

TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS (“CONDITIONS”), TOGETHER WITH THE CONTRACT FOR SERVICES, THE SERVICE LEVEL AGREEMENT, AND THE SERVICE PRICE LIST, EACH BETWEEN JAMES AND JAMES FULFILMENT, INC. (“PROVIDER”) AND THE PERSON OR ENTITY ORDERING SERVICES FROM PROVIDER (THE “CLIENT”), COLLECTIVELY REPRESENT THE ENTIRE AGREEMENT (THE “AGREEMENT”) OF THE PARTIES WITH RESPECT TO THE SERVICES THEREIN AND HEREIN DESCRIBED. THE AGREEMENT MAY NOT TO BE SUPPLEMENTED, MODIFIED OR AMENDED EXCEPT BY WRITTEN AGREEMENT SIGNED BY BOTH THE CLIENT AND PROVIDER.

1. DEFINITIONS

In these conditions:

- a. ‘Conditions’ - these terms and conditions of business
- b. ‘Provider’ - James and James Fulfilment Inc.
- c. ‘Client’ - any person, firm or agent who accepts the services of the Provider
- d. ‘Customer’ - any recipient to which the Provider ships the Goods to. For the avoidance of doubt, the Provider does not have any contract with the Customer
- e. ‘Services’ - any services which the Provider is to supply in accordance with the Conditions
- f. ‘Goods’ - the goods which are the subject of the Contract which are to be stored and serviced by the Provider at the Client’s request
- g. ‘Contract’ - any contract for the supply of the Services by the Provider to the Client in accordance with these Conditions
- h. ‘Effective Date’ - the date upon which the Provider will become the employer of the Client’s Employees under TUPE regulations
- i. ‘Demand’ - any action, award, claim or other legal recourse, complaint, cost, debt, demand, expense, fine, liability, loss, outgoing, penalty or proceeding
- j. ‘Provider’s Premises’ - all the locations that the Provider operates its business from
- k. ‘Force Majeure’ - an event beyond the reasonable control of the Provider including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Providers or subcontractors.

2. AUTHORITY TO CONTRACT

The Client warrants that:

- a. it is either the owner of the Goods or has lawful possession of the Goods and all right and authority to store them with the Provider and to direct the release and/or delivery of the Goods to Customer;

- b. the Goods are properly marked and packed for storage and handling; and
- c. all information provided by Client to Provider is true, accurate, and complete in all material respects.

3. QUOTATIONS AND TENDERS

Quotations and tenders by the Provider are valid for a period of 30 days from the date of quotation unless otherwise stated or agreed in writing.

4. CONTRACTUAL TERMS

- a. The Contract is subject to the Conditions which take precedence over any terms and conditions of the Client unless otherwise agreed in writing. The Provider shall not be bound by any variation, waiver or addition to the Conditions unless confirmed by the Provider in writing
- b. The Provider shall not be bound by any oral warranty or representation given or made (or purported to be given or made) on behalf of itself unless confirmed by the Provider in writing
- c. The Provider reserves the right to amend the Conditions from time to time by giving one month's notice. If such increase is not acceptable to the Client, it may cancel the Contract within the notice period herein by giving the Provider notice in writing, as per the agreed contract notice period. During this period any changes will not be in effect
- d. The latest version of the Conditions will be made available online by the Provider.

5. PRICE

- a. All amounts payable by the Client under the Contract are exclusive of amounts in respect of sales taxes and all other taxes and duties whatsoever which shall be payable by the Client at the applicable rate.

The Provider shall have the right to increase its prices to the Client:

- i. with immediate effect to account for any alterations to the Services requested by the Client after the date of the Contract, including material changes to the Goods from that agreed in the Quotation
 - ii. each 1 January in line with the latest published CPI figures for inflation
 - iii. with immediate effect to account for increases in the Provider's costs outside of their control (including but are not limited to costs of postal services, external couriers, pallet networks and raw materials)
 - iv. by giving one month's notice in writing for any other reason. If such increase is not acceptable to the Client, it may cancel the Contract within the notice period herein by giving the Provider the agreed notice in writing, as per the agreed contract notice period. During this period any changes will not be in effect.
- b. For the avoidance of doubt, no Insurance for the Goods of any kind (including but not limited to insurance for consequential losses) is included in the price unless agreed by the Provider in writing.

