# TERMS AND CONDITIONS

## 1. DEFINITIONS

In these conditions:

a. 'Conditions' - these terms and conditions of business
b. 'Provider' - James and James Fulfilment Ltd
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.
l. 'Proposal' - proposal provided to the Client for Services
m. 'Campaign' - an operational method for managing higher than average daily order volume
n. 'Material Changes' - change to size, dimension, weight and profile of product agreed in the proposal
o. 'Working Day' - Any day that is not a Saturday, Sunday, or a public holiday

## 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. PROPOSALS AND TENDERS

Proposals and tenders submitted by the Provider are valid for a period of 30 days from the date of proposal 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 change 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 VAT 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 Proposal
ii. each 1 January in line with the latest published CPI figures for inflation reported in Q4 of the previous year
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. Client creditworthiness is established using a credit agency. Where creditworthiness falls below an established minimum credit rating, the Client will be required to provide a deposit based on the exposure as calculated by the provider. This deposit will be held on account by the Provider.
b. All invoices are payable in full, without discount of any kind, and in accordance with the payment terms stated in the Client's contract with the Provider.

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 Clients are obligated to establish and maintain a UK direct debit facility with the Provider, unless an alternative payment method is agreed in writing. Default of this facility

or non payment will be considered a breach of contract and may lead to the immediate suspension of services by the Provider.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 made in currency in which the Client has been invoiced and all bank charges are to be borne by the Client.
f. The Client will not be entitled to make any deduction or claim any set-off or withhold payment on any invoices. Where the Client wishes to raise queries in relation to invoicing, these should be raised in accordance with the Providers compensation policy.
g. The Provider reserves the right to charge costs and interest on late payments as set out in the Late Payment of Commercial Debts (Interest) Act 1998
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. ensure compliance with all local legal and taxation obligations relating to the territory in which they are trading. Non compliance with any obligations will be considered a breach of contract, which will lead to the immediate suspension of services by the Provider. Any costs, penalties or fines associated with non compliance and the remedy of such shall be borne by the Client.
b. 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;
c. 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;
d. 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; an admin fee will be applied for non-compliance
e. conduct their business within the laws of the UK and any other territories associated with the Provider including registration for all appropriate taxes.
f. comply with all laws and regulations affecting the manufacture, sale, packaging and labelling of the Goods, including Dangerous Goods, from time to time in force;
g. 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;

h. 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;
i. provide to the Provider with copies of all material safety data sheets relating to the Goods where they exist;
j. perform the additional undertakings as detailed in the Provider's most recently published Service Level Agreement;
k. 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;
l. be solely responsible for obtaining any necessary import licences or permits; and
m. 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.
n. agree to a zero tolerance policy towards any form of abuse, including but not limited to verbal, emotional or physical abuse. In the event that abuse is identified, the contract may be terminated immediately.
o. agree to not make, publish or communicate any defamatory statements, in any public forum.

## 9. TUPE

a. The parties agree that the Contract may constitute a relevant transfer for the purposes of TUPE. Where relevant the contract will be made pursuant to TUPE with effect from the Effective Date;
b. For any employees who are transferred, the Client will pay to the Provider an amount equal to the redundancy pay which would have been payable to the Employees as of the Effective date, had they been made redundant;

**Undertakings (where the Client is the direct employer of the Employees)**

c. The Client undertakes to the Provider:
   i. that it has complied with, and shall up to and including the Effective Date, comply with all of its obligations due to or in connection with the Employees;
   ii. that it has paid and shall pay all sums due to or in relation to the Employees up to and including the Effective Date, including but not limited to all salaries, bonus, commission, expenses, holiday pay, NI, pension, taxation and other sums payable in respect of any period up to the Effective Date;

iii. that it has complied and shall comply in all respects with its obligations under TUPE regulations, and that it has provided and shall provide to the Provider such information as the Provider may request in order to verify such compliance
iv. that there are no sums owing to or from any Employee other than reimbursement of expenses for the current period and wages for the current salary period;
v. that all employments, engagements and agreements relevant to the transfer have been fully disclosed;
vi. that it shall not alter (whether to take effect before, on or after the Effective Date) any of the terms of employment or engagement of any of the Employees (without the prior written consent of the Provider);

**Indemnities (where the Client is the direct employer of the Employees, or if a 3rd party is the employer)**

The Client undertakes to the Provider to fully indemnify and hold the Provider harmless against all Demands (including legal and other professional fees and expenses) which the Provider may incur, arising from:

i. any failure by the Client to comply with its obligations in law;
ii. the employment of the Employees or the termination of their employment by the previous employer;
iii. any failure by the Client to comply with its legal obligations;
iv. the transfer to the Provider, by virtue of TUPE, of the employment of any employee related to the Service other than the Employees;
v. any act or omission before the Effective Date which, by virtue of TUPE, is deemed to be an act or omission of the Provider; or
vi. without prejudice to the other provisions of this clause, the Client shall, at its own expense, give the Provider such assistance as the Provider may reasonably require to contest any Demand by any person employed before the Effective Date in connection with this agreement, subject always to the Client's obligations under the DPA 1998.

