and other eligibility criteria and competence as may be prescribed.
- (5) Provided that no licence shall be refused to any applicant under this section unless the applicant has been given an opportunity of being heard.

### **7. Conditions for Granting Licence**

The Commission shall not grant any licence, unless the applicant has satisfied all the conditions prescribed by the Regulations.

### **8. Licence to Operate A Warehouse**

- (1) Before the Commission grants a licence to any person to operate a warehouse it shall satisfy itself of the following:-
- a. that the applicant is in possession of a Warehouse whether as a tenant or owner;
  - b. that upon inspection the warehouse is suitable for warehousing of the respective goods in accordance with the regulations made under this Regulations;
  - c. that the applicant's director, business partner or manager is of good and sound business and management record and has not been involved in any criminal proceedings involving business and dishonesty or impropriety;
  - d. that the warehouse and the goods which are or may be kept therein are fully insured at full market value in respect of fire, natural disasters including but not limited to flood, lightning and windstorm, theft and burglary or any other damage; and
  - e. that the applicant is financially capable of conducting the business of warehousing.
- (2) Each warehouse operator applying for a licence under this Regulations shall
- a. Execute and file with the Commission a bond sufficient to secure the faithful performance by him of the obligations as a warehouse operator under this Regulations and any regulations and other statutory instruments made under this Regulations.
  - b. Where the Commission determines that a previously approved bond is,

or for any cause has become insufficient, it may require an additional bond or bonds to be given by the warehouse operator concerned, conforming with the requirements of this section, and, unless the additional bond is given within the time fixed by a written demand made by the Commission, the licence of the warehouse operator may be suspended or revoked by the Commission.

- (3) Whenever the Commission shall determine that a previously approved insurance is insufficient, it shall require additional insurance to be given by the warehouse operator, conforming to the requirements of this Regulations.
- (4) (a) Each applicant for a licence to operate a warehouse under this Regulations shall as a condition to the granting thereof, file or have on file with the Commission the goods proposed to be warehoused and a copy of his schedule of charges as a warehouse operator.
  - (b) No licensed warehouse operator may make a change in his charges unless a notice of such change in his schedule, and the reasons therefore, are filed with and the change is approved by the Commission.
  - (c) The Commission shall refuse to approve any change, which it finds unjust, unreasonable, or discriminatory after opportunity for hearing has been afforded to the warehouse operator.

#### **9. Warehouse Operator's Specialized Staff Licence**

- (1) No person shall weigh, sample, grade, classify or certify any goods stored in a warehouse licensed under this Regulations unless duly licensed by the Commission under this Regulations.
- (2) The Commission shall prescribe in the regulations, the qualifications and other conditions for the issuance of specialized staff licence for samplers, graders, weighers or quality Inspectors.
- (3) (a) Every application for a Specialized Staff Licence shall be in such form and accompanied by such fees as may be prescribed by the Commission
  - (b) Every application shall name the specific job for which the licence is required.

#### **10. Warehouse Inspectors**

- (1) The Commission may appoint or license persons or a group of persons to be warehouse Inspectors.
- (2) The Commission shall prescribe in the regulations, qualifications of a person to be licensed a warehouse inspector.
- (3) The warehouse inspectors licensed pursuant to the provisions of this Regulations shall have power to inspect warehouse premises and goods kept therein to ensure that the warehouse operator observes the conditions in this Regulations, and regulations prescribed thereunder and any other conditions appearing on the licence issued.

- (4) A warehouse Inspector or any other person duly authorized in writing in that behalf may, at any reasonable time during the day, enter a warehouse premises for the purposes of ensuring that the provisions of this Regulations or rules and regulations issued thereunder are observed.

## **11. Powers of Warehouses Inspector**

- (1) A Licensed Warehouse Inspector shall have power among other functions:
- a) to determine whether warehouses for which licences are applied for or have been issued are suitable for the receiving, storage, conditioning, and handling of the goods stored or expected to be received, stored, conditioned, or handled;
  - b) to inspect the receiving, storing, conditioning and handling of goods stored in designated warehouses;
  - c) to inspect all relevant documents with regard to the warehouse operator's licence, warehouse operator, warehouse Receipt, agreements and any other necessary documents in the performance of the warehouse inspector's duties;
  - d) to prescribe measures to be taken to rectify anomalies found during the inspection; and
  - e) to submit an inspection report to the Commission within [14 (fourteen)] days of the completion of the assignment.
- (2) Notwithstanding the provisions in sub regulation 1(e) above, the licensed Warehouse Inspector shall report immediately to the Commission, if, during the course of inspection, he finds out one of the following:-
- a) goods are in such a condition that, if immediate remedial measures are not taken, the conditions of such goods will deteriorate to irreversible levels;
  - b) goods are not of the grade represented on the warehouse Receipts issued to the depositors;
  - c) the warehouse insurance cover is not adequate to cover the goods stored in the warehouse;
  - d) the warehouse building(s) is/are not in a condition, conducive for keeping the goods according to the required standard and no measures are being taken by the operator or owner to rectify the situation; or
  - e) any other form of non-compliance with this Regulations and any regulations prescribed thereunder calling for urgent action on the part of the warehouse operator.
- (3) A licensed warehouse Inspectors shall carry out spot checks on license warehouses and the facilities of licensed warehouse operators at least once every [three months] to ensure that they meet the Commission's basic required standards—whether financial or physical
- (4) The warehouse Inspector can during spot checks also perform quality determination, grading and independent verification of the stored goods.
- (5) Every licensed warehouse or licensed warehouse operator shall permit any authorized representative or agent of the Commission to enter and inspect or

examine, on any business day, during usual business hours, a warehouse's business, mode of conducting the same, facilities, equipment, inventories, property, books, records, accounts, papers and minutes of proceedings held at such warehouse, and any other records deemed relevant to the operation of the warehouse.

- (6) Every licensed warehouse or licensed warehouse operator shall provide the necessary assistance required for any examination made in accordance with this Regulations and any regulations prescribed thereunder.
- (7) The licensed warehouse Inspector shall charge such fees for every examination or inspection services provided as may be determined by the Commission from time to time.

## **12. Issuance of Licence**

- (1) The Commission shall issue a licence to the applicant:-
  - a) On its approval of the Bond, insurance and schedule of charges filed by the applicant;
  - b) Upon its determination that the warehouse(s) covered by such application is (are) suitable for the proper storage of the goods intended to be stored therein and;
  - c) Its determination that the applicant has complied with the provisions of this Regulations and regulations promulgated thereunder.
- (2) Upon Receipt of an application for a licence, the Commission may issue such temporary permit to the applicant for such reasonable time, (not to exceed [thirty days], as in the judgment of the Commission may be necessary or advisable to enable the applicant to comply with the further requirements of this Regulations for obtaining a licence. Such a permit shall have the same effect as a licence and shall entitle and subject the holder of the permit to the same rights as if a warehouse license had been obtained.

