

2010/03/30
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**(THIS AGREEMENT ENTERED ON THEDAY OF _____ MONTH,
TWO THOUSAND.....)**

BETWEEN

CENTRAL WAREHOUSING CORPORATION (or between the state agency)

A body corporate established under the Warehousing Corporation Act, 1962 (hereinafter referred to as the 'CORPORATION' which expression shall, whenever the context so requires or admits, mean and include its successors and assignees) having its Corporate Office at 4/1, Siri Institutional Area, August Kranti Marg, Hauz Khas, New Delhi through its Regional Manager/Warehouse Manager (as the case may be).. FIRST PART

AND

THE FOOD CORPORATION OF INDIA,

Incorporated under the Food Corporations Act, 1964 (hereinafter referred to as 'FCI' which expression shall, whenever the context so requires or admits, mean and include its successors and assignees) having its Head Office at 16-20, Barakhamba Lane, New Delhi through its General Manager/(Region)/Area Manager(as the case may be) ..SECOND PART.

- I. Whereas, in pursuance of the letter dated 30th March, 2010 of the Govt. of India, Ministry of CA,F&PD, Department of Food & Public Distribution, Krishi Bhawan, New Delhi, FCI is desirous to utilize storage space through the CORPORATION for storage of foodgrains/ sugar at the godowns built by private investors.
- II. Whereas the CORPORATION has agreed to provide storage space to FCI at the Warehouses constructed through Private Investors as per the existing functional designs and drawings as stipulated in PEG Scheme and provide services including but not confined to preservation, maintenance, security, handling, insurance as per the existing standards of services being rendered to FCI and in accordance with instructions issued by Government of India / FCI and arrangements/Agreements entered into between FCI and CORPORATION from time to time in this regard.
- III. FCI has agreed to give Guarantee of years for the storage charges to the CORPORATION for the godowns it has got constructed through Private Investors as approved by the High Level Committee (HLC) for PEG Scheme at the identified locations and capacities as per terms and conditions enumerated in this Agreement.
- IV. Now this Agreement witnesseth that the CORPORATION shall make available to FCI storage space as per the requirement of FCI on the following mutually agreed terms & conditions.

TERMS & CONDITIONS

1. STORAGE SPACE

1.1 FCI reserves the space with CORPORATION for a period ofyears in terms of MT capacity and in that reserved capacity, FCI will be free to make as many turnovers as required by the FCI.

1.2 CORPORATION shall keep the guaranteed godowns for exclusive occupation of FCI during the guarantee period.

1.3 The CORPORATION shall undertake satisfactory storage of stocks and shall take necessary care as is expected from a Storing Agency. CORPORATION shall be fully responsible for preservation; maintenance and security of stocks till the same are liquidated finally.

1.4 Mode of Payment:

1.4.1 For godowns hired on lease only basis: Rent for godowns constructed for lease purpose by Private Investors and operated by the CORPORATION shall be reimbursed to the CORPORATION at the monthly rates/ctl. as approved by SLC/HLC. FCI shall also pay to the corporation maintenance, preservation and security charges @ Rs. 1.60/ctl/month plus 15% of the rent (rate approved by HLC/SLC) as supervision charges on submission of separate bills. Private Investors will be responsible for the payment of service tax as applicable on storage charges of foodgrains and claim the same from FCI through the CORPORATION

1.4.2 For godowns hired on lease & services basis: Storage charges for godowns constructed for lease & services by Private Investors and supervised by the CORPORATION shall be reimbursed to the CORPORATION at the monthly rates/ctl. as approved by SLC/HLC for Lease & Services. FCI shall also pay to the Corporation, 15% of the monthly rates/ctl. as approved by SLC/HLC as supervision charges on submission of separate bills. There shall be annual increase of 33% of percentage increase in WPI in rent (Rate approved by HLC/SLC) for such godowns provided on lease with services by Private Investors to the CORPORATION. Private Investors will be responsible for the payment of service tax as applicable on storage charges of foodgrains and claim the same from FCI through the CORPORATION.

1.5 On expiry of the initial period of reservation of space, FCI may get reservation extended every time by an advance notice of one month for a further period of one year on annual guarantee basis.

1.6 If during the guarantee period on account of lower procurement or higher off-take or for any other reason the said storage space remains unutilized, FCI would continue to pay the storage charges. However where utilization of space is affected due to fault on the part of CORPORATION/Private Investors, rent shall not accrue to the extent of space unutilized because of the fault of CORPORATION/Private Investors.