**Warranties**

b. The Client has not offered, promised or agreed to, nor is aware of, any future variation in any contract of employment of any one of the Employees or any other person in respect of whom liability is deemed by TUPE to pass to the Provider, and no negotiations for an increase in the remuneration or benefits of any Employee are current or likely to take place within the period of six months after Completion.
c. The Client is not engaged, involved or aware of any enquiry, investigation, dispute, claim or legal proceedings (whether arising under contract, common law, statute or in equity) with any of the Employees or any other person currently or previously employed by or engaged in the Business or their dependants and, so far as the Client is aware, there is no event which could give rise to such enquiry, investigation, dispute, claim or proceedings.

**With respect to labour relations**

Where relevant, the Client has Disclosed all collective bargaining, procedural or other agreements or arrangements (whether in writing, oral or by custom and practice and whether binding or not) in existence relating to or relevant to any of the Employees.

## 10. 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.

## 11. 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, ECMAscript (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.

## 12. 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.:
   i. the Provider shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
   ii. 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 £20,000. 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 with Section 4 of the Contract.

If the Provider fails to meet the required 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 14, the Client shall pay the Provider an amount equal to the aggregate total of the minimum monthly picking fees (as set out in the Proposal) due over the balance of the remainder of relevant Term. Such an 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

## 15. 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.

## 16. 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.

## 17. DATA PROTECTION

In the provision of the Services, the Provider (the data processor) will be expected to process data related to the Client (the data controller) and their customers. This data will cover:

i. customer information with regard to the Services and record keeping thereafter for no longer than as reasonably required by the Provider and Client;
ii. for the processing of the Services with;
iii. comprising customer data; including name, surname, billing address, delivery address, email, phone;
iv. where the controller is obliged to ensure that it has fully complied with the relevant data protection laws;
v. and where the controller has rights to the data as defined within the GDPR.

b. The Provider will:

i. only act on the written instructions of the controller (unless required by law to act without such instructions);
ii. ensure that people processing the data are subject to a duty of confidence;
iii. take appropriate measures to ensure the security of processing;
iv. assist the data controller in providing subject access and allowing data subjects to exercise their rights under the GDPR;
v. assist the data controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
vi. return all personal data to the controller as requested at the end of the contract;
vii. delete all personal data once it is no longer required; and
viii. submit to audits and inspections, provide the controller with whatever information it needs to ensure that they are both meeting their Article 28 obligations, and tell the controller immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state.

c. The Client hereby provides its prior, general authorisation for the Provider to appoint processors to process the customer personal data, provided that the Provider:

i. Shall ensure that the terms on which it appoints such processors comply with UK GDPR or the GDPR as applicable, and are consistent with the obligations imposed on the Provider in this clause 17;
ii. Shall remain liable to the Client for any failure by such processor to comply with the terms referred to in clause 17c (i); and
iii. Shall inform the Client of any intended changes concerning the addition or replacement of the processors by publishing the updated list of processors on www.ecommercefulfilment.com/subprocessors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and cannot demonstrate, to the Provider's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Client shall indemnify the Provider for any losses, damages, costs (including legal fees) and expenses suffered by the Provider in accommodating the objection or, if the Provider considers it is not practicable to accommodate the objection, in terminating the Services.

d. Where the Services are required by the client to be provided outside of the EEA, data which is specifically required for the provision of those Services will be transferred to the non-EEA country. Such permitted transfers will be safeguarded by the Provider through Model Contract Clauses or other adequate safeguards.

The Provider's liability is as defined in this contract, save than nothing within the contract relieves the processor of its own direct responsibilities and liabilities under the GDPR.

## 18. 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

## 19. GOVERNING LAW

The Contract and the Conditions shall be subject to English Law and the parties agree to the exclusive jurisdiction of the English Courts in all matters.