## **13. Validity of Licence**

- (1) The validity of the licence shall be twelve months and shall be renewable subject to the provisions of this Regulations.
- (2) A licence is non transferable. A new licence shall be required anytime there is a change of ownership or change in name of a warehouse.

## **14. Designation as a Licensed and Bonded Warehouse**

- (1) Upon the filing with and approval by the Commission, of a Bond, in compliance with this Regulations, for the conduct of the business of a licensed warehouse, the warehouse may be designated as licensed and bonded and the warehouse operator shall display in a conspicuous place, such identification mark as the Commission may prescribe by regulation.

(2) Notwithstanding anything in this Regulations, no warehouse shall be designated as licensed and bonded under this Regulations and no name or description conveying the impression that it is so licensed and bonded, shall be used:-

- a) until a licence has been issued and a Bond, as provided for in section of this Regulations, has been filed with and approved by the Commission; or
- b) unless the licence issued under this Regulations remains unsuspended and unrevoked.

(3) Any person who contravenes subsection (2) commits an offence and is liable, on conviction, to a fine not exceeding .....or imprisonment for a term not exceeding [2] years.

### **15. Posting of Licence, Rates, and Signs**

Each licensed warehouse operator shall:-

- (1) immediately upon Receipt of a licence post it in a conspicuous place in the office of the licensed warehouse or, if a station licence, in the main office of such station;
- (2) keep conspicuously displayed in each operational office the approved schedule of charges for services; and
- (3) post at or near the main entrance to each of the licensed warehouses a sign, as prescribed by the Commission, which shall include the name under which such warehouse is operated and the term "Licensed and Bonded".

### **16. Publication of Licences, Investigations and Revoked Licences**

The Commission shall, from time to time, publish:-

- a) the names and addresses of persons licensed under this Regulations;
- b) the results of any investigations made under section XXXXXX of this Regulations;
- c) a list of all licences suspended or revoked under this Regulations and the causes for the suspension or revocation.

### **17. Revocation, Suspension and Non- Renewal of Licence**

- (1) The Commission may, after an opportunity to be heard has been afforded to the licensee concerned, suspend, revoke or refuse the renewal of any licence issued to any warehouse operator conducting business in a licenced warehouse under this Regulations for any contravention of this Regulations.
- (2) Any person aggrieved by the suspension, revocation or non-renewal of a licence may appeal to the Commission.

### **18. Operation after Revocation, Suspension or Expiration of Licences**

- (1) Where a licence is revoked, suspended or has expired, the warehouse operator shall terminate, in the manner prescribed by the Commission, all arrangements covering the receiving, storing, conditioning, or handling of goods in the warehouse stations covered by such licence, but shall be permitted, under direction or supervision of the Commission or the Commission's appointed collateral manager who shall oversee the delivery of deposited goods previously received. Such costs appertaining to the employment of the Commission's collateral manager will be drawn from a call on the warehouse operator's bond.
- (2) During any suspension of a licence, the warehouse operator shall cease receiving of goods and shall inform the public by conspicuously placing a notice at the warehouse entrance.
- (3) During suspension and revocation the warehouse operator shall maintain goods already received in good condition and make deliveries.

### *Insurance and Bonds*

#### **19. Cancellation of Insurance/Bond**

- (1) No licensed warehouse operator shall cancel or suspend an approved insurance policy or Bond or arrange for substitution of insurance policy or Bond without prior written approval of the Commission.
- (2) An insurance company may cancel insurance or Bond required by this Regulations only after the expiration of [30] days period from the date of mailing, by registered or certified mail, of the notice to the Commission of the intention to cancel or suspend the insurance policy.
- (3) Surety under a Bond may cancel insurance or Bond required by this Regulations only after the expiration of [35] days period from the date of mailing, by registered or certified mail, of the notice to the Commission of the intention to cancel or suspend the insurance policy.
- (4) The insurance company or Surety shall, at the time of giving notice to the Commission send a copy of the notice to the warehouse operator.
- (5) Notwithstanding any other provision of the Regulations, failure of the warehouse operator to provide new evidence of insurance within [30] days or sufficient Bond within [35] days after the Commission receives notice of cancellation shall cause the warehouse licence to be suspended.
- (6) If new evidence has not been filed by the [thirtieth] day following Receipt of notice the licence shall be revoked.

#### **20. Regulations on Bond by person injured**

Any person injured by reason of any obligation for which a Bond is given shall be entitled to sue on the Bond in his or her own name in court, to recover the damages he or she has sustained by the breach, provided that no such Regulations shall be

commenced unless the dispute has first been referred to arbitration in accordance with the Alternative Dispute Resolution Regulations 2010 (Act 798) and any subsequent amendments thereto or such other arbitration/mediation system as may be established by the Commission for the resolution of trade disputes.

## **21. Claims under Casualty Insurance**

- (1) In case fire, internal explosion, lightning or windstorm is deemed by a loss adjuster, appointed by the insurer and approved by the Commission, to be the proximate cause of destruction or damage to any goods in any licensed warehouse, the warehouse operator shall, upon demand by the depositor, and upon being presented with the Receipt or other evidence of ownership, make settlement, after deducting the warehouse operators charges and advances, at the market value of the goods based on the value at the average price paid for the goods of the same grade and quality on the date of the loss at the location of the warehouse.
- (2) The warehouse operator must make complete settlement to all depositors having goods stored in any warehouse, damaged or destroyed, within [ten] days after settlement with the insurance company. Failure of the warehouse operator to make such settlement shall be grounds for the revocation or suspension of the warehouse licence in addition to any civil remedies at law available to the depositor.

## **PART III - WAREHOUSE OPERATORS**

### *Duties and Obligations of Warehouse Operators*

## **22. Duties of Warehouse Operator to Receive Goods and Issue Receipts**

- (1) Every Licensed warehouse operator shall receive for storage, conditioning, or handling, without discrimination, so far as the capacity and facilities of the warehouse will permit, all goods in suitable condition for storage, conditioning, or handling tendered to the operator in the usual course of business and shall upon receiving any such goods issue therefore a Receipt or ticket. Where a ticket is issued on Receipt of the goods, a Receipt shall be issued upon demand.
- (2) A person who deposits goods for storage in a licensed warehouse shall be taken to have deposited the goods subject to the terms of this Regulations.

## **23. Rebates and Preferences Prohibited.**

No licensed warehouse operator shall:-

- (1) Directly or indirectly, by any special charge, rebate, draw back, or other device, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered in the receiving, storage, conditioning, or handling of any goods than the operator demands, collects, or receives from any person for doing a like and contemporaneous service in the receiving, storage, conditioning, or handling of any goods under substantially similar circumstances or conditions; or

- (2) Make or give any undue or unreasonable preference or advantage to any person in any respect whatsoever; or
- (3) Subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

#### **24. Duty to Keep Goods Separately**

Except as provided in this Regulations a warehouse operator shall keep goods of each depositor separate from goods of other depositors and from other goods of the same depositor for which a separate Receipt has been issued as to permit the identification and re-delivery of the goods deposited.

