

J H Kemp Limited

Terms and Conditions of Trade (Warehouse Services)

- 1. Interpretation**
 - 1.1 In these Conditions, the definitions in schedule 1 shall apply.
 - 1.2 In these Conditions, the following rules apply:
 - 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
 - 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
 - 1.2.4 The terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 - 1.2.5 A reference to writing or written includes faxes and e-mails.
- 2. Information about us**
 - 2.1 We are J H Kemp Limited, a company registered in England and Wales under company number 03924219 and with our registered office at 2 Water Court, Water Street, Birmingham B3 1HP. Our main trading address is our registered office. Our VAT number is 753782208.
- 3. How the Agreement is formed between you and us**
 - 3.1 You appoint us to provide warehousing services, which may include the services described in these Conditions and which are more particularly described in the Service Particulars (**the Warehouse Services**).
 - 3.2 You are a user of the Warehouse Services from the date that you and we agree (**the Service Commencement Date**) until your rights are terminated under these Conditions. The Agreement between us will only be formed when you sign these Conditions.
 - 3.3 The Agreement will relate only to the Services which we agree to perform as detailed in the Service Particulars. We will not be obliged to supply any other Services.
 - 3.4 You promise us that you:
 - 3.4.1 own the Goods which you deliver to our Warehouse; or
 - 3.4.2 are authorised by the owner of such Goods to accept these Conditions.
 - 3.5 We can sub-contract any and all of our obligations to other people, but we will remain responsible for such sub-contractors.
- 4. Performance**
 - 4.1 The Warehousing Services will be fulfilled as far as possible in accordance with any specific time scales notified to you or agreed, and otherwise within a reasonable period of time.
- 5. Charge and Payment**
 - 5.1 Our Charges for the Warehousing Services will be payable by you and will be notified to you from time to time.
 - 5.2 We may, by giving 20 Business Days notice, increase the Charge of the Warehousing Services to reflect any increase in the cost of that which is due to:
 - 5.2.1 any factor beyond our control (including foreign exchange fluctuations and increases in taxes and duties);
 - 5.2.2 any delay caused by your instructions or your failure to give us adequate or accurate information or instructions.
 - 5.3 At our discretion, we may invoice you at any time after commencement of the Warehousing Services.
 - 5.4 The Customer shall pay the invoice in full and in cleared funds in accordance with our terms. Payment shall be made to the bank account nominated in writing by us. Time of payment is of the essence.
 - 5.5 Save as otherwise provided, you will pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and you will not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may at any time, without limiting any other rights or remedies we may have, set off, against any monies owing by us to you, any amount owing by you to us.
 - 5.6 In the event of a dispute arising in relation to an invoice you will ensure that during the period of dispute unrelated invoices are paid on or before their date and you will only be entitled to withhold payment in respect of invoiced amounts in dispute. You must notify us in writing of any such disputed amount prior to the date on which it becomes due and payable and in any event not later than 14 days after the relevant invoice date. We and you will attempt to resolve the dispute within 20 Business Days of you duly notifying us of the dispute in accordance with this clause. In the absence of any such resolution, either you or we (with the approval of the other) can ask that an expert determine the matter. If you and we cannot agree on an expert, The President of the Institute of Chartered Accountants can be asked by either you or us to appoint an expert. The fees of any such expert shall be shared between you and us equally or otherwise as the expert may determine is fair taking into account the conduct of each party.
 - 5.7 If you fail to make any undisputed payment on the due date then, without prejudice to any other right or remedy available to us, we will be entitled to suspend the provision of Warehousing Services to you.
 - 5.8 You acknowledge that our Charges are based on the scope of services to be provided as set out in the Service Particulars. If during the course of this Agreement your actual service profile varies from that set out in the Service Particulars we reserve the right to recalculate our Charges and charge you additional amounts over and above the Charges set out in the Service Particulars based on our prevailing market rates. If you do not agree to such recalculated Charges, we reserve the right to terminate our Agreement with you with immediate effect.