6. PAYMENT

- a. Where credit has been agreed: All invoices are payable in full, without discount of any kind, within 14 days of the invoice date unless otherwise agreed in writing.
- b. Where no credit has been agreed: All invoices are payable immediately and/or a deposit may be required in advance
- c. The Provider reserves the right, from time to time, to reassess or withdraw any credit extended to the Client if it has reason to believe the Client is no longer creditworthy
- d. All payments must be made by ACH or with agreement from the Provider by electronic bank transfer. The Provider may make an administration charge and charge for any additional costs incurred in processing payments not made as above.
- e. All payments to the Provider must be in US Dollars
- f. The Client will not be entitled to make any deduction or claim any set-off or withhold payment on any invoices
- g. The Provider reserves the right to charge costs and interest (at a rate equal to 5% plus the then current US Prime Rates as published in the Wall Street Journal) on late payments
- h. Where any invoice is over 30 days late, the Provider reserves the right to instruct a third party agency, or begin court action, to collect all outstanding amounts in which case any fees or costs incurred will be billed to the Client in addition to the Late Payment of Commercial Debts interest and costs.

7. LIEN

- a. The Provider shall have on the Goods a particular lien as well as a general lien entitling it to retain the Goods as security for payment of all sums owed (whether due or not) from the Client on any account, whether directly relating to the Goods or not. Storage charges at the normal rate shall accrue on any Goods detained under a lien. The Provider may enforce this lien in accordance with Section 14(d) below, including, by selling all or any part of the Goods in accordance with applicable law.
- b. The Client must continue to insure the Goods whilst under lien and the Provider will take no additional responsibility for damage or loss other than already set out in the Contract

8. CLIENT UNDERTAKINGS

The Client undertakes to:

- a. present the Goods for packing in such condition as not to cause damage or injury, or the likelihood of damage or injury, to the property, employees or agents of the Provider or to the Customer;
- b. obtain any necessary import licences or permits necessary for the entry of the Goods into the territories in which they are to be shipped, and their delivery to the Provider;
- c. be responsible for any customs duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation and delivery of the Goods;
- d. comply with all laws and regulations affecting the manufacture, sale, packaging and labelling of the Goods from time to time in force;
- e. ensure that all the Goods presented have been appropriately tested and approved as safe for all purposes for which the Goods are intended to be used;
- f. inform the Provider in writing before the presentation of the Goods of any special precautions required by the nature, weight or condition of the Goods and any laws and

- regulations specific to the Goods with which the Provider will need to comply when storing, handling or shipping the Goods;
- g. provide to the Provider with copies of all material safety data sheets relating to the Goods where they exist;
 - h. perform the additional undertakings as detailed in the Provider's most recently published Service Level Agreement;
 - i. provide all necessary information to allow international customs clearance for Goods to be exported including but not limited to cost prices, sale prices, HS codes, customs descriptions, instructions, documents, licences, authorisations and permissions;
 - j. be solely responsible for obtaining any necessary import licences or permits; and
 - k. shall ensure that the bill of lading or other contract of carriage (i) identifies the Client as the named consignee, in care of the Provider, and (ii) does not identify the Provider as the consignee. If any Goods are shipped to the Provider naming Provider as named consignee, the Client shall promptly notify the carrier in writing that Provider is (i) the "in care of party" only and (ii) does not have any beneficial title or interest in the Goods. The Provider may refuse to accept any Goods tendered for storage in violation of this provision, and shall not be liable for any loss or damage to, or misconsignment of, such Goods. Whether the Provider accepts or refuses goods shipped in violation of this Section, the Client agrees to indemnify and hold Provider harmless from all claims for transportation, storage, handling and other charges relating to such goods, including surcharges, undercharges, rail demurrage, truck/intermodal detention and other charges of any nature whatsoever, in each case excepting charges that the Provider explicitly has agreed to undertake in writing.