#### **25. Commingling**

- (1) If authorized by agreement, a warehouse operator may mingle fungible goods with other goods of the same kind and grade.
- (2) If goods are mingled in the manner described in subsection (1), the holders of the Receipts for the mingled goods own the entire mass in common, and each holder is entitled to the proportion of them that the quantity shown by each holder's Receipt to have been deposited bears to the whole.
- (3) The warehouse operator shall be liable to each depositor for the care and delivery of his share of such commingled goods to the same extent and under the same condition as if the goods had been kept separate.

#### **26. Duty of Care**

A warehouse operator is liable for loss of or damage to goods caused by the warehouse operator's failure to exercise such care and diligence in regard to them as a careful and vigilant owner of similar goods would exercise in the custody of the goods in similar circumstances.

#### **27. Duties to Keep Records and Accounts**

- (1) Every warehouse operator shall keep in a place of safety a complete and accurate set of records and accounts of all transactions pertaining to the operation of a warehouse including records and accounts of:-
  - a) All goods received in the warehouse and withdrawn therefrom;
  - b) All unissued Receipts in his possession;
  - c) All sampling, grading and weighing results; and
  - d) All Receipts issued, returned to, or cancelled, by him.
- (2) The warehouse operator shall keep all the records and accounts of the warehouse business in numerical sequence separate and distinct from the records and accounts of any other business in such form and in such manner and for such period as the Commission may, by regulations, specify.

- (3) The warehouse operator shall make available to the Commission for inspection the records and accounts of the warehouse business at any time as may be desired by the Commission.
- (4) Copies of Receipts or other documents evidencing ownership of any goods or liability as a warehouse operator shall be retained so long as such documents are outstanding, and any such document which has been cancelled shall be retained for a period of not less than [5] years from the date of cancellation.

## **28. Duty to Deliver**

In the absence of lawful excuse, a warehouse operator must deliver the goods referred to in a negotiable Receipt, to the bearer of the Receipt on demand made by the bearer in accordance with Section 52 of this Regulations.

## **29. Duty to Deliver Goods to Persons with Valid Titles or Right.**

- (1) The warehouse operator shall take all necessary precautions to ensure that the delivery of goods is made to a person who has lawfully obtained a warehouse Receipt.
- (2) The warehouse operator's title or right to the possession of goods shall only be derived directly or indirectly from:-
  - a) a transfer made by a depositor at the time of or subsequent to deposit of goods; or
  - b) lien.
- (3) Unless the title or right to possession of the goods by a warehouse operator is obtained in accordance with the provisions of subsection (2) no title or right to possession of goods shall exonerate the warehouse operator from liability for refusing to deliver the goods according to the terms indicated on the warehouse Receipt.

## **30. Duty to Ascertain Valid Titles to Goods.**

Where a warehouse operator has information that a person other than the holder of a Receipt claims to be the owner of or entitled to the goods, the warehouse operator may refuse to deliver the goods until the warehouse operator has had a reasonable time, not longer than [5] working days, to determine the validity of the adverse claim or to commence interpleader proceedings.

### *Liabilities of a Warehouse Operator*

## **31. Damages for Late Delivery**

- (1) Delivery shall be made within the time provided in any contract with the depositor or, if no such contract provision exists, then to the several depositors in order of demand as rapidly as it can be done by ordinary diligence. Delivery made within forty-eight (48) hours, after excluding Saturdays, Sundays, and legal holidays, constitutes compliance with this subsection.

- (2) The person entitled to delivery of goods may maintain an action against the warehouse operator for damages resulting from the warehouse operator's failure to deliver within the time provided in this section. In any such Regulation the person entitled to delivery of the goods may seek recovery of his actual damages or liquidated damages of [one half of one percent] of the value for each day's delay after the time provided in this section.

### **32. Liability for Mis-delivery.**

- (1) A warehouse operator shall not deliver the goods if, prior to delivery, he receives information or otherwise becomes aware that a person to whom delivery is about to be made is not legally entitled to the delivery.
- (2) A warehouse operator who:
- a) comes to know that the person who claims delivery of the goods is not in fact lawfully entitled to the possession thereof;
  - b) ignores the request not to make delivery of the goods, made under paragraph (a); and
  - c) continues to deliver the goods shall be liable for conversion to all persons having proprietary rights in or possession of the goods.

### **33. Liability for Nonexistent or Mis-described Goods.**

The warehouse operator shall be liable to the holder of the warehouse Receipt for damages caused by non-existence of the goods or by failure of the goods being delivered to correspond with the description thereof in the Receipt at the time of deposit.

### **34. Liability for Failure to Cancel Warehouse Receipt after Delivering Goods.**

A warehouse operator who contrary to section 54 fails to take up and cancel a Receipt after delivery of all or any portion of goods shall be liable for failure to deliver the goods to anyone who purchase the Receipts in good faith and for valuable consideration, whether the Receipt was acquired before or after delivery of the goods by the warehouse operator.

### **35. Liability after a Warehouse Receipt has been Lost, Stolen or Destroyed.**

Subject to the provisions of section 58, a warehouse operator shall be liable for failure to deliver goods to a person to whom the lost, stolen or destroyed warehouse Receipt has been or shall be negotiated for value in good faith and without notice of the fact that a duplicate Receipt has been issued or goods have already been delivered.

### *Warehouse Operator's Lien*

### **36. Warehouse Operator's Right to Lien.**

- (1) Every warehouse operator has a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his agent.

- (2) The lien of the warehouse operator is for the amount of the storage and maintenance charges including:-
- a) all lawful charges for storage and preservation of the goods;
  - b) all reasonable charges for:-
    - (i) any notice required to be given under the provisions of this Regulations;
    - (ii) notice and advertisement of sale;
    - (iii) sale of goods where default is made in satisfying the lien of the warehouse operator; and
    - (iv) compliance of statutory provisions.
- (3) In case of any endorsement on the face of a negotiable warehouse Receipt, by a bank or the warehouse operator, such endorsement shall be evidence of a pledge and the pledgee shall have priority over the interest of the holder of the Receipt.
- (4) In case of any pledge referred to in sub-section (3), the warehouse operator shall not deliver the goods unless the endorsement of the pledge has been duly cancelled.

### **37. Statement of Charges under Lien.**

Where a negotiable Receipt is issued for goods, the warehouse operator shall have no lien on the goods except for

- (a) charges relating to the handling and storage of those goods after the date of the Receipt, unless the Receipt expressly enumerates other charges for which a lien is claimed; and
- (b) any conditioning of the goods that has been undertaken by the warehouse operator at the time of or after the date of deposit and where the provision of that service and its associated costs have been expressly agreed to in writing by the depositor.

