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on Warehouse Receipts**

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DRAFT MODEL LAW ON WAREHOUSE RECEIPTS

1. This document contains the draft Model Law on Warehouse Receipts (MLWR), as revised by the Drafting Committee following the sixth session of the Working Group (1-3 March 2023) and the subsequent written consultation of the Working Group. The draft Model Law is composed of six chapters:

Chapter I	–	Scope and general provisions
Chapter II	–	Issue and contents of a warehouse receipt; Alteration and replacement
Chapter III	–	Transfers and other dealings in negotiable warehouse receipts
Chapter IV	–	Rights and obligations of the warehouse operator
[Chapter V	–	Pledge bonds]
Chapter VI	–	Application of this Law

2. At the conclusion of its sixth session, the Working Group approved the draft Model Law subject to the subsequent revision of the text by the Drafting Committee to incorporate the Group's decisions. Furthermore, the Working Group agreed on the submission of the draft Model Law text to the UNIDROIT Governing Council for consideration and approval at its 102nd session on 10-12 May 2023.

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DRAFT MODEL LAW ON WAREHOUSE RECEIPTS

CHAPTER I

SCOPE AND GENERAL PROVISIONS

Article 1 – Scope of application

1. This Law applies to warehouse receipts.
2. For the purposes of this Law, a warehouse receipt is an electronic record or paper document issued and signed by a warehouse operator that identifies itself as a warehouse receipt and by which the warehouse operator:
 - (a) acknowledges holding goods described in it on behalf of the holder; and
 - (b) promises to deliver the goods to the holder.

Article 2 – Definitions

For the purposes of this Law:

1. “Depositor” means a person who deposits goods for storage with a warehouse operator.
2. “Electronic record” means information generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not.
3. “Holder” of a warehouse receipt means:
 - (a) in the case of an electronic negotiable warehouse receipt - the person who has control of the receipt;
 - (b) in the case of a paper negotiable warehouse receipt that is issued to the order of a named person - that person, or the most recent endorsee, if in possession of the receipt;
 - (c) in the case of a paper negotiable warehouse receipt that is issued to bearer or endorsed in blank - the person in possession of the receipt; and
 - (d) in the case of a non-negotiable warehouse receipt - the person to whom delivery of the goods is to be made in accordance with the terms of the receipt.
4. “Negotiable warehouse receipt” means a warehouse receipt that is issued:
 - (a) to the order of a named person; or
 - (b) to bearer.
5. “Non-negotiable warehouse receipt” means a warehouse receipt that is issued in favour of a named person.
6. “Protected holder” means a person that satisfies the requirements of Article 17(1).

7. “Storage agreement” means an agreement between a warehouse operator and a depositor that sets out the terms on which the warehouse operator agrees to store goods.

8. “Warehouse operator” means a person who is in the business of storing goods for other persons for reward.

Article 3 – Control of an electronic warehouse receipt

A person controls an electronic warehouse receipt if a reliable method is used:

- (a) to establish exclusive control of that electronic warehouse receipt by the person; and
- (b) to identify that person as the person in control.

Article 4 – Party autonomy

ALTERNATIVE A:

Parties may not derogate from or vary by agreement any provision of this Law.

ALTERNATIVE B:

1. Parties may derogate from or vary by agreement the following provisions of this Law: [...].¹
2. Such an agreement does not affect the rights of any person who is not a party to that agreement.

Article 5 – Interpretation

In the interpretation of this Law, regard is to be had to its international origin and the need to promote uniformity in its application.

¹ The enacting State may consider which provisions of the Model Law, if any, the parties may derogate from or vary by agreement.

CHAPTER II

ISSUE AND CONTENTS OF A WAREHOUSE RECEIPT; ALTERATION AND REPLACEMENT

SECTION A. ISSUE AND CONTENTS OF A WAREHOUSE RECEIPT

Article 6 – Obligation to issue a warehouse receipt

1. A warehouse operator must issue a warehouse receipt in relation to goods, after taking possession of the goods, if requested by the depositor.
2. The lack of issuance of a warehouse receipt by the warehouse operator does not affect the validity of the storage agreement.

Article 7 – Representations by the depositor

The depositor represents to the warehouse operator, at the time of deposit, that:

- (a) it has the authority to deposit the goods; and
- (b) the goods are free of any rights or claims of third parties except as agreed by the warehouse operator.

Article 8 – Incorporation of storage agreement in the warehouse receipt

A warehouse receipt is taken by operation of this Law to include all terms of the storage agreement that are not inconsistent with the express terms of the warehouse receipt.

