

CAROUSEL TERMS AND CONDITIONS

1 Our Contract with you

- 1.1 We are Carousel Logistics Limited, incorporated and registered in England and Wales with company number 01908712, our registered office is c/o Cripps LLP, 23 Kings Hill Avenue, Kings Hill, West Malling, Kent, ME19 4UA.
- 1.2 The **Order Form** constitutes an offer by you to purchase **Services** in accordance with these **Conditions**. Where you request us to provide **Services** (whether in writing or otherwise), and no **Order Form** is created your request constitutes an offer by you to purchase **Services** in accordance with these **Conditions**.
- 1.3 Your offer shall only be deemed to be accepted when we sign an **Order Form**, or we issue written acceptance of your offer, or we commence providing the **Services** (whichever is earliest), at which point and on which date the **Contract** shall come into existence (**Commencement Date**).
- 1.4 These **Conditions** apply to the **Contract** to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.5 In addition to these **Conditions**, the **BIFA Conditions** will apply to all **Logistics Services** and the **UKWA Conditions** will apply to all **Warehouse Services**. For the purposes of the **BIFA Conditions** and **UKWA Conditions**, we are the "**Company**", and you are the "**Customer**". It is your responsibility to read and understand the **BIFA Conditions** and **UKWA Conditions**, and by entering into a Contract with us you confirm your agreement to them.
- 1.6 You can request a copy of the current **BIFA Conditions** or **UKWA Conditions** from us at any time. The obligations set out in these **Conditions** shall apply in addition to any obligations in the **BIFA Conditions** (available at <http://www.bifa.org/about-bifa/tradingconditions>) and **UKWA Conditions**. To the extent that there is any conflict, clause 14.6 shall apply.
- 1.7 The references in bold are defined terms set out at clause 14.

2 Supply of Services

- 2.1 We reserve the right to amend the **Service Description** if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the **Services**.
- 2.2 You appoint us as your exclusive provider of the **Services** as set out in the **Service Description** and you shall not:
- 2.2.1 provide services (in whole or in part) yourself which are identical or similar to the **Services**; or
- 2.2.2 negotiate or engage (directly or indirectly, including through any of your group companies) with any third party for the supply of services which are identical or similar to the **Services**.
- 2.3 The obligations at clause 2.2 shall apply for the duration of the **Contract** or (if shorter) for a period of five years from the **Commencement Date**.

3 Risk

- 3.1 Risk in the **Goods** will be subject to the **UKWA Conditions** when we are providing **Warehouse Services** or subject to **BIFA Conditions** when we are providing **Logistics Services**.

4 Insurance

- 4.1 Unless we agree otherwise in writing, you must at your own expense maintain (with reputable insurers) and provide evidence to us on request of insurance cover:
- 4.1.1 for the **Goods**, for the duration of the **Contract**, against all insurable risks to their full insurable value (including all duties and taxes) which excludes any right for the insurer to bring a subrogated claim against us; and

4.1.2 in respect of your liabilities and obligations under the **Contract** including (but not limited to) public liability, product liability, employer's liability and any insurances required by law, for the duration of the **Contract** and for 6 years after its termination.

4.2 We can arrange insurance for the **Goods** at your request, subject to additional charges.

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5 **Your obligations**

5.1 You shall:

5.1.1 ensure that the terms of the **Order Form** are complete and accurate;

5.1.2 co-operate with us in all matters relating to the **Services**;

5.1.3 provide us with such information, assistance and materials as we may reasonably require in order to supply the **Services** (including but not limited to information as necessary to provide the **Services** without injury or damage to us, our officers, employees, agents or any third parties, and as to the **Goods'** storage, transport and distribution requirements and current industry practices), and ensure that any information you provide is complete and accurate in all material respects;

5.1.4 the **Goods** are fit and safe to be carried or stored in the condition in which they are presented to us and that have been prepared in secure premises using competent, diligent and reliable staff employed by you, labelled in accordance with any statutory or other regulations for the time being in force and that the **Goods** have been safeguarded against unauthorised interference during preparation, storage and transportation immediately prior to acceptance for carriage or storage of them by us;

5.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the **Services** before the date on which the **Services** are to start;

5.1.6 comply with (and ensure the **Goods** comply with) all applicable laws, including health and safety laws; and

5.1.7 comply with any additional obligations as set out in the **Service Description**; the **UKWA Conditions**, and the **BIFA Conditions**.

5.2 If our performance of any of our obligations under the **Contract** is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation, or by any defect or issue with the **Goods (Default)**:

5.2.1 without limiting or affecting any other right or remedy available to it, we shall have the right to suspend performance of the **Services** until you remedy the **Default**, and to rely on the **Default** to relieve us from the performance of any of our obligations in each case to the extent the **Default** prevents or delays our performance of any of our obligations;

5.2.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 5.2; and

5.2.3 you shall be responsible for all costs, expenses, damages and losses arising out of or in connection with the **Default**.

5.3 You shall indemnify us against all liabilities, costs, expenses, damages and losses suffered or incurred by us arising out of or in connection with your breach of the **Contract**.

5.4 We reserve (for us and for any governmental or customs authorities, or any logistics agents handling the **Goods**) the right to open the packaging of and inspect any **Goods**.

6 **Charges and payment**

6.1 The **Charges** for the **Services** and the terms of payment shall be as set out in the **Order Form** and the relevant **Charges Card**.

6.2 The **Service Charges** will automatically increase on an annual basis with effect from each anniversary of the **Commencement Date** by the rate according to Retail Prices Index (RPI) in the preceding 12-month period.