### **38. Refusal to Deliver Goods until Lien is Satisfied.**

A warehouse operator having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

### **39. Enforcement of lien.**

- (1) A warehouse operator's lien may be enforced subject to the provisions of section 42 against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and against all goods belonging to others, which have been deposited by the person who is liable as a debtor for the claims to which the lien is asserted if such person has been entrusted with goods at the time of deposit just as a person who takes the goods in good faith and for value.

- (2) A warehouse operator's lien may be satisfied by sale of goods, other remedies allowed by the law for the enforcement of a lien against personal property or any other legally enforceable action for recovery of the warehouse operator's claim.
- (3) Where goods are not taken back within the declared period of storage,
- a) The warehouse operator shall have the right to recover his charges, by selling by public auction, in accordance with Auction Sales Law 1989, PNDCL 230 or in any other manner provided in this section any goods upon which he has a lien.
  - b) The warehouse operator shall give a notice in writing of his intention to sell the goods to the person liable as debtor for the charges for which the lien exists or to the owner or person owning the right of property of the goods.
  - c) The notice under sub-section (3) (b) shall:-
    - (i) Contain all the details about the goods, the location of warehouse, date of deposit, the name of depositor and a statement of lien claimed by the warehouse operator for the goods stored in the warehouse; and
    - (ii) State that unless the charges are paid within the stipulated time mentioned in the notice, the goods shall be advertised for sale and sold by public auction at a time and place as specified in the notice.
  - d) If the charges are not paid on or before the day mentioned in the notice, then, unless any other mode of sale is specified by the Commission by regulations, an advertisement of the sale shall be published in a leading newspaper having circulation in the locality where the sale is to be held as well as where the owner of the goods is located and the sale shall be held not less than fourteen days from the date of first publication of the advertisement.
  - e) The warehouse operator shall, from the proceeds of the sale, satisfy his lien and shall pay over the surplus, if any, to the person entitled thereto.

#### **40. Perishable and Hazardous Goods**

- (1) When goods are of a perishable nature, or by keeping will deteriorate greatly in value, or injure other property, the warehouse operator may give such notice as is reasonable and possible under the circumstances to the holder of the Receipt for the goods, if the name and address of the holder is known to the warehouse operator or if not known to the warehouse operator then to the depositor, requiring the holder to satisfy the lien on the goods and to remove them from the warehouse.
- (2) The notice referred to in subsection (1) may be given by sending it by registered mail addressed to the person to whom it is to be given at the person's last known place of address and the notice shall be deemed to be given on the day following the mailing.

- (3) On the failure of the person to whom notice is to be given to satisfy the lien and remove the goods within the time specified in the notice, the warehouse operator may sell the goods at public or private sale without advertising.
- (4) Where the warehouse operator after a reasonable effort is unable to sell the goods, the warehouse operator may dispose of them in any manner the warehouse operator thinks fit, and the warehouse operator shall incur no liability by reason of disposing of them.
- (5) The warehouse operator shall, from the proceeds of any sale made pursuant to this section, satisfy the warehouse operator's lien and shall hold the balance in trust for the holder of the Receipt.

#### **41. Effect of Sale**

If goods have been lawfully sold to satisfy a warehouse lien, or have been lawfully sold or disposed of under section 41, the warehouse operator is not liable for failure to deliver the goods to the holder of the Receipt.

#### **42. Loss of Lien**

A warehouse operator shall lose the right of his lien upon the goods by –

- a) Surrendering possession thereof; or
- b) Refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this Regulations.

#### **43. Warehouse Operator's Lien Loss Does Not Preclude Other Remedies.**

The fact that a warehouse operator has or has not a lien upon the goods, shall not affect his entitlement to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouse operator.

### **PART IV - WAREHOUSE RECEIPTS**

#### **44. Who May Issue A Warehouse Receipt?**

- (1) For the purposes of this Regulations, a warehouse Receipt may only be issued by persons duly authorized and licensed to do so under this Regulations.
- (2) No warehouse operator shall issue a warehouse Receipt without actually receiving the goods of the quantity, quality or grade and other particulars as may be mentioned in the Receipt.

#### **45. Negotiable Warehouse Receipts**

- (1) A warehouse Receipt in which it is stated that the goods received will be delivered to the person named in the Receipt or his order shall be known as a negotiable warehouse Receipt.

- (2) No words shall be inserted in a negotiable Receipt with the effect of rendering that Receipt non-negotiable.
- (3) The words in a negotiable warehouse Receipt limiting its negotiability shall be void.
- (4) A negotiable warehouse Receipt shall be valid for delivery till the date of expiry of the declared shelf-life of the goods for which it is issued.
- (5) Notwithstanding sub section (4) above, the holder of a warehouse receipt may request an extension of the validity of a receipt no later than 14 days prior to its expiry date. The granting of such an extension shall be the responsibility of the warehouse operator and such decision must be based on the continued good shelf life of the goods for which it is issued.

#### **46. Non-negotiable Warehouse Receipts**

- (1) A warehouse Receipt in which it is stated that the goods received will be delivered to the depositor or to any other specified person is a non-negotiable Receipt.
- (2) A warehouse operator who issues a non-negotiable Receipt must cause to be plainly marked on its face "non-negotiable" or "not negotiable".
- (3) If a warehouse operator fails to comply with subsection (1), a holder of the Receipt who purchases it for valuable consideration believing it to be negotiable may, at the holder's option, treat the Receipt as vesting in the holder all rights attaching to a negotiable Receipt and imposing on the warehouse operator the same liabilities the warehouse operator would have incurred had the Receipt been negotiable and the warehouse operator is liable accordingly.

#### **47. Form of Warehouse Receipt**

- (1) A negotiable warehouse Receipt shall be in the form and contain such information as may be prescribed by the Commission from time to time.
- (2) A warehouse Receipt, which may be either in writing or in electronic form, shall be a document of title to goods if it contains all the following particulars, namely:-
  - (a) Receipt number;
  - (b) warehouse licence number and date up to which it is valid;
  - (c) the location of the warehouse or other place where the goods are stored;
  - (d) the name of the person by whom or on whose behalf the goods are deposited;
  - (e) the date of issue of the Receipt;
  - (f) a statement either:-
    - i. that the goods received will be delivered to the person by whom or on whose behalf the goods are deposited, or to another named person, or

- ii. that the goods will be delivered to bearer or to the order of a named person;
  - (g) the rate of storage charges;
  - (h) a description of the goods or of the packages containing them;
  - (i) the signature of the warehouse operator or the authorized agent of the warehouse operator;
  - (j) a statement of the amount of any advance made and of any liability incurred for which the warehouse operator claims a lien.
- (3) If a warehouse operator omits from a negotiable Receipt any of the particulars set out in subsection (1), the warehouse operator is liable for damage caused by the omission.
- (4) A Receipt must not be considered not to be a warehouse Receipt because of the omission of any of the particulars set out in subsection (2).
- (5) A warehouse operator may insert in a Receipt issued by the warehouse operator any other term or condition that:-
- (a) is not contrary to any provision of this Regulations, and
  - (b) does not impair the warehouse operator's obligation to exercise the care and diligence in regard to the goods as a careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances.