- 6. Customer's insolvency or incapacity**
 - 6.1 If you become subject to any of the events listed in clause 6.2, or we reasonably believe that you are about to become subject to any of them, then, without limiting any other right or remedy available to us, we may cancel or suspend all Warehousing Services under our Agreement without incurring any liability to you, and all outstanding sums in respect of Warehousing Services provided shall become immediately due.
 - 6.2 For the purposes of clause 6.1, the relevant events are:
 - 6.2.1 you suspend, or threatens to suspend, payment of your debts or are unable to pay your debts as they fall due or admits inability to pay your debts or (being a company) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) are deemed either unable to pay your debts or have no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) have any partner to whom any of the foregoing apply; or
 - 6.2.2 you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or make a proposal for or enter into any compromise or arrangement with your creditors other than (where the you are a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of you with one or more other companies or the solvent reconstruction of you; or
 - 6.2.3 (being an individual) you are the subject of a bankruptcy petition or order; or
 - 6.2.4 a creditor or encumbrancer of yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
 - 6.2.5 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you; or
 - 6.2.6 (being a company) a floating charge holder over your assets has become entitled to appoint or has appointed an administrative receiver; or
 - 6.2.7 a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets; or
 - 6.2.8 any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in clause 6.2.1 to clause 6.2.7 (inclusive); or
 - 6.2.9 you suspend, threaten to suspend, cease or threaten to cease to carry on all or substantially the whole of your business; or
 - 6.2.10 your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Agreement has been placed in jeopardy; or
 - 6.2.11 (being an individual) you die or, by reason of illness or incapacity (whether mental or physical), you are incapable of managing your own affairs or becomes a patient under any mental health legislation.
 - 7. Controlled goods and health & safety**
 - 7.1 You will present for storage in our Warehouse only those Controlled Goods which you specifically notify to us in writing.
 - 7.2 We may provide you with health and safety instructions in relation to your conduct at our Warehouse referred to in these Conditions and you agree to ensure that all persons under your control or otherwise acting on your behalf adhere to those instructions.
 - 7.3 You will only send us Goods that are packaged in such a way that they will remain in a condition to be safely handled, stored and carried so as not to cause injury, damage, contamination or deterioration (or the possibility of them) to any person, premises, equipment or to any other items in any way.
 - 7.4 Unless otherwise agreed, you will provide, and pay for, suitable facilities and equipment for, and will procure, safe and efficient loading and unloading of Goods.
 - 8. Access rights and obligations**
 - 8.1 You will be entitled to access to the Warehouse to view your Goods only by pre-arranged appointment. To arrange a visit you must provide us with reasonable notice of the days and times that you would like to attend and the likely duration of the visit. Whilst on site, you shall be required to comply with all health and safety requirements and must be accompanied by a member of our staff. We reserve the right to charge for each and every visit in accordance with our Charges prevailing at the relevant time and which will be available on request.
 - 8.2 We can change the location of any Warehouse, but will tell you promptly in advance if we do.
 - 9. Receipt of goods**
 - 9.1 Unless otherwise agreed in writing, prior to us receiving each and

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- every consignment of your Goods into our Warehouse for storage, you will provide us with information including, but not limited to:
- 9.1.1 details of the supplier (if relevant),
 - 9.1.2 a list detailing all of your SKUs and a description of the Goods that each SKU refers to,
 - 9.1.3 any relevant COSHH data,
 - 9.1.4 details of any other health and safety issues that we would reasonable require in order to safely handle and store the Goods.
- 9.2 You will continue to provide, and update, such information for all Goods you store with us for the duration of this Agreement. Where you have not provided us with the relevant information we will not be obliged to pay you in connection with any claim you may attempt to make for damaged or lost Goods, nor will we be able to book your Goods onto our WMS.
- 9.3 You will provide us with reasonable notice of Goods being delivered to our Warehouse. Upon your Goods being delivered to our Warehouse (whether by you or one of your suppliers) you will provide us with a delivery note (a "**Delivery Note**") specifying:
- 9.3.1 the description, quantity and relevant SKU numbers of the Goods to be stored by us;
 - 9.3.2 your relevant Purchase Order or other reference number for the consignment of Goods.