Article 9 – Information to be included in a warehouse receipt

1. A warehouse operator must include the following information in a warehouse receipt:
 - (a) whether it is negotiable or non-negotiable;
 - (b) if it is negotiable, the name of the person to whose order the receipt is issued or a statement that it is issued to bearer;
 - (c) if it is negotiable, any limitations on the manner in which it may be transferred;
 - (d) if it is non-negotiable, the name of the person in whose favour it is issued;
 - (e) the name of the depositor;
 - (f) the name of the warehouse operator;
 - (g) the type and quantity of the goods;
 - (h) the fixed period of the storage, if any;
 - (i) the place where the goods are stored;
 - (j) a unique identification number for the receipt;
 - (k) the date of issue; and

- (l) the date of the storage agreement and a statement that a copy of the storage agreement will be made available to potential transferees on demand.
2. An incomplete or incorrect statement of information required by paragraph 1 does not affect the validity of the warehouse receipt. The warehouse operator is liable for any losses suffered by any person as a result of any such incomplete or incorrect statement.
3. If a negotiable warehouse receipt does not name a person to whose order it is issued, it is issued to bearer.

Article 10 – Additional information that may be included in a warehouse receipt

1. A warehouse operator may also include any other information in a warehouse receipt, such as:
 - (a) the name of the insurer, if any, who has insured the goods;
 - (b) the amount of the storage fees if they are a fixed amount or, if they are not a fixed amount, how the fees are calculated;
 - (c) the quality of the goods; or
 - (d) if the goods are fungible, whether the goods may be commingled.
2. An incorrect statement of information referred to in paragraph 1 does not affect the validity of the warehouse receipt. The warehouse operator is liable for any losses suffered by any person as a result of any such incorrect statement.
3. If a warehouse receipt covers fungible goods but does not state the quality of the goods, the goods are presumed to be of average quality.

Article 11 – Goods in sealed packages and similar situations

1. If the warehouse operator has no practicable or commercially reasonable means of assessing the goods, the warehouse operator may describe the goods, including their type, quantity and quality:
 - (a) in accordance with information provided to it by the depositor; and
 - (b) in the case of goods in a sealed package, by a statement to the effect that the package is said to contain the described goods, and that the warehouse operator otherwise has no knowledge of the contents or condition of the contents of the package.
2. A warehouse operator who describes goods in accordance with paragraph 1 will not be liable for any losses suffered by any person, unless the warehouse operator knew or had reasonable grounds to believe that the description was false or misleading.

SECTION B. ALTERATION AND REPLACEMENT

Article 12 – Alteration of a warehouse receipt

If a field in a negotiable warehouse receipt is left blank by the warehouse operator and is later filled in without the warehouse operator's authorization, the insertion will be effective as against

the warehouse operator if a subsequent holder has no knowledge of the lack of authorization at the time that person becomes the holder.

Article 13 – Loss or destruction of a warehouse receipt

1. In the event of the loss or destruction of a warehouse receipt, the holder at the time of loss or destruction may require the warehouse operator to issue a replacement warehouse receipt, by providing:

- (a) such proof of its entitlement to the warehouse receipt; and
- (b) such indemnity in relation to the issue of the replacement warehouse receipt and security in support of that indemnity,

as the warehouse operator may reasonably require.

2. In the case of an electronic warehouse receipt:

- (a) “loss” in paragraph 1 means loss of control; and
- (b) “issue a replacement warehouse receipt” in paragraph 1 may include reinstatement of control of the warehouse receipt over which control has been lost.

3. If a warehouse operator fails to issue a replacement warehouse receipt pursuant to paragraph 1, the holder at the time of loss or destruction may apply to the Court for an order that the warehouse operator issue a replacement warehouse receipt, including by way of proceedings in the form of [the expeditious proceedings to be specified by the enacting State]. In the case of a lost negotiable warehouse receipt, the applicant must deposit with the Court adequate security to indemnify the warehouse operator against claims by a holder of the lost warehouse receipt.

4. A replacement warehouse receipt issued under this Article must state that it is a replacement warehouse receipt.

Article 14 – Change of medium of a warehouse receipt

1. If the holder of a warehouse receipt so requests, a warehouse operator may change the medium of the warehouse receipt from paper to electronic or from electronic to paper.

2. At the time of the change of medium, the warehouse operator must ensure that the warehouse receipt can no longer be used in its previous medium.