#### **48. Receipts Terms**

- (1) Every warehouse Receipt issued shall embody within its terms:-
- (a) The grade of the goods received as established by the official standards adopted by the Commission, unless the identity of the goods is preserved in a special pile or special bin or otherwise and an identifying mark of such identity preserved goods shall appear on the face of the Receipt.
  - (b) A statement that the Receipt is issued subject to this Warehouse Receipt System Regulations and regulations prescribed thereunder.
  - (c) A clause reserving for the warehouse operator the right to terminate storage, conditioning, and handling arrangements and collect outstanding charges upon the revocation of the warehouse operator's licence.
  - (d) Such other terms and conditions as may be required by the Commission provided that nothing contained therein shall require a Receipt issued for any goods to specifically state the variety of the goods by name.

#### **49. Description of Goods by Mark**

- (1) Where goods are described in a Receipt merely by a statement:
- (a) of certain marks or labels on the goods or on the packages containing them,
  - (b) that the goods are said by the depositor to be goods of a certain kind, or
  - (c) that the packages containing the goods are said by the depositor to contain goods of a certain kind, or by a statement of import similar to that of

subsection (a), (b) or (c), the statement does not impose any liability on the warehouse operator in respect of the nature, kind or quality of the goods.

- (2) A statement referred to in subsection (1) shall be deemed to be a representation by the warehouse operator either
- (a) that the marks or labels were in fact on the goods or packages,
  - (b) that the goods were in fact described by the depositor as stated, or
  - (c) that the packages containing the goods were in fact described by the depositor as containing goods of a certain kind, as the case may be.

## **50. Registration of Negotiable Warehouse Receipts**

A warehouse operator shall register all negotiable warehouse Receipts issued by him with an automated depository approved by the Commission.

## **51. Delivery of Warehouse Receipts to Owner**

Subject to this Regulations, a warehouse Receipt issued by a warehouse operator when delivered to the owner or bailor of the goods or mailed to the owner or bailor at the owner's or bailor's address last known to the warehouse operator constitutes the contrRegulations between the owner or bailor and the warehouse operator.

## **52. Duty to Deliver**

- (1) In the absence of a lawful excuse, a warehouse operator must deliver the goods referred to in a negotiable Receipt, to the bearer of the Receipt on demand made by the bearer and on the bearer doing all of the following:
- (a) Satisfying the warehouse lien;
  - (b) Surrendering the Receipt with endorsements necessary for the negotiation of the Receipt; and
  - (c) Acknowledging in writing the delivery of the goods.
- (2) In the absence of a lawful excuse, a warehouse operator must deliver the goods referred to in a non-negotiable Receipt to the holder of the Receipt on demand made by the holder and on the holder doing all of the following:
- (a) Satisfying the warehouse lien;
  - (b) Surrendering the Receipt; and
  - (c) Acknowledging in writing the delivery of the goods.
- (3) If a warehouse operator refuses or fails to deliver the goods in compliance with this section, the burden is on the warehouse operator to establish the existence of a lawful excuse for the refusal or failure.
- (4) Subject to provisions of subsections (1) a warehouse operator shall deliver goods only after being satisfied that:
- (a) The person receiving the goods is lawfully entitled to the possession of the goods;
  - (b) By the terms indicated in the warehouse Receipt issued for the particular goods, that person is entitled to delivery, either by himself or on his written authorization, to another person.

- (5) The warehouse operator shall not be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of a Receipt given for the goods when they were deposited, even if such Receipt is negotiable, in a situation where goods have been lawfully sold or disposed of:-
- (a) because of their perishable or hazardous nature; or
  - (b) to satisfy the warehouse operator's lien.

### **53. Delivery on Presentation of Negotiable Receipt**

If a person is in possession of a negotiable Receipt that has been endorsed to the person or endorsed in blank, or by the terms of which the goods are deliverable to the person or the person's order or to bearer, the warehouse operator is justified in delivering the goods to that person if delivery is made in good faith and without notice of any defect in the title of that person.

### **54. Cancelling Negotiable Receipts on Delivery of Goods**

A warehouse operator who delivers goods for which he had a negotiable Receipt shall take up and cancel the Receipt.

### **55. Liability for Failure to Deliver Goods**

- (1) Except as provided in section 41 if a warehouse operator delivers goods for which the warehouse operator has issued a negotiable Receipt, and fails to take up and cancel the Receipt, the warehouse operator is liable for failure to deliver the Goods to anyone who purchases the Receipt in good faith and for valuable consideration, whether he or she acquired title to the Receipt before or after delivery of the goods by the warehouse operator.
- (2) Except as provided in section 41, if a warehouse operator:-
- (a) delivers part of the goods for which the warehouse operator has issued a negotiable Receipt; and
  - (b) fails either
    - i. to take up and cancel the Receipt, or
    - ii. to place plainly on it a statement of what goods or packages have been delivered,

the warehouse operator is liable, for failure to deliver all the goods specified in the Receipt, to anyone who purchases the Receipt in good faith and for valuable consideration, whether the purchaser acquired title to the Receipt before or after the delivery of any portion of the goods.

### **56. Altered Warehouse Receipts**

- (1) An alteration to a warehouse Receipt shall be regarded as:
- (a) immaterial, if the alteration does not affect ex-ante proprietary rights of the holder;
  - (b) authorized, when made with an implied or direct permission or connivance of the warehouse operator and which render a warehouse operator and the perpetrator liable under the provisions of this Regulations; or

- (c) unauthorized but made without fraudulent intent, when made without an implied or direct permission or connivance of the warehouse operator and which render the warehouse operator liable according to the terms of the Receipt, as they were before alteration.

### **57. Right of Purchasers of Altered Receipts against Warehouse Operator**

- (1) A purchaser of a warehouse Receipt for value without notice of alteration shall acquire the same proprietary rights against the warehouse operator which the purchaser would have acquired if the Receipt had not been altered at the time of purchase.
- (2) A purchaser of a warehouse Receipt shall be regarded to have had notice of alteration, if before the purchase of the warehouse Receipt, he or his agent took part in or influenced the alteration of the said warehouse Receipt.
- (3) A purchaser of an altered warehouse Receipt who has been found or who could be reasonably imputed with possession of notice of alteration commits an offence and shall be proceeded against under section 76(2) (f) in the same footing with the operator.