- 9.4 We reserve the right to reject, or place in Quarantine, your Goods for storage and not enter them onto our WMS if:
- 9.4.1 a Delivery Note is not provided in accordance with clause 9.3; or
 - 9.4.2 we are concerned in any way about the condition and/or packaging of your Goods by you; or
 - 9.4.3 you fail to provide the information required by paragraph 9.1 or the information you have provided is inconsistent with the Goods we receive, or both.
- 9.5 If any of the circumstances at clause 9.4 arise, where we have not rejected your Goods, we may keep your Goods in Quarantine, and they will remain in Quarantine until such time as:
- 9.5.1 you provide the Delivery Note or missing information as required by paragraph 9.1 or we agree with you an alternative course of action, or any combination of these; or
 - 9.5.2 we agree a re-packaging Charge with you.
- 9.6 We will accept your Goods, initially on an 'unchecked basis' by signing your Delivery Note (as amended if necessary) upon their delivery to our Warehouse, whereupon we will book such Goods onto our WMS and store your Goods until you submit a request to remove specified Goods from our Warehouse.
- 9.7 Any Good placed into Quarantine will be subject to additional handling Charges.
- ### 10. Removal of goods
- 10.1 When you want to collect your Goods from our Warehouse, you will:
- 10.1.1 (unless otherwise agreed and confirmed by us in writing) provide reasonable notice of your intention to collect Goods from our Warehouse (the length of such notice being dependent upon the nature and quantity of Goods you intend to collect);
 - 10.1.2 advise us on what day and between what times you or your appointed carrier will attend at our Warehouse to collect Goods;
 - 10.1.3 if you intend to appoint a carrier, provide details of the carrier who will be attending at our Warehouse for collection;
 - 10.1.4 provide to us a full list of the Goods and their SKU codes (where applicable), that you intend to collect ("**Collection List**").
- 10.2 Whilst we will always try to meet your requirements for collection, we may not always have sufficient capacity in the Warehouse to deal with collections on short notice and in those cases we will agree with you a time when your Goods can be collected.
- 10.3 Based on your Collection List we will prepare our own record of Goods that we make available for collection ("**Goods Collected Note**"). We will only be obliged to release Goods if our Goods Collection Note is signed by the person attending for collection. Our Goods Collection Note will be proof of what Goods have been collected and will not be subject to challenge save in the case of fraud or manifest error.
- ### 11. Pick, Pack and Dispatch
- 11.1 If a pick request is made we will:
- 11.1.1 pick the Goods from our Warehouse;
 - 11.1.2 package items in an appropriate manner (each, 'a Parcel');
 - 11.1.3 allocate a unique tracking number to each Parcel comprising the Goods;
 - 11.1.4 appoint a courier to collect and deliver the Parcel to a recipient at an address notified by you to us.
- ### 12. International and air transport
- 12.1 We may provide you with certain delivery services that involve international transport, be it by air, road, sea or rail ('International Deliveries') or non-international air transport, or both, in which case the terms in this paragraph 12 will apply.
- 12.2 If we provide international air transport, the Carriage By Air Act 1961 (as amended from time to time) ("the Act") applies as between us and our Common Carrier, and accordingly:
- 12.2.1 our services will be provided in accordance with the Act; and
 - 12.2.2 our liability to you shall be no more than is prescribed in the Act;
 - 12.2.3 any claims against us must be made within the periods specified in the Act;
 - 12.2.4 in all cases our liability to you will not exceed the liability of our Common Carrier to us.
- 12.3 If we provide international road transport, the CMR applies as between us and our Common Carrier, and accordingly:
- 12.3.1 our services will be provided in accordance with CMR;
 - 12.3.2 our liability to you shall be no more than is prescribed in the CMR; and
 - 12.3.3 in all cases our liability to you will not exceed the liability of our Common Carrier to us.
- 12.4 If we provide Non-International Carriage, the Montreal Convention as amended by Schedule 1 to the Carriage By Air Acts (Application of Provisions) Order 2004/1899 ("the Order") applies as between us and our Common Carrier and accordingly:
- 12.4.1 our Services will be provided in accordance with the Order; and
 - 12.4.2 our liability to you shall be no more than is prescribed in Article 22 of the Order and you must make any claims against us within the time period(s) specified in Article 31 of the Order;
 - 12.4.3 in all cases our liability to you will not exceed the liability of our Common Carrier to us.