3. The change of medium does not affect the rights and obligations of the parties.

CHAPTER III

TRANSFERS AND OTHER DEALINGS IN NEGOTIABLE WAREHOUSE RECEIPTS

SECTION A. HOW A NEGOTIABLE WAREHOUSE RECEIPT MAY BE TRANSFERRED

Article 15 – Transfer of a negotiable warehouse receipt

1. A paper negotiable warehouse receipt may be transferred:
 - (a) by endorsement and delivery, if it is issued or endorsed to the order of the person transferring it; or
 - (b) by delivery, if:
 - (i) it is issued to bearer; or
 - (ii) it is endorsed in blank or to bearer.
2. An electronic negotiable warehouse receipt may be transferred by change of control.

SECTION B. EFFECT OF A TRANSFER OF A NEGOTIABLE WAREHOUSE RECEIPT

Article 16 – Rights of a transferee generally

1. A person to whom a negotiable warehouse receipt has been transferred acquires:
 - (a) such rights to the receipt and the goods; and
 - (b) such benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt,as the transferor was able to convey.
2. Paragraph 1 does not limit the rights of a protected holder of a negotiable warehouse receipt pursuant to Article 18.

Article 17 – Protected holder of a negotiable warehouse receipt

1. A person is a protected holder of a negotiable warehouse receipt if:
 - (a) the receipt has been transferred to the person pursuant to Article 15;
 - (b) the person acted in good faith and without knowledge of any claim to the receipt or the goods covered by it, or of any defence on the part of any person other than the warehouse operator; and
 - (c) the transfer was in the ordinary course of business or financing.
2. [A person does not have knowledge of a claim to a warehouse receipt or the goods covered by it for the purposes of paragraph 1(b) merely because information relating to that claim has been registered in [a registry established pursuant to a secured transactions law as specified by the enacting State].]

3. If a negotiable warehouse receipt is issued by a warehouse operator to the order of a named person other than the depositor, the issue of the receipt to that person by the warehouse operator has the same effect, for the purposes of determining whether that person is a protected holder, as if the receipt had been transferred to that person pursuant to Article 15.

Article 18 – Rights of a protected holder of a negotiable warehouse receipt

1. A protected holder of a negotiable warehouse receipt acquires ownership of the receipt and the goods covered by the receipt, and the benefit of the obligation of the warehouse operator to hold and deliver the goods in accordance with the terms of the receipt, free of any claim or defence of the warehouse operator or any other person, other than any claim or defence that arises under the terms of the receipt or under this Law.

2. Paragraph 1 applies even if:

- (a) the transfer to the protected holder or any prior transfer constituted a breach of duty by the transferor;
- (b) a previous holder of the receipt lost control or possession of the receipt as a result of fraud, duress, theft, conversion, misrepresentation, mistake, accident or similar circumstances; or
- (c) the goods or the receipt had been previously sold, transferred or encumbered to a third person.

3. The ownership and benefit of a protected holder of a negotiable warehouse receipt under paragraph 1 are not subject to [any retention-of-title, security or equivalent right as specified by the enacting State] that any person may have in or in relation to the goods covered by the receipt.

4. The ownership and benefit of a protected holder of a negotiable warehouse receipt under paragraph 1 are not subject to any right pursuant to a judgment against any person other than the protected holder. The warehouse operator is not obliged to deliver the goods to a person claiming pursuant to such a judgment, unless the warehouse receipt is surrendered to it.

SECTION C. SECURITY RIGHTS

Article 19 – Third party effectiveness of a security right

A security right in a negotiable warehouse receipt may be made effective against third parties by:

- (a) [registration in a registry established pursuant to a secured transactions law as specified by the enacting State;]
- (b) in the case of an electronic negotiable warehouse receipt, the secured creditor taking control of the receipt; or
- (c) in the case of a paper negotiable warehouse receipt, the secured creditor taking possession of the receipt.

SECTION D. REPRESENTATIONS AND GUARANTEES BY A TRANSFEROR OF A NEGOTIABLE WAREHOUSE RECEIPT

Article 20 – Representations by a transferor of a negotiable warehouse receipt

A transferor of a negotiable warehouse receipt represents to the transferee that:

- (a) the receipt is authentic; and
- (b) it does not know of any fact that would impair the validity of the receipt, the value of the goods covered by the receipt, or the effectiveness of the transfer of ownership of the receipt and the goods it covers, except as agreed by the transferee.