### **58. Lost or Destroyed Warehouse Receipts**

- (1) In the case of lost or destroyed warehouse Receipts, a new Receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the Receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate Receipt issued in lieu of a lost or destroyed Receipt, may be issued upon compliance with this section.
- (2) Before issuing such new or duplicate Receipt the warehouse operator shall require the depositor or other person applying therefor to make and file with him:-
  - (a) An affidavit showing that the applicant is lawfully entitled to the possession of the original Receipt, that he has not negotiated or assigned it, how the original Receipt was lost or destroyed, and if lost, that diligent effort has been made to find the Receipt without success, and
  - (b) A bond in an amount double the market value, at the time the bond is given, of the goods represented by the lost or destroyed Receipt. Such bond shall be in a form approved for that purpose by the Commission, shall be conditioned to indemnify the warehouse operator against any loss sustained by reason of the issuance of such Receipt, and shall be executed by the depositor as principal and by a corporate surety licensed to do business in Ghana, as surety.
- (3) Upon Receipt of such affidavit and bond, the warehouse operator shall send copies thereof to the Commission.
- (4) The original affidavit and bond shall be retained by the warehouse operator not fewer than five (5) years after the duplicate Receipt is cancelled.

### **59. Duplicate Receipts**

- (1) No more than one Receipt shall be issued in respect of the same goods except in case of a lost or destroyed Receipt, in which case the new Receipt, if one is given, shall bear the same date as the original and shall be plainly marked on its face "duplicate".
- (2) A warehouse operator is liable for all damage caused by the warehouse operator's failure to observe subsection (1) to any person who purchases the subsequent Receipt for valuable consideration believing it to be an original, even though the purchase is made after the delivery of the goods by the warehouse operator to the holder of the original Receipt.
- (3) A Receipt on the face of which the word "duplicate" is plainly marked is a representation and warranty by the warehouse operator that it is an accurate copy of a Receipt properly issued and uncanceled at the date of the issue of the duplicate.
- (4) A duplicate Receipt issued shall have the same standing as the original and shall not impose upon the warehouse operator any additional liability.

#### **60. Reasonable Time to Determine Validity of Claims**

If a warehouse operator has information that a person other than the holder of a Receipt claims to be the owner of or entitled to the goods, the warehouse operator may refuse to deliver the goods until the warehouse operator has had a reasonable time, not longer than [7] days, to determine the validity of the adverse claim or to commence interpleader proceedings.

#### **61. Negotiable Receipt to State Charges for which Lien Claimed**

If a negotiable Receipt is issued for goods, the warehouse operator has no lien on the goods except for charges for storage of those goods after the date of the Receipt, unless the Receipt expressly enumerates other charges for which a lien is claimed.

#### **62. Negotiable Receipt Conclusive Proof**

- (1) In the hands of a holder who has purchased it for valuable consideration, a negotiable Receipt is conclusive evidence of the Receipt by the warehouse operator of the goods described in it as against the warehouse operator and any person signing it on the warehouse operator's behalf or any person claiming through him.
- (2) Subsection (1) applies, even though the goods or some part of them may not have been received, unless the holder of the negotiable Receipt has actual notice at the time of receiving it that the goods had not in fact been received.

#### **63. Negotiation of Negotiable Receipts by Delivery and by Endorsement**

- (1) A negotiable Receipt may be negotiated by delivery in either of the following cases if
  - (a) by the terms of the Receipt, the warehouse operator undertakes to deliver the goods to the bearer;
  - (b) by the terms of the Receipt, the warehouse operator undertakes to deliver the goods to the order of a named person, and that person or a subsequent endorsee has endorsed it in blank or to bearer.
- (2) A negotiable Receipt may be negotiated by the bearer endorsing it to a named person if
  - (a) by the terms of a negotiable Receipt, the goods are deliverable to bearer, or
  - (b) a negotiable Receipt has been endorsed in blank or to bearer.
- (3) If a negotiable Receipt is endorsed under subsection (2), after that the Receipt must be negotiated by the endorsement of the endorsee or a subsequent endorsee or by delivery if it is again endorsed in blank or to bearer.
- (4) If, by the terms of a negotiable Receipt, the goods are deliverable to the order of a named person, the Receipt may be negotiated by the endorsement of that person.
- (5) An endorsement under subsection (4) may be in blank, to bearer or to a named person, and if the endorsement is to a named person the Receipt may be again negotiated by endorsement in blank, to bearer or to another named person, and subsequent negotiation may be made in similar manner.

#### **64. Persons Capable of Negotiating a Warehouse Receipt**

A negotiable warehouse Receipt may be negotiated by any person in possession of the same irrespective of the manner the warehouse Receipt was acquired, if, by the terms of the Receipt, the warehouse operator undertakes to deliver the goods to the order of such person or if at the time of negotiation the Receipt is in such a form that it may be negotiated by delivery.

#### **65. Rights in Negotiated Receipts**

- (1) A person to whom a negotiable Receipt is duly negotiated shall acquire all of the following:
  - (a) such title to the goods as the person negotiating the Receipt to him had or had ability to convey to a purchaser in good faith for value;
  - (b) such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the Receipt had or had ability to transfer to a purchaser in good faith and for valuable consideration;
  - (c) the benefit of the obligations of the warehouse operator to hold possession of the goods for the person according to the terms of the Receipt as fully as if the warehouse operator had contracted directly to him; and
  - (d) all rights accruing under the law of agency, estoppel, including right to goods delivered to the warehouse operator after the warehouse Receipt was delivered.

- (2) The negotiation of a warehouse Receipt in good faith and the acquisition of title by a person to whom a warehouse Receipt has been negotiated, shall create a direct obligation to the warehouse operator to hold possession of the goods for such person according to the terms of the Receipt as fully as if the warehouse operator had contracted directly with him.

#### **66. Warranties on Negotiation of Warehouse Receipt.**

- (1) A person who, for valuable consideration, negotiates or transfers a Receipt by endorsement or delivery, including one who assigns for valuable consideration, a claim secured by a Receipt, unless a contrary intention appears, warrants the following:-
  - (a) that the Receipt is genuine;
  - (b) that the person has a legal right to negotiate or transfer it;
  - (c) that the person has no knowledge of any fact that would impair the validity of the Receipt;
  - (d) that the person has a right to transfer the title to the goods; and that the goods are merchantable or fit for a particular purpose when those warranties would have been implied, if the contract of the parties had been to transfer without a Receipt the goods represented by it.

#### **67. Liability of Endorser**

The endorsement of a Receipt does not make the endorser liable for any failure on the part of the warehouse operator or previous endorsers of the Receipt to fulfill their respective obligations.

#### **68. Validity of Negotiation of Receipt**

The validity of the negotiation of a Receipt is not impaired by the Regulations that:-

- (a) The negotiation was a breach of duty on the part of the person making the negotiation; or
- (b) The owner of the Receipt was induced by fraud, mistake or duress to entrust the possession or custody of the Receipt to that person, the person to whom the Receipt was negotiated, or a person to whom the Receipt was subsequently negotiated, paid value for it without notice of the breach of duty, or fraud, mistake or duress.