- 12.5 Subject to the Act, the CMR and the Order (as applicable), we will not be liable for any losses incurred caused by the delay in delivering Parcels arising out of the use by us of freight forwarders, airlines or other international transporters.
- 12.6 If an International Delivery, or a non-international air delivery, combines carriage by air, road or other means of transport, it shall be presumed that any loss or damage arising to your Parcel occurred during the air period of such carriage unless proven otherwise.
- 12.7 If you regard the limits of liability provided for under the Act and/or the CMR and/or the Order as insufficient, you must make your own insurance arrangements and you hereby agree to assume the risk of all loss or damage above the limits so specified.
- 12.8 You are responsible for obtaining, at your own cost, such export licence and other consents in relation to your Parcels as are required from time to time and if reasonably required by us will make these available to us prior to the commencement of the relevant International Delivery.
- 12.9 Notwithstanding paragraph 12.8, we (or our sub-contractors) may (but will not be obliged to):
- 12.9.1 complete any required documents, amend product or service codes;
 - 12.9.2 receive your original purchase invoice for the Goods in the Parcel;
 - 12.9.3 pay any duties or taxes required under applicable laws and regulations for which you will immediately reimburse us; and
 - 12.9.4 redirect your Parcel to the end recipient's import broker or other address upon request by any person we (or our sub-contractors) reasonably believe to be duly authorised.
- 12.10 As appropriate we may act, or authorise our sub-contractors to act on your behalf, as your forwarding agent for customs and export control purposes and as end recipient of your Parcels solely for the purposes of designating a customs broker to perform customs clearance and entry.
- 12.11 We may need to supply third parties (including but not limited to, international carriers) with information regarding the Parcel (including but not limited to a full description of the Goods in any Parcel, their value, quantity and weight) and/or you and your intended recipient (including your/their VAT number). You will provide us with all the required information in advance of our commencing our International delivery Services or non international air deliveries and we reserve the right to refuse to provide you with such services if you do not provide us in advance with all such required information.
- 12.12 You shall indemnify us in full and hold us harmless from any loss or damage we may suffer and/or incur arising out of your failure to comply with any applicable laws or regulations and/or for your breach of any of the following warranties and representations:
- 12.12.1 all information provided by you/your Business Contacts/your users is complete and accurate in all respects;
 - 12.12.2 all applicable customs, import and export and other laws and regulations have been complied with;
 - 12.12.3 the Goods in any Parcel to be sent are acceptable for international air transport.
- 12.13 You will reimburse us for all and any charges, duties and taxes owed for our International Delivery Services and indemnify us for all claims, damages and expenses howsoever incurred if the Parcel is deemed unacceptable for whatever reason for transport outside the UK and/or for air transport within the UK. Any Parcels on which duty and other taxes will exceed £500 will be paid by you in advance of any such Parcel's being dispatched.
- 12.14 You will comply with our procedures and policies (as advised to you from time to time) relating to International Deliveries and/or non-international air transport
- ### 13. General Road Haulage
- 13.1 Where you ask us to transport and deliver large volumes of Stock within the UK, the terms and conditions of the Road Haulage Association Limited – Conditions of Carriage 2009 (effective 1 September 2009) (or such later edition) shall be incorporated into this Agreement and will apply to such transportation services. In the event of conflict between these terms and the RHA Terms, the RHA terms shall prevail. A copy of the RHA conditions are available on request.
- ### 14. Risk (IMPORTANT)
- 14.1 We will take reasonable care of your Goods whilst in our Warehouse.
- 14.2 As the value of Goods may far exceed the Charges paid for the

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- Warehousing Services, our liability for any damage to Goods whilst in our possession or loss or apparent loss of Goods stored in our Warehouse must be limited as set out in these Conditions, and you must ensure that all Goods delivered to us under this Agreement are insured to your satisfaction.