1.7 CORPORATION only with the prior consent of FCI or on the advice of FCI shall endeavour to rent out the unutilized space to other parties and the storage charges so received would be adjusted against the unutilized guaranteed storage charges payable by FCI. But in case despite best efforts, such vacant capacity could not be hired out to any other user, FCI will continue to pay the storage charges during the guarantee period.

1.8 CORPORATION shall ensure that while renting out only such commodities are allowed to be stored which do not affect in any way, the FCI stocks already stored or likely to be stored as also such storage does not adversely affect immediate or FCI operations. The surplus space shall be physically segregated from the area where the FCI stocks are kept and it shall be ensured by the CORPORATION that in this process, there is no risk whatsoever to the food grain stored in the godown.

1.9 Cancellation of the reservation of space before the expiry of the guaranteed period would not be normally resorted to; however, in exceptional circumstances if it is so required by FCI, to cancel/curtail the quantum of reservation, it shall be resorted to only when the godown is rendered permanently unstorageworthy after FCI issues Notices to the CORPORATION and on Joint Inspections by a Committee set up at the level of Regional/State Heads of both organizations. Rent shall not be paid for such godowns from the date of issue of Notice by FCI. Cancellation of the reserved space can also be resorted to, with mutual consent of both FCI and the CORPORATION, in case during the guarantee period on account of lower procurement or higher off-take or for any other reason the said storage space remains unutilized.

1.10 In the cases, where godowns require repairs or roads not motorable or operation do not get commenced despite FCI Notices, rent of the reserved capacity shall be liable to be withheld till the discrepancies are corrected and repairs are made. However, the rent shall not accrue for the period for which FCI is not able to utilize the space/operate due to the reasons mentioned above.

1.11 In case the godown is completed within stipulated time, same will be taken over within one month of completion of the godown in all respects. However, in case of delay in construction, godowns will be taken over with corresponding reduction in guarantee period. The reservation of space/guarantee period would commence from the first day of use of such godown after all arrangements are in place for proper storage of foodgrains after completion of the godown.

2. RECEIPT & WEIGHMENT IN WAREHOUSE.

2.1 Stocks at the Warehouses would be received and issued on 100% weighment basis on the Lorry Weighbridge available in the Warehouse. In case of failure of weighment facility at the complex, then the charges for weighment through the nearest Private Lorry weighbridge including additional transportation charges would be borne by the CORPORATION.

2.2 The weight of the stocks, moisture contents as well as condition of the stock at the time of receipt and delivery shall be jointly recorded by CORPORATION and FCI staff and duly authenticated in records. In the Warehouses, where no FCI staff is posted for such authentication, the weight, moisture content etc. recorded by the CORPORATION staff shall be final and binding on both CORPORATION and FCI. However, the same shall be intimated to concerned Area Manager, FCI, on day to day basis. An Acknowledgement would be issued by CORPORATION to FCI confirming receipt/delivery of stocks at the Warehouse.

2.3 Bags found wholly or partly wet at the time of deposit shall be segregated and will be stored only after the contents are properly dried, reconditioned and considered fit to stand storage by the CORPORATION.

2.4 The cost of gunnies used for replacement of gunny bags due to normal wear and tear during handling shall be borne by CORPORATION. The cost of jute twine or any other packing / stitching / mending material used by CORPORATION for repair of gunnies shall also be included in the storage rent payable to CORPORATION, since such small activities are part & parcel of normal storage process.

2.5 Liability towards Damages/Down gradation/Deterioration of stocks, if any will be borne by CORPORATION. However, if such Damages/Down gradation/Deterioration of stocks is due to storage period exceeding two years for Rice and three years for Wheat, each

such case shall be examined based on its merits by the Joint Committee at Regional Level consisting of officers from both CORPORATION and FCI.

2.6 Apart from furnishing Custodian Certificate, Corporation would also carry out periodical/special physical verification of stocks as per the instructions of FCI and submit Report in the prescribed format within the given timeframe to the FCI. FCI may also associate in such PV wherever considered necessary by it.

3. INITIAL FUMIGATION

3.1 For stocks received in infested condition, necessary remarks shall be recorded by CORPORATION and intimated to FCI immediately and action will be taken by the Corporation to fumigate the stocks. For such fumigations done within 14 days of receipt of the stocks, CORPORATION shall claim fumigation charges from FCI at rates prescribed from time to time, duly supported by relevant documents.