9. DELIVERY & PERFORMANCE

- a. Goods shall be deemed delivered to the Customer (and therefore no longer the responsibility of the Provider) when they are accepted by either the Client, an agent of the Client, the Customer or any carrier (who shall be the Client's agent irrespective of who pays the carrier's charges). The Provider will use all reasonable endeavours to package and have the Goods ready for despatch by any date quoted by the Provider or requested by the Client or their agents, but time shall not be of the essence of the Contract
- b. The Provider shall not be liable for any penalty, loss, injury, damage, costs or expense arising from any delay or failure in delivery or performance from any cause whatsoever
- c. If the Client, their agents, or the Customer, fail to take delivery of the Goods or any part of them at the agreed time and date, or fail to provide documents or written instructions required to enable the Goods to be delivered, then the Client shall pay the Provider on demand for all costs and expenses incurred by the Provider including storage and all charges arising from its failure
- d. The Provider has the right not to accept any deliveries of Goods or components that the Client has not previously advised of, including, without limitation, if the Goods tendered by the Client do not conform to the description, as provided on the Quotation or otherwise agreed in writing by the Provider
- e. The Provider has the right to refuse delivery of any Goods or components that it deems unsafe or not in a suitable condition for storage or packing.

10. ONLINE SYSTEMS & REPORTING

- a. The Provider will, subject to scheduled maintenance time, use its reasonable endeavours to ensure that order API is available at all times, and will take all reasonable precautions to ensure uptime is maintained, however uptime of the API is not guaranteed. The Client must therefore ensure that if the API is not available, any data requests will be stored by the Client and resubmitted later
- b. The Provider will, subject to scheduled maintenance time, use its reasonable endeavours to ensure that the Client's web portal is accessible at all times
- c. While the Provider will use its reasonable endeavours to ensure data is correctly displayed on the Client's web portal, it makes no warranty whatsoever in relation to the accuracy of such data. The Provider will not be held liable for any loss, delay or other costs resulting from decisions made by the Client on the basis of any data or report
- d. The Provider will endeavour to adhere to modern web standards as set out by the World Wide Web Consortium (W3C). It is the Client's responsibility to ensure that the Client or its agents use a compatible browser, including support for, but not limited to; html, xml, css, ECMA script (javascript), canvas and PDF. The Provider takes no responsibility and will offer no refund if the Client is unable to access or use data or reports due to the use of incompatible software.

11. WARRANTY & LOSS

- a. Nothing in these Conditions shall limit or exclude the Provider's liability for:
 - i. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - ii. fraud or fraudulent misrepresentation; or
 - iii. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession)
- b. Subject to clause 12 a.:

IN NO EVENT SHALL PROVIDER BE RESPONSIBLE OR LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES OF ANY TYPE OR NATURE WHATSOEVER AND HOWEVER ARISING, INCLUDING, WITHOUT LIMITATION, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF ANY PROVISION OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CLIENT OR COULD HAVE BEEN REASONABLY FORESEEN BY A PERSON OR ENTITY, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.; and

- i. THE PROVIDER'S TOTAL ANNUAL LIABILITY TO THE CLIENT IN RESPECT OF ALL OTHER LOSSES ARISING UNDER OR IN CONNECTION WITH THE CONTRACT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL IN NO CIRCUMSTANCES EXCEED THE LOWER AMOUNT OF 25% OF THE TOTAL AMOUNT PAID FOR THE SERVICES IN THAT YEAR, EXCLUSIVE OF POSTAGE AND MATERIALS; OR \$27,000. EACH YEAR STARTS ON THE ANNIVERSARY OF THE CONTRACT START DATE.

- c. For the avoidance of doubt, the Provider shall have no liability whatsoever for any loss, damage, deterioration, delay, non-collection, non-delivery, mis-delivery, unauthorised delivery of any Goods or non-compliance with instructions caused by any agent (including all carriers regardless of who pays the carriers' charges) of the Client
- d. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract
- e. This clause 12 shall survive termination of the Contract

13. CLAIMS

- a. The Client will notify the Provider of any potential claim under the Contract giving full details of the potential claim including any details required by the Provider:
 - i. for claims covered by the Provider's Compensation Policy, within the time scales set out in that policy
 - ii. for all other claims, within 14 days of the potential claim coming to the Client's knowledge and in any case no later than 90 days from its occurrence
- a. The Provider shall have reasonable time to investigate the claim and respond.