- 14.3 Our Charges are based on an assumption that we will not check and may not be qualified to check that the Goods that you deliver to us are as specified in your Delivery Note. We will check:
- 14.3.1 that the Items marked with SKUs are properly identified on the Delivery Note;
- 14.3.2 that such Items are recorded on our WMS.
- 14.4 We will not check:
- 14.4.1 that an Item to which an SKU is assigned corresponds with a particular description (if given);
- 14.4.2 where an Item is made up of a number of component parts, we will not check and verify the makeup of those component parts;
- 14.4.3 that Items are in good condition (save for the external appearance of Packages).
- 14.5 We will only be responsible (where applicable) for ensuring that we hold such Items as are recorded on our WMS from time to time.
- 15. Our liability and your responsibility to insure**
- 15.1 Only you know the value of your Goods and the value of those Goods may far exceed the Charges levied under the Agreement. Accordingly you agree to:
- 15.1.1 insure all Goods against all insurable risks (including, 'in transit' insurance) to their full insurable value with any right for the insurer to bring a subrogated claim against us being excluded and you agree that the proceeds of such insurance are adequate to compensate you for any loss to any Goods; and
- 15.1.2 waive all rights against us and our sub-contractors, agents and employees to claim for damages caused by any risks for which you are insured.
- 15.2 Subject to clause 15.4, our liability for losses that you suffer, during any 12 month period, as a result of our breach of the Agreement, in negligence or otherwise in connection with Warehousing Services will be subject to a maximum amount equal to the aggregate Charges for the Warehouse Services over the 12 month period prior to the event giving rise to the liability.
- 15.3 Subject to clause 15.4, we will not be liable for losses that you suffer as a result of our breach of the Agreement, in negligence or otherwise in connection with the Services that fall into the following categories:
- 15.3.1 loss of income or revenue;
- 15.3.2 loss of business;
- 15.3.3 loss of profits
- 15.3.4 loss of anticipated savings;
- 15.3.5 loss of data; or
- 15.3.6 waste of management or office time.
- 15.4 Nothing in this agreement excludes or limits our liability for:
- 15.4.1 death or personal injury caused by our negligence;
- 15.4.2 fraud or fraudulent misrepresentation;
- 15.4.3 any other matter for which it would be illegal for us to exclude or attempt to exclude our liability.
- 15.5 Subject to the other limitations, our liability for any loss or damage caused by us to a particular Item shall be the lower of:
- 15.5.1 the sum of £2,000;
- 15.5.2 the amount of loss you suffer;
- 15.5.3 the replacement value of the Item;
- 15.5.4 the value of the Item as notified by you to us;
- 15.5.5 any other limitation that we may specifically agree with you.
- 15.6 It is a condition of this Agreement that you will inform us in writing (prior to presenting to us for storage) if any Items have a replacement value of more than £2,000. If you fail to do so, we will have no liability in relation to the loss or damage of such Items whatsoever.
- 15.7 Subject to clause 12, in relation to any Items that are picked and packaged for dispatch using a courier, we shall be responsible for such Parcels whilst in Transit only and our liability to you shall be limited to the lower of:
- 15.7.1 £50.00 for each Parcel;
- 15.7.2 the amount of loss you suffer; or
- 15.7.3 the value of the Parcel as it goes into Transit, and in the case of an Item its replacement cost value as booked onto the WMS, less its value (if any) after the loss or damage (as applicable) was sustained.
- 15.8 We are not liable for any loss or damage arising from:
- 15.8.1 Force Majeure;
- 15.8.2 your errors, acts, omissions, misstatements or misrepresentations or any breach by you of your obligations under this Agreement;
- 15.8.3 wastage, defect, or deterioration of any Item;
- 15.8.4 insufficient or improper packing, labelling or addressing by you;
- 15.8.5 Controlled Goods being stored through us.
- 15.9 You acknowledge that the exclusions and limitations in this paragraph are reasonable in all the circumstances.
- 16. Time limits for claims and claims procedure**
- 16.1 Subject to clause 12, we will not be liable for any claim by you under this Agreement unless you give us written notice of your claim:
- 16.1.1 in the case of damage to any Parcel, within 3 days of the end of Transit; or
- 16.1.2 in the case of damage to any Item you collect, on collection; or
- 16.1.3 in any other case of you becoming aware of a claim for damage or lost Stock, within 3 days of becoming so aware.