#### **69. Negotiation of Receipt Defeats Lien of Seller of Goods**

- (1) When a negotiable Receipt has been issued for goods, no seller's lien or right of stoppage in transit defeats the rights of a purchaser for value in good faith to whom the Receipt has been negotiated, whether the negotiation is prior or subsequent to the notification to the warehouse operator who issued the Receipt of the seller's claim to a lien or right of stoppage in transit.
- (2) The warehouse operator shall not deliver the goods to an unpaid seller unless the Receipt is first surrendered for cancellation.

#### **70. Transfer of a Negotiable Receipt without Endorsement**

When a negotiable Receipt is transferred for valuable consideration by delivery and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel the transferor to endorse the Receipt unless a contrary intention appears, and the negotiation takes effect as of the time when the endorsement is made.

### **71. Subsequent Negotiation**

When a person:-

- (a) having sold, mortgaged or pledged goods that are in a warehouse and for which a negotiable Receipt has been issued, or
  - (b) having sold, mortgaged or pledged a negotiable Receipt representing goods, continues in possession of the negotiable Receipt,
- the subsequent negotiation of it by that person under a sale or other disposition of it to a person receiving it in good faith, for valuable consideration and without notice of the previous sale, mortgage or pledge, has the same effect as if a previous purchaser of the goods or Receipt had expressly authorized the subsequent negotiation.

### **72. Rights acquired in the Absence of Due Negotiation**

A warehouse Receipt may be transferred without negotiation if transferred by:-

- (a) the holder to another person under a separate arrangement or agreement; or
- (b) order of the court.

### **73. Transfer of Goods Covered by Non-negotiable Receipt**

Goods covered by a non-negotiable Receipt may be transferred by the holder by delivery to a purchaser or donee a transfer of the goods in writing executed by the holder, but the transfer does not affect or bind the warehouse operator until the warehouse operator is notified in writing of it.

### **74. Rights of Person to Whom Goods Transferred**

- (1) A person to whom the goods covered by a non-negotiable Receipt are transferred acquires, as against the transferor:-
  - (a) the title to the goods, and
  - (b) the right to deposit with the warehouse operator the transfer or duplicate of it or to give notice in writing to the warehouse operator of the transfer.
- (2) The transferee acquires the benefit of the obligation of the warehouse operator to hold possession of the goods for the transferee according to the terms of the Receipt:-
  - (a) on deposit of the transfer of the goods, or
  - (b) on giving notice in writing of the transfer and on the warehouse operator having a reasonable opportunity of verifying the transfer.

## **PART V - OFFENCES AND PENALTIES**

### **75. Offences and Penalties**

- (1) Any warehouse operator or any officer, agent or servant of a warehouse operator who:
- (a) Removes, delivers, directs, assists, or permits any person to remove, or deliver any goods from any warehouse for which Receipts have been issued and are outstanding without receiving and cancelling the Receipt issued therefor;
  - (b) Sells, encumbers, transfers, or in any manner removes or permits to be transferred, or removed from a licensed warehouse any goods received for deposit for storage, conditioning, or handling for which tickets have been issued without written approval of the holder of the ticket and such transfer shall be shown on the individual depositor's account and the inventory records of the warehouse operator;
  - (c) Knowingly accepts for storage any goods destined for human consumption that has been contaminated with an agricultural pesticide or filth rendering it unfit for human consumption, if the goods are commingled with any uncontaminated goods; and
  - (d) Delivers goods out of the possession of such warehouse operator, knowing that a negotiable Receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such Receipt at or before the time of such delivery,
  - (e) Any person who deposits goods to which he has no title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable Receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage.
  - (f) Knowingly delivering goods not related to delivery notice

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year, or to a fine not exceeding [        ] or to both.

- (3) Any warehouse operator or any officer, agent or servant of a warehouse operator who:-
- (a) Issues a negotiable warehouse Receipt without a valid licence issued by the Commission;
  - (b) Issues a Receipt for any goods that are not in the operator's warehouse at the time the Receipt is issued;
  - (c) Issues a Receipt or ticket in excess of the amount of goods held in the operator's licensed warehouse to cover the Receipt;
  - (d) Issues a Receipt showing a grade or description different from the grade or description of the goods deposited;
  - (e) Issues a duplicate Receipt without substantially following the procedure for issuing duplicate Receipt and plainly placing upon the face thereof the word "Duplicate";
  - (f) Issues or aids in issuing negotiable Receipt for deposited goods owned by the warehouse operator and omits to state any fact with respect to ownership;
  - (g) Knowingly issues or aids in fraudulently issuing a Receipt for goods knowing that it contains any false statement;
  - (h) Knowingly issues or aids in issuing a duplicate or additional negotiable Receipt for goods knowing that a former negotiable Receipt for the same

goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate" except in the case of a lost or destroyed Receipt;

- (i) Knowingly delivers goods not related to delivery notice.
- (3) Any warehouse operator or any officer agent or servant of a warehouse operator who knowingly negotiates a warehouse Receipts which does not confer legal title and or without authorization from legal owner commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year, or to a fine not exceeding [       ] or to both.
- (4) Any warehouse operator or any officer, agent or servant of a warehouse operator who
  - (a) Terminates storage of a goods without giving [       ] days' written notice to the Depositor; or
  - (b) Knowingly compromises the use of equipments to deceive in weigh, grade, sampling and documentation commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year, or to a fine not exceeding [       ] or to both.
- (5) Any person who obstructs a warehouse inspector or any other authorized person in the exercise of the power conferred upon him by this Regulations as warehouse inspector or who neglects or refuses to produce to the warehouse inspector or such authorized person any books, records, information or anything which the inspector or the authorized person may request to be produced for inspection, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding [       ] or to a fine not exceeding..... or to both.
- (6) Where an offence under this Section is committed by a company, every person, who at the time the offence was committed, was in charge of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
- (7) Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.
- (8) Notwithstanding anything contained in sub-section (3), where any offence under this section has been committed by a company and it is proved that such an offence has been committed with the consent or connivance of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

For the purposes of this section:-

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

- (9) Any person who commits any offence against any of the provisions of this Regulations, to which no specific penalty is provided shall be liable on conviction for every such offence to imprisonment for a term not exceeding [        ]months or to a fine not exceeding ..... or to both.

## **PART VI - MISCELLANEOUS PROVISIONS**

### **76. Revocation or Termination of Licence not to affect Receipts**

The revocation or termination of a licence under this Regulations shall not affect the validity of Receipts issued under the licence, and the warehouse operator will continue to comply with this Regulations with regard to valid Receipts so far issued.