14. TERMINATION

If the Client fails to make payment or otherwise defaults in any of its obligations under the Contract or any other contract or agreement with the Provider, or is involved in illegal activities, or activities which bring the Provider into disrepute, or becomes insolvent, has a receiver appointed or is wound up, or enters into any arrangement with or for the benefit of its creditors, or the Provider bona fide believes that any event here mentioned may occur, then the Provider may (at its sole option and without affecting any other claim right or remedy against the Client) either:

- a. terminate the Contract with immediate effect by giving the Client notice in writing of its intention to do so; or
- b. suspend the Supply of the Services without notice until the Client's default has been remedied to the Provider's reasonable satisfaction; or
- c. require payment in advance for the Services.

The Client and the Provider shall each have the right to terminate the Contract in accordance Section 4 of the Contract.

If the Provider fails to meet the required the levels of service for a particular service under the SLA for 3 consecutive calendar months, the Client will have the right within 30 days from the end of the third such month to terminate the Contract by giving the Provider 3 months written notice of its intention to do so.

In the event of termination prior to the end of the Initial Term or any Extended Term either by the Client in breach of the Contract or by the Provider in accordance with this clause 15, the Client shall pay the Provider an amount equal to the aggregate total of the minimum monthly picking fees (as set out in the Quotation) due over the balance of the remainder of relevant Term. Such amount shall immediately become a debt due to the Provider.

In the event of termination:

- a. The Goods will be packed at the normal charge rate and a final invoice sent covering all costs including any collection or final delivery costs and storage up until the Goods are collected
- b. The Goods will not be made available for collection, or sent for delivery, until all amounts due to the Provider by the Client (or the Client's agents or associates) are paid in full
- c. The Goods must be collected within 7 days of any collection date agreed by the parties and in any event within one month of the date of termination
- d. Where any payment is overdue, the Provider will continue to charge storage charges and may, without prejudice to its other rights and remedies against the Client, notify the Client in writing that the Goods may be sold or otherwise disposed of at the Client's entire risk and expense if such payment is not made within 21 days from the date of such notice. On expiry of the period, if such payment has not been made the Provider may sell or otherwise dispose of the Goods, in entirety or part, at the Client's entire risk and expense by an appropriate method. Any proceeds of sale or disposal shall be remitted to the Client after deduction of all expenses and all amounts owed to the Provider

14. FORCE MAJEURE

- a. The Provider shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- b. If the Force Majeure Event prevents the Provider from meeting SLAs for more than 3 months, the Provider shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

15. CONFIDENTIALITY

Each party undertakes that it shall not at any time during the Contract, and for a period of 5 years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by this clause.

Each party may disclose the other party's confidential information:

- a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16; and
- b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

This clause 16 shall not apply to any information which:

- i. is already known to the receiving party at the time of disclosure by the disclosing party;
- ii. is in or comes into the public domain through no fault of the receiving party;
- iii. is obtained by the receiving party from a third party who has the legal right to make the disclosure to the receiving party or

- iv. is independently developed by the receiving party without reference to or reliance on the disclosing party's confidential information.

16. GENERAL

- a. For the avoidance of doubt the Provider may engage the services or employ any person or Provider in order to carry out any obligation it may have to the Client
- b. Any notice period required or permitted to be given by either party to the other under the Contract shall be made:
 - i. in writing by recorded delivery to the trading address of the Provider, or to the main contact address as registered in ControlPort; or
 - ii. by email to the Provider's support email address, or the Client's main contact email address as registered in ControlPort
- c. The notice period shall be deemed to be served on the working day that the notice was recorded as delivered, or the first working day after delivery if a weekend.
- d. No waiver by the Provider of any breach of Contract by the Client shall be considered as waiver of any subsequent breach of the same or any other provision
- e. If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Conditions and the remainder of the provision in question shall not be affected thereby

17. GOVERNING LAW

The Contract and the Conditions shall be subject to Ohio Law and the parties agree to the exclusive jurisdiction of the state and federal courts sitting in the county of Franklin in the state Ohio in all matters.