- 16.2 Where your claim relates to any lost or damaged Stock you must, before we shall have any liability to you, provide us with as much relevant information about the Stock as we may reasonably request:
- 16.2.1 proof of value including purchase invoice; and
- 16.2.2 in the case of damage, a photograph of the Stock and, if requested by us, the Stock and its packaging for inspection.
- 17. Termination**
- 17.1 Either you or we can end the Agreement on giving not less than 30 days' written notice.
- 17.2 Upon the termination of this Agreement, you will ensure that:
- 17.2.1 all of your Goods and any waste materials have been collected from our Warehouse;
- 17.2.2 all of our property is returned; and
- 17.2.3 all sums due are paid.
- 17.3 In the event you do not collect your Goods and waste as provided for at clause 17.2:
- 17.3.1 we reserve the right to remove any Goods and waste and return them to your last known place of business, and although we will not be providing Warehousing Services any longer we will charge you a fee based on our standard carriage rates prevailing at the time together with a handling charge equal to 10% of the carriage charge. In addition we will charge you at our standard rates for storage, packaging dispatch until the Goods have been removed; and
- 17.3.2 if you do not collect your Goods within 20 days after termination we may sell or destroy any of your Goods. You will pay the cost of any destruction. The proceeds of any sale will be set off against any amounts that you owe us and the balance, if any, will be sent to you.
- 17.4 If non-performance of any obligation under the Agreement caused by any Force Majeure shall continue for more than three weeks then you or we may terminate this Agreement immediately by giving notice in writing to the other.
- 18. TUPE**
- 18.1 If we shall become the employer of any Personnel of the Previous Service Provider or any of its sub-contractors or of you pursuant to TUPE at the Service Commencement Date as a result of us entering this Agreement with you, you shall indemnify us in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by us including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 18.1.1 the non-payment of salaries and other emoluments by the Previous Service Provider or you including holiday pay, taxation and National Insurance contributions and contributions to pensions relating to any of the Personnel up to and including the Service Commencement Date;
- 18.1.2 the failure of the Previous Service Provider or you to inform and consult properly or at all under Regulation 13 of TUPE;
- 18.1.3 the termination of the Previous Service Provider of the employment of any of the Personnel, where appropriate, as a result of you terminating your agreement with the Previous Service Provider or the termination of employment of Personnel by you;
- 18.1.4 the termination by us of the employment of any of the Personnel, and/or any of our existing employees if they are selected following a fair redundancy process rather than any of the Personnel, by reason of redundancy or business reorganisation within 3 months of the Service Commencement Date; and
- 18.1.5 anything done or omitted to be done by the Previous Service Provider or you in respect of any of the Personnel which is deemed to have been done by us by virtue of TUPE ("**Employee Claims**").
- 18.2 We shall notify you in writing as soon as reasonably practicable if any Employee Claim is brought against us, setting out in reasonable detail the nature of the Employee Claim. You shall then provide us with such assistance free of charge as may be reasonably necessary to defend the Employee Claim. We shall not make any admission of liability, or compromise any Employee Claim, without your prior written consent (such consent not to be unreasonably withheld or delayed).
- 18.3 You shall indemnify us against all Employee Claims arising from your, or the Replacement Service Provider's, failure to perform and discharge any obligation and against any claims in respect of Transferring Employees arising from or as a result of:
- 18.3.1 any act or omission by you or the Replacement Service Provider relating to a Transferring Employee occurring on or after the termination of the Service Transfer Date; and
- 18.3.2 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date.
- 18.4 You and we shall co-operate with each other to ensure that any requirement to inform and consult with employees and/or employee representatives under TUPE as a result of the termination of this Agreement will be fulfilled.
- 19. Assignment/sub-contracting**
- 19.1 We can sub-contract and/or assign our rights and obligations under these Conditions. You may only do so with our prior written consent

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(which we will not unreasonably withhold).