### **77. Creation of Statutory Lien**

- (1) When a depositor stores goods with the Warehouse Operator, the depositor has a first priority lien on the goods or the proceeds there from or on goods owned by the Warehouse Operator if the depositor has written evidence of ownership disclosing a storage obligation. The lien arises at the commencement of the storage obligation. The lien terminates when the storage liability of the Warehouse Operator to the depositor terminates.
- (2) The lien created under this regulation shall be preferred to any lien or security interest in favor of any creditor of the Warehouse Operator, regardless of whether the creditor's lien or security interest attached to the goods or proceeds before or after the date on which the depositor's lien attached under sub-regulation (1) of this regulation.
- (3) A depositor who claims a lien under this sub-regulation (1) of this regulation need not file any notice of the lien in order to perfect the lien.
- (4) The lien created by sub-regulation (1) of this regulation is discharged, except as to the proceeds there from and except as to the goods owned by the Warehouse Operator upon sale of the goods by the Warehouse Operator to a buyer in the ordinary course of business.

### **78. Power of Commission to make Regulations**

The Commission may make regulations for the better carrying out of the provisions and purposes of this Regulations and may, in particular make regulations-

- (a) prescribing the procedures and-limits of negotiation of a negotiable warehouse Receipt;
- (b) prescribing a standard format of a warehouse Receipt;
- (c) determining the standards or requirements for allowing a warehouse operator to sell or dispose of goods, which are perishable or hazardous;
- (d) determining the manner of keeping depositors goods in a warehouse
- (e) prescribing the classification of warehouses;
- (f) determining goods which may be commingled in the ware house;
- (g) ways of recovering the warehouse operator's lien by sale of goods;
- (h) prescribing conditions for the licensing of the warehouse;

- (i) prescribing conditions that may be inscribed on the warehouse licence;
- (j) prescribing warehouse licence application procedure;
- (k) prescribing warehouse licence application appeal procedure;
- (l) prescribing the qualifications of the employees that may be employed by a warehouse operator,
- (m) prescribing fees that may be paid for warehouse licensing;
- (n) prescribing for anything which may be prescribed under this Regulations.

## 79. Interpretation

(1) In these Regulations, unless the context otherwise requires: -

**"Regulations"** means the Warehouse Receipt System Regulations;

**"Bin"** shall mean a bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored;

**"Commingle"** means the binning and or storage of goods by class, under circumstances other than identity preserved;

**"Commission"** means the Securities and Exchange Commission established by section 1 of the Securities Industry Law PNDCL 333

**"Conditioning"** means, but not limited to, the drying or cleaning of goods;

**"Delivery"** means voluntary transfer of possession from one person to another.

**"Depositor"** means any person who delivers goods in a warehouse for storage, handling, or who is the owner or legal holder of an outstanding warehouse Receipt, or who is lawfully entitled to possession of the goods;

**"Electronic form"** with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated microfiche or similar device;

**"Endorsee"** means the person to whom the warehouse Receipt is negotiated;

**"Endorsement"** means signing on the warehouse Receipt by the depositor or holder of the warehouse Receipt for the purpose of its negotiation;

**"Failure"** with regards to warehousing Receipt; means: -

- (a) inability of the warehouse operator to cover the storage obligations;
- (b) public declaration of insolvency;
- (c) revocation of a licence and the leaving of an outstanding obligation to a depositor or a denial of the application for a license renewal;

- (d) failure to redeliver any goods to a depositor in the ordinary course of business and where a bonafide dispute does not exist between the warehouse operator and the depositor,
- (e) failure to make application for licence renewal within [sixty] day after the annual licence renewal date; or
- (f) a denial of the application for a licence renewal.

**"Fungible goods"** means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit;

**"Goods"** means all tangible movable goods (other than actionable claims, money and securities), whether fungible or not; and for the purposes of the Regulations includes agricultural goods;

**"Grade"** means the quality standard of any goods as notified as grade designation by the Ghana Standard Board established by Section 1 of the Standards Decree 1973 (NRCD 173) 937 or any other law for the time being in force;

**"Holder"** means:

- a) in relation to a negotiable Receipt, a person who has possession of the Receipt and a right of property in it and,
- b) in relation to a non-negotiable Receipt, a person named in it as the person to whom the goods are to be delivered or the assignee of that person;

**"Identity Preserved"** means the handling of goods in such a manner that guarantees the return of the Regulationsual quantity and quality of the goods to the depositor.

**"Licence"** means a licence issued under the Regulations and includes any renewals and amendments thereof except where the context requires otherwise;

**"Licensed warehouse"** means any warehouse for which the Commission, subject to other terms and requirements of the Regulations, has issued a licence;

**"Negotiable Receipt"** means a Receipt which states that the goods specified in it will be delivered to bearer or to the order of a named person;

**"Non-negotiable Receipt"** means a which states that the goods specified in it will be delivered to the depositor or to another named person;

**"Person"** means any individual, corporation, two or more persons having a joint or common interest, or other legal or commercial entity.

**"Purchaser"** includes mortgagee and pledgee;

**"Receipt"** means a warehouse Receipt;

**"Regulation"** means a regulation made under this Regulations

**"Revocation"** means the permanent removal of a warehouse operator's licence following a hearing on violations of the Regulations;

**"Scale Weight Ticket"** hereinafter referred to as "ticket", means Goods Received Note, a load slip or other evidence, other than a Receipt, given a depositor by a warehouse operator licensed under the Regulations, upon initial delivery of the goods to the warehouse. A ticket shall not be negotiable.

**"Shortage"** means that a warehouse operator does not have a sufficient amount of goods by, kind, class, and quality, to cover his outstanding obligation for those goods;

**"Station"** means a warehouse located not more than three kilometers from the central office of the warehouse, for which a warehouse licence may be issued, listing two or more stations on the same licence; however, a fee shall be charged and collected for each station;

**"Suspension"** means the temporary removal of a licence actuated by any action or measure taken pursuant to the provisions of the Regulations;

**"To purchase"** includes to take as mortgagee or as pledgee;

**"Warehouse operator"** means any person who for reward engages in the business of operating a warehouse for receiving, storing, handling of goods for compensation and includes the agent or employee the scope of whose actual or apparent authority renders such person to exercise rights or become liable under the Regulations;

**"Warehouse Receipt"** means an acknowledgement in writing or in electronic form issued by a warehouse operator or his duly authorized representative of the Receipt for storage of goods not owned by the warehouse operator;

**"Warehouse"** means any building, structure or other protected enclosure approved by the Commission to be used or useable, for the storage or conditioning of goods or buildings used in relation thereof or including operation of the warehouse;

**"Warehousing business"** means the Business of maintaining warehouses for storage of goods and issuing negotiable warehouse Receipts;

(2) In this Regulations words denoting masculine include feminine. Unless the context otherwise requires words denoting the singular number shall include the plural and vice versa.