3.2 In respect of stocks dispatched though Rail by CORPORATION, if the same are found to be dispatched in infested condition, as substantiated by records and facts, FCI shall claim fumigation charges at rates prescribed from time to time, against CORPORATION (Dispatching Warehouse). FCI have the right to deduct fumigation charges from the bills of CORPORATION. Moreover, the CORPORATION is responsible to maintain health of stocks and in case of any Loss Assessment Report (LAS) is received from destination; recovery shall be affected from CORPORATION subject to any failure on the part of CORPORATION as verified through the records.

4. STORAGE & TRANSIT LOSS/ GAIN

4.1 Storage losses/gains should be governed as per FCI's/GoIs instructions and as per the procedure in vogue for storage losses/gains. If the storage losses are beyond permissible limit as per FCI norms in vogue, CORPORATION shall be held responsible for the same and recoveries for such unjustified losses shall be effected from them by FCI. Norms/prevalent procedure for storage losses finalized by the FCI/Government of India from time to time will be binding on the CORPORATION.

4.2 Loss and Gain Statement will be submitted in the prescribed proforma of FCI to the Area Manager concerned after stocks in particular stack is completely liquidated during the month. This Statement may be jointly signed by the Warehouse Manager of CORPORATION and FCI Representative. The Statement will be Commodity-wise, Month-wise, Stack-wise

4.3 The Loss and Gain Statement will be submitted by the Warehouse Manager by 7th of succeeding month after liquidation of stocks for regularizing the losses.

4.4 In addition, it is stipulated that CORPORATION shall be fully responsible for any loss caused to the stocks of FCI while in their custody on account of pilferage, theft or misappropriation for which recoveries will be made from them at Economic Costs of the relevant year in which such misappropriation/theft taken place.

4.5 The stocks stored on account of FCI shall be subject to monthly /periodical inspections by FCI. Inspecting Officer of the FCI shall give Notice in writing with full particulars of Loss or Damage/ Down gradation/Deterioration, if any, caused to the foodgrains, to the Warehouse Manager.

4.6 While handling the stocks at Railhead/Sidings and transportation of stocks to/from depots for unloading/loading the Rakes, proper care would be taken by the Corporation/its H&T contractor to prevent the avoidable losses. Transit Losses up to 0.5% can be regularized by the Competent Authority of FCI in case it is considered that losses are justifiable and not attributable to the negligence or otherwise on the part of the Corporation/its H&T Contractor and do not warrant investigation considering the circumstances and facts of such cases. However, any unworkman like act or negligence leading to occurrence of Transit Losses would lead to fixation of responsibility on the Corporation to the extent attributable for such act.

5. DELIVERY OF GOODS

5.1 Instructions for delivery or transfer of goods shall be in writing and signed by the Authorized Representative of FCI.

5.2 In case delivery is to be given to any other person, he shall be duly authorized and his signatures attested by the Authorized Representative of FCI.

5.3 The delivery shall be given as per demand/priority given in writing to the Warehouse Manager of the CORPORATION by the Authorized Representative of FCI.

5.4 The weight of the stocks, moisture contents as well as condition of the stock at the time of delivery/issue shall be jointly recorded by CORPORATION and FCI staff and duly authenticated in records. In the Warehouses, where no FCI staff is posted for such authentication, the weight, moisture content etc. recorded by the CORPORATION staff shall be final and binding on both CORPORATION and FCI. However, the same shall be intimated to concerned Representative of FCI, on day to day basis.

5.5 The condition of stocks at the time of delivery shall be examined by FCI Representative, who shall give Notice in writing with full particulars of Loss or Damage/ Down gradation/Deterioration, if any, caused to the goods to the Warehouse Manager forthwith for his inspection of goods. Similar Notice for Claim of Damage will be given to the Warehouse Manager by FCI Representative in case he comes to know of the Loss/Damage/ Deterioration/ Down gradation while the goods are in the Warehouse/ stacked.

6. HANDLING & TRANSPORTATION

6.1 The Handling and Transportation (H&T) arrangements in the Depot shall be arranged by CORPORATION itself. FCI shall reimburse the actual charges for different operations undertaken by the Handling and Transportation Contractor as per existing procedure.