- 20. Time not of the essence**
20.1 Whilst we will endeavour to provide the Warehouse Services in accordance with the Conditions, time shall not be of the essence for the performance of our obligations.
- 21. Written communications**
21.1 For contractual purposes, you agree to electronic means of communication and you acknowledge that all Agreements, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.
- 22. Notices**
22.1 All notices given by you to us must be given to J H Kemp Limited at info@jhkemp.co.uk or to 2 Water Court, Water Street, Birmingham B2 1HP. We may give notice to you at either the e-mail or postal address you provide to us when placing an Order. Notice will be deemed received and properly served 24 hours after an e-mail is sent, or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.
- 23. Transfer of rights and obligations**
23.1 The Agreement between you and us is binding on you and us and on our respective successors and assignees.
23.2 You may not transfer, assign, charge or otherwise dispose of this Agreement, or any of your rights or obligations arising under it, without our prior written consent.
23.3 We may transfer, assign, charge, sub-contract or otherwise dispose of this Agreement, or any of our rights or obligations arising under it, at any time during the term of the Agreement.
- 24. Events outside our control**
24.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Agreement that is caused by events outside our reasonable control ('**Force Majeure Event**').
24.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:
24.2.1 strikes, lock-outs or other industrial action;
24.2.2 civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
24.2.3 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
24.2.4 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
24.2.5 impossibility of the use of public or private telecommunications networks; and
24.2.6 the acts, decrees, legislation, regulations or restrictions of any government.
24.3 Our performance under the Agreement is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Agreement may be performed despite the Force Majeure Event.
- 25. Waiver**
25.1 If we fail, at any time during the term of the Agreement, to insist upon strict performance of any of your obligations under the Agreement, or if we fail to exercise any of the rights or remedies to which we are entitled under the Agreement, this will not constitute a waiver of such rights or remedies and will not relieve you from compliance with such obligations.
25.2 A waiver by us of any default will not constitute a waiver of any subsequent default.
25.3 No waiver by us of any of the terms and conditions of this Agreement will be effective unless it is expressly stated to be a waiver and is communicated to you in writing in accordance with paragraph 22 above.
- 26. Severability**
26.1 If any of the terms and conditions of the Agreement are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.
- 27. Entire agreement**
27.1 These terms and conditions and any document expressly referred to in them constitute the whole agreement between us and you and supersede all previous discussions, correspondence, negotiations, previous arrangement, understanding or agreement between us and you relating to the subject matter of any Agreement.
27.2 We each acknowledge that, in entering into this Agreement, neither of us relies on, or will have any remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in these terms and conditions or the documents referred to in them.

- 27.3 Each of us agrees that our only liability in respect of representations and warranties (whether made innocently or negligently) will be for breach of the Agreement.
- 27.4 Nothing in this clause limits or excludes any liability for fraud.
- 28. Our right to vary these terms and conditions**
28.1 We have the right to revise and amend these terms and conditions from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities.
- 29. General lien**
29.1 If you owe us any money, we may keep possession of any of your Goods in our Warehouse until you settle such outstanding amounts. If you owe us any money that is overdue by more than 60 days, we may sell any Goods and use the proceeds to satisfy, in whole or in part, what you owe. We will give you ten days' notice of our intention to exercise this right. You will indemnify us if anything that we sell turns out to belong to a third party.
- 30. Our relationship**
30.1 You and us are not partners, joint venturers, employers, employees or, save as provided otherwise.
- 31. Law and jurisdiction**
31.1 This Agreement for the purchase of Services and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) will be governed by English law. Any dispute or claim arising out of or in connection with the Agreement or their formation (including non-contractual disputes or claims) will be subject to the exclusive jurisdiction of the courts of England and Wales.