Article 21 – Limited representation by intermediaries

Notwithstanding Article 20, an intermediary that is entrusted with warehouse receipts on behalf of another or with collection of a negotiable instrument or other claim, represents by the transfer of a negotiable warehouse receipt only that it is authorized to do so.

Article 22 – Transferor not a guarantor

A person who transfers a negotiable warehouse receipt does not guarantee, by virtue of the transfer, the performance by the warehouse operator of any obligations in relation to the receipt.

CHAPTER IV

RIGHTS AND OBLIGATIONS OF THE WAREHOUSE OPERATOR

Article 23 – Application of this Chapter

The obligations imposed by this Chapter on a warehouse operator apply if a warehouse receipt has been issued, even if:

- (a) the receipt does not comply with the requirements of this Law; or
- (b) the warehouse operator is in violation of an applicable regulatory requirement.

Article 24 – Duty of care

1. The warehouse operator must store and preserve the goods in accordance with the level of care expected of a diligent and competent operator in that particular trade.
2. The warehouse operator may vary its obligation under paragraph 1 by the terms of the warehouse receipt. However, the warehouse operator may not exclude or limit liability for fraud, wilful misconduct, gross negligence, or conversion of the goods.

Article 25 – Duty to keep goods separate

1. Subject to paragraph 2, the warehouse operator must keep the goods separate so as to permit identification of the goods at any time.
2. The warehouse operator may commingle fungible goods into a mass of goods of the same type and quality, if so stated in the warehouse receipt.

Article 26 – Lien of the warehouse operator

1. The warehouse operator has a lien on the goods and in any proceeds for:
 - (a) charges for storage of the goods;
 - (b) unexpected expenses necessary for the preservation of the goods;
 - (c) expenses reasonably incurred in the sale of the goods in accordance with paragraph 4; and
 - (d) similar charges or expenses owed by the holder in relation to other goods held by the warehouse operator, if so stated in the warehouse receipt.
2. Subject to paragraph 3, the warehouse operator's lien is effective against third parties.
3. As against a protected holder, the lien is limited to:
 - (a) charges and expenses specified on the face of the receipt; or
 - (b) if no charges or expenses are so specified, a reasonable charge for storage after the date of issue of the receipt.
4. The warehouse operator may enforce its lien as permitted by [relevant other law as specified by the enacting State].

Article 27 – Obligation of warehouse operator to deliver

1. Except as provided in Article 30, the warehouse operator must deliver the goods to the holder of the warehouse receipt if the holder:
 - (a) provides the warehouse operator with an instruction to deliver the goods to it;
 - (b) surrenders possession or control of the warehouse receipt to the warehouse operator; and
 - (c) satisfies the amount secured by the warehouse operator's lien under Article 26.
2. Upon delivery of the goods, the warehouse operator must cancel the warehouse receipt.

Article 28 – Partial delivery

1. Except as provided in Article 30, the warehouse operator must deliver part of the goods to the holder of the warehouse receipt if the holder:
 - (a) provides the warehouse operator with an instruction to deliver that part of the goods to it;
 - (b) surrenders possession or control of the warehouse receipt; and
 - (c) satisfies a corresponding proportion of the amount secured by the warehouse operator's lien under Article 26.
2. Upon partial delivery of the goods, the warehouse operator must note the partial delivery on the warehouse receipt and return possession or control of the receipt to the holder.

Article 29 – Split warehouse receipt

If requested by the holder of a warehouse receipt, a warehouse operator may split the warehouse receipt into two or more warehouse receipts that cover in total the goods that were covered by the original warehouse receipt, upon surrender of possession or control of the original warehouse receipt.

Article 30 – Excuses from delivery obligation

The warehouse operator is excused from delivering the goods if and to the extent it establishes any of the following:

- (a) destruction or loss of the goods for which the warehouse operator is not liable;
- (b) that it has sold or otherwise disposed of the goods in enforcement of its lien pursuant to Article 26(4);
- (c) that it has sold or otherwise disposed of the goods pursuant to Article 31;
- (d) that it has received competing claims to the goods and the matter has yet to be resolved; or
- (e) that it is prevented from doing so by court order or otherwise by circumstances beyond its control.

Article 31 – Termination of storage by the warehouse operator

1. The warehouse operator, by reasonable notice to all persons known to the warehouse operator to claim an interest in the goods or if the warehouse operator does not know of any person claiming an interest in the goods by public advertisement, may demand payment of the amounts secured by its lien and removal of the goods:

- (a) at the end of the storage period specified in the warehouse receipt; or
- (b) if the storage period has expired or no storage period is specified in the warehouse receipt, on the date specified in the notice.