6.2 The H&T arrangements would include handling of foodgrains/Gunny bales at the Railhead point, loading into trucks/vehicle, transportation to and from Warehouses, unloading & proper stacking inside the godowns and de-stacking & loading into trucks/vehicles at the time of delivery and transportation from one point to another in the same Warehouse.

6.3 For dispatch of stocks through Rail or Road, Instructions issued by the Movement Division of FCI Hqrs./Zonal/Regional/District/Depot offices on the subject from time to time will be followed by CORPORATION without delay.

6.4 During Rail Receipt in the receiving godowns, in case the RRs are not received by the consignee for any reason, a separate Indemnity Note will be executed by the CORPORATION in respect of Consignments so delivered. Demurrage, if any, charged by the Railways due to non-clearance of wagons within the free time due to above reasons shall be on the CORPORATION account as per existing procedure/system.

6.5 In the cases, HTC is not appointed despite FCI Notices for arrangement of storage facilities; rent of the reserved capacity shall be liable to be withheld till the finalization of H& T Contractor. However, rent shall not accrue for the period for which FCI is not able to utilize the space/operate due to the reasons mentioned above.

6.6 If H&T Contractor appointed by the CORPORATION fails to undertake handling of stocks, the CORPORATION shall make alternate arrangements at the Risk & Cost of its regular H&T Contractor. FCI will not be liable for any extra expenditure, if the Risk & Cost arrangements so made by CORPORATION are costlier.

6.7 In case wagons are not cleared and stocks are not lifted from the platform within the free time due to strike by Labourers or Transporters and wharfage/demurrage are charged by Railways, in such a situation, responsibility will be that of the CORPORATION and not that of the FCI.

6.8 The H&T bills raised by the CORPORATION shall be paid within 15 Days' time from the date of receipt subject to the conditions that all requisite documents/claims are in order. No interest shall be payable for delayed payment.

7. INSURANCE

7.1 The CORPORATION shall undertake to exercise reasonable care and diligence as is expected from a Storing Agency under the law for safe keeping the stocks of FCI. The stocks stored in the Warehouses shall be insured/indemnified against the risk of fire, flood, theft house breaking and burglary and the whole charges on this account will be borne by CORPORATION or for those risks which have been included by Govt. of India in fixing the CORPORATION storage rates for FCI.

7.2 In case any additional risk is required to be covered by FCI or any additional risk is felt necessary by the CORPORATION due to some unforeseen contingencies e.g. strikes, civil commotion etc., the necessary insurance cover shall be arranged by the CORPORATION or for those risks which have been included by Govt. of India in fixing the rates for storage for CORPORATION.

7.3 The insurance of stocks in favour of FCI will continue to be undertaken by CORPORATION at the Economic Cost of the relevant commodity and crop year as finalized from time to time.

7.4 In the event of any loss, FCI will cooperate with the CORPORATION in furnishing necessary details for finalizing the claim for compensation by the Insurance Company.

7.5 The CORPORATION shall get the claim settled from the Insurance Co. at the earliest and pass on the compensation so received from the Insurance Company to FCI. The CORPORATION will settle the claim with FCI on the declared value after occurrence of the incident.

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8. WAREHOUSING AGREEMENT

FCI shall have no share, right, interest, title or claim into or upon the Warehouse or any part or portion thereof by way of lease, easement, tenancy, sub tenancy or any other kind. Nothing herein contained constitute or shall be deemed to constitute FCI as a Tenant or Assignee of the CORPORATION.

9. ARBITRATION

In case of any dispute touching upon/pertaining to this guarantee agreement between FCI and CORPORATION, such disputes will be first referred to MOCAF&PD for an amicable settlement. Aggrieved with the decision of the MoCAF&PD, either party may approach for arbitration as provided in the office memo no. DPE/4 (10)/2001-PMA-GLI dated 22.1.2004 issued by Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises, Govt. of India as under :

“In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party for Arbitration to the Sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Govt. of India in charge of the Department of Public Enterprises. The Arbitration and Conciliation Act, 1996 shall not be applicable to arbitration under this clause. The Award of the Arbitrator shall be binding upon the parties to the disputes, provided, however, any party aggrieved by such Award may make a further reference for setting aside or revision of the Award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary /Addl. Secretary, when so authorized by the Law Secretary, whose decision shall bind the parties finally and conclusively. The parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator”.

WITNESS whereof this agreement has been executed by the duly authorized representatives of the parties hereto on the day and year first above written.

For & on behalf of CWC

For & on behalf of FCI

Witnesses:

1. _____

2. _____