- Schedule 1 – Interpretation**
- Agreement: the agreement between us and you for the sale and purchase of Services, in accordance with these Conditions;
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
Charge: the charges for the Service details of which are set out in the Service Particulars or otherwise agreed in writing by you and us together with any charges, duties and taxes payable by us in respect of International Deliveries;
CMR: Convention on the Agreement for the International Carriage of Goods by Road 1956;
Collection List: has the meaning set out in clause 10.1.4;
Common Carrier: a carrier that delivers to any delivery address requested;
Conditions: the terms and conditions set out in this document as amended from time to time including any special conditions agreed between you and us;
Controlled Goods: goods, including but not limited to COSHH goods, which may be sensitive to conditions found in Transit or to X-rays, or which require a licence or permission or with which special precautions must be taken;
Delivery Note: has the meaning set out in 9.3;
Employee Claims: has the meaning set out in clause 18.1.5;
Force Majeure: any event beyond our reasonable control including (without limit) acts of god, adverse weather conditions, fire, flood or any other natural disaster, interruption or failure of utility services including but not limited to electric power, gas or water, road traffic accident, traffic immobilisation, war, invasion, foreign enemy, hostilities, terrorism, civil commotion, revolution, rebellion, riot, insurrection, forfeiture under legal process, industrial action, strike, lockout, stoppage or restraint of labour from whatever cause;
Goods: means your goods which are delivered to us for storage in our Warehouse;
Goods Collection Note: has the meaning set out in clause 10.3;
Initial Term: the minimum duration of this Agreement between us and you, being that period specified in the Service Particulars in default of which being the period expiring no less than 30 days from the Service Commencement Date;
Item: means an 'outer' package, box or pallet (as the case may be) comprising one or more Goods to which a single SKU is assigned;
Warehouse Services: has the meaning set out in clause 3.1;
Parcel: a single box or packet into which Items are packaged for Transit and which are given a unique tracking label;
the Montreal Convention: means the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999, and "Non-International Carriage" has the same meaning as that in the Order;
Personnel: all employees, staff, other workers, agents and

J H Kemp Limited

Terms and Conditions of Trade (Warehouse Services)

Previous Service Provider:	consultants who are or were engaged in the provision of services the same or substantially similar to the Warehousing Services prior to or on the Service Commencement Date; the provider appointed by you as a provider of some or all of the Warehousing Services (or services which are similar to the Warehousing Services) prior to the Service Commencement Date, including you where you provided some or all of such Warehousing Services yourselves;
Purchase Order:	your unique number assigned to an order of your Goods which you have placed on your supplier;
Quarantine:	an area in our Warehouse for storing Goods received from you for storage where we are unable to enter them onto our WMS;
Replacement Services:	any services which are identical or substantially similar to any of the Warehouse Services and which you receive in substitution for any of the Warehouse Services following the termination or expiry of this Agreement, whether those services are provided by you internally or by a Replacement Service Provider;
Replacement Service Provider:	any third party provider of Replacement Services appointed by you from time to time;
'Service Commencement Date'	has the meaning set out in clause 3.2;
Services	means the services provide by us to you under our Agreement and these Conditions;
'Service Particulars'	means a document which accompanies these Conditions detailing the scope of the Warehousing Services to be provided to you by us;
Service Transfer Date:	the date on which the Services (or any part of the Services) for whatever reason transfer from us to you or any Replacement Service Provider;
Stock:	all or any of your Goods (as the context allows) that we store in our Warehouse which Goods are comprised of Items (which Items are comprised of SKU's);
Stock Keeping Unit or SKU:	a unique identifier for each distinct unit of your Goods;
Transit	the physical movement of Stock or Parcels from one location to another;
Transferring Employees:	those employees whose Agreement of employment will be transferred to you or a Replacement Service Provider pursuant to TUPE on expiry or termination of this Agreement;
TUPE:	The Transfer of Undertakings (Protection of Employment Regulations) 2006 (as amended from time to time);
VAT	Value Added Tax chargeable under English law for the time being and any similar additional tax;
Warehouse:	one of our storage sites;
Warehouse Services:	has the meaning set out in clause 3.1;
Warehouse Management System or WMS:	the system used to assist in the delivery and management of Our Warehousing Service;
'we' 'us' and 'our':	means JH Kemps Limited (crn 03924219);
Working Day:	Monday to Friday (inclusive), excluding UK bank and public holidays;
'you' and 'your':	the individual, company, partnership or similar business organisation whose details appear on the Service Particulars as our customer or who is otherwise a customer to whom we provide the Services;