2. If the amounts are not paid and the goods not removed before the date contemplated by paragraph 1, the warehouse operator may sell the goods by public or private sale, in a commercially reasonable manner, by reasonable notice to all persons known to the warehouse operator to claim an interest in the goods or if the warehouse operator does not know of any person claiming an interest in the goods by public advertisement pursuant to [relevant other law as specified by the enacting State].

3. If, as a result of a quality or condition of the goods of which the warehouse operator did not have knowledge at the time of deposit, the goods are a hazard, the warehouse operator may sell the goods at public or private sale, in a commercially reasonable manner, on reasonable notice to all persons known to the warehouse operator to claim an interest in the goods. If the warehouse operator, after reasonable efforts, is unable to sell the goods, it may dispose of them in any lawful manner.

**[CHAPTER V
PLEDGE BONDS]²**

Article 32 – Scope and general provisions

1. This Law also applies to pledge bonds.
2. For the purposes of this Law, a pledge bond is an electronic record or paper document issued and signed by the warehouse operator that identifies itself as a pledge bond and satisfies the requirements of Article 33.
3. For the purposes of this Law, “holder” of a pledge bond means:
 - (a) in the case of an electronic pledge bond - the person who has control of the pledge bond;
 - (b) in the case of a paper pledge bond that is issued to the order of a named person - that person, or the most recent endorsee, if in possession of the pledge bond; and
 - (c) in the case of a paper pledge bond that is issued to bearer or endorsed in blank - the person in possession of the pledge bond.
4. Article 3 applies in relation to pledge bonds in the same way as it applies to warehouse receipts.

Article 33 – Issue and form of a pledge bond

1. The warehouse operator, at the time it issues a negotiable warehouse receipt, must attach to the receipt (if it is in paper form), or associate with the receipt (if it is in electronic form) a pledge bond that contains the same information as the warehouse receipt.
2. Articles 9 to 14 apply to pledge bonds in the same way as they apply to warehouse receipts.

Article 34 – Effect of a pledge bond

1. A pledge bond grants the holder a possessory security right in the goods covered by the warehouse receipt.
2. The rights of the holder of the warehouse receipt to goods are subject to the rights of the holder of the pledge bond.
3. The holder of the warehouse receipt may pay the amount secured by the pledge bond whether or not the amount is yet due.

² This Chapter is suggested for enacting States that seek to implement a system of dual warehouse receipts consisting of a warehouse receipt and a pledge bond. This text has been presented separately in order to facilitate the use of the Model Law by States that do not want to adopt a dual warehouse receipts system. A State that does want to adopt a dual warehouse receipts system could also consider drafting the content of these provisions into the main part of the Model Law rather than retain them separately here, in order to facilitate understanding and use of the Model Law in that State.

4. If there has been default in payment of the amount secured by a pledge bond, the holder of the pledge bond can enforce its security right over the goods pursuant to [relevant other law as specified by the enacting State].

Article 35 – Transfers and other dealings

1. A pledge bond may be transferred together with the warehouse receipt, or separately.
2. The first holder of a pledge bond to transfer it separately from the warehouse receipt must note the following information in the pledge bond:
 - (a) the amount secured by the pledge bond; and
 - (b) the due date for payment of the amount secured by the pledge bond.
3. Articles 15 to 22 apply to pledge bonds in the same way as they apply to warehouse receipts.

Article 36 – Rights and obligations of the warehouse operator

1. Prior to the due date for payment of the amount secured by the pledge bond, the warehouse operator may only deliver the goods upon presentation of both the warehouse receipt and the pledge bond.
2. After the due date for payment of the amount secured by the pledge bond, the warehouse operator must deliver the goods [upon presentation of the pledge bond whether or not the warehouse receipt is also surrendered and/or as required by the holder of the pledge bond pursuant to its procedure for enforcing the pledge bond].
3. Subject to paragraphs 1 and 2, Articles 23 to 31 apply to pledge bonds in the same way as they apply to warehouse receipts.

CHAPTER VI

APPLICATION OF THIS LAW

Article 37 – Entry into force

1. This Law enters into force on [date as specified by the enacting State].
2. This Law applies to warehouse receipts [and pledge bonds] that are issued after this Law enters into force.

Article 38 – Repeal and amendment of other laws

1. [The laws as specified by the enacting State] are repealed.
2. [The laws as specified by the enacting State] are amended as follows [the text of the relevant amendments to be specified by the enacting State].