6.3 The **Services Charges** are conditional upon you achieving the **Projected Expenditure**. If your total payments to us in any consecutive 13 week period (pro-rated to the period or periods by which the **Projected Expenditure** is calculated) are less than 75% of the **Projected Expenditure (Minimum Expenditure)** we may (without prejudice to our other rights and remedies) invoice you for **Service Charges** as if the **Minimum Expenditure** had been met (as calculated by us, acting reasonably) including elements of the **Services** (including but not limited to transport, distribution and handling) which we, acting reasonably, anticipated being required based on the **Projected Expenditure**.

6.4 If you fail to make a payment due to us under the **Contract** by the due date, then, without limiting our remedies under clause 8, you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment, at the rate set out in the **UKWA Conditions** (regardless of the **Services** being provided).

6.5 All amounts due under the **Contract** shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.6 In addition to any rights under the **UKWA Conditions** and **BIFA Conditions**, we shall have a lien on any items (including packaging) purchased for you or on your behalf as security for payment of all sums due from you on any account (whether such account relates to those items or not), and storage charges shall accrue on those items as if they were Goods.

7 Liability

7.1 Subject to clause 7.2, our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, restitution, or otherwise:

7.1.1 in relation to **Logistics Services**, is capped at 2 SDR (Special Drawing Rights as defined by the International Monetary Fund) per kilogram, subject to the **BIFA Conditions**;

7.1.2 in relation to **Warehouse Services** is capped at £100 per tonne, subject to the **UKWA Conditions**; and

7.1.3 to the extent not limited by clause 7.1.1 or clause 7.1.2, or otherwise arising under or in connection with the **Contract**, shall be limited to £1,000.

7.2 Nothing in the **Contract** shall limit or exclude our liability for death or personal injury (caused by our negligence or the negligence of our employees, agents or subcontractors), fraud or fraudulent misrepresentation, or any other liability which cannot be limited or excluded by applicable law.

7.3 Subject to clause 7.2, we shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, restitution, or otherwise, arising under or in connection with the **Contract** for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill, for any losses, damages, costs claims or expenses not arising out of our negligence, breach of contract or breach of statutory duty, nor for any indirect or consequential loss.

7.4 You agree that any warranties, obligations or provisions which might be implied by law (or are otherwise not explicitly set out in the **Contract**) are excluded from the **Contract** (to the fullest extent permitted by law).

7.5 When we collect **Goods** from you or despatch them from the **Storage Facility**, we will record their quantity and condition. That record will (unless you provide conclusive evidence otherwise) be conclusive evidence of the quantity and condition of those **Goods** at the time you (or any third party) receives them.

7.6 If you wish to make a claim against us for any failure to return or deliver the **Goods** in the same quantity and condition as on our receipt or collection from you (even if caused by our negligence), you must ensure that written notice is given to us by you within 7 days of the date when the **Goods** should have been received.

8 Term and Termination

8.1 The **Contract** shall commence on the **Commencement Date** and continue for the **Initial Term**, after which it shall automatically renew for consecutive **Renewal Periods**, until terminated in accordance with this clause 8.

8.2 We or you may terminate the **Contract** by giving the other written notice of at least 6 months, not to expire before the end of the **Initial Term** or a **Renewal Period**.

8.3 We or you may terminate the **Contract** with immediate effect by giving written notice to the other if:

8.3.1 the other party commits a material breach of the **Contract** and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

8.3.2 the other party ceases or suspends a substantial part of its business (or threatens to do so), takes any action in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up, having a receiver appointed to any of its assets or ceasing to carry on business or, if the action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction, or the other party's financial position deteriorates to such an extent that (in the terminating party's opinion) the other party's capability to adequately fulfil its obligations under the **Contract** has been placed in jeopardy.

8.4 We may terminate the **Contract** with immediate effect by giving written notice to you if you fail to pay any amount due under the **Contract** on the due date for payment (on 3 occasions in any 6 month period), or you undergo a change of control (as defined in section 1124 of the Corporation Tax Act 2010).

8.5 Without affecting our other rights or remedies, we may suspend the supply of **Services** under the **Contract** or any other contract between you and us if you fail (on 3 occasions in any 6 month period) to pay any amount due under the **Contract** on the due date for payment, you become subject to any of the events listed in clause 8.3.2, or we reasonably believe that you are about to become subject to any of them.

9 Consequences of termination

9.1 On termination of the **Contract** you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of **Services** supplied or other sums payable to us for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt. Following termination, the **UKWA Conditions** will continue to apply to any **Goods** we hold as part of the **Warehouse Services**, and the **BIFA Conditions** will continue to apply to any **Goods** we hold as part of the **Logistics Services**.

9.2 If we terminate the **Contract** in accordance with clause 8.3 or clause 8.4, we may (without prejudice to our other rights and remedies) invoice you for all **Service Charges** which would have been payable by you under the **Contract** (as calculated by us, acting reasonably) had the **Contract** continued in force until the end of the **Initial Term** or **Renewal Period** (as applicable).

9.3 Termination of the **Contract** shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the **Contract** which existed at or before the date of termination.

9.4 Any provision of the **Contract** that expressly or by implication is intended to come into or continue in force on or after termination of the **Contract** shall remain in full force and effect, including but not limited to clauses 6, 7, 9 and 13.

10 Personal Data

10.1 If we process any personal data on your behalf, you agree that we are a data processor and you are a data controller for the purposes of applicable data protection law (and the terms "personal data", "data subject," "data controller", "data processor" and "process" shall have the meanings given by applicable data protection law from time to time).

10.2 You acknowledge and agree that personal data may be transferred or stored outside the EEA or the country where you are located in order to carry out the **Services** and our other obligations under the **Contract**.

10.3 You shall ensure that you are entitled to transfer the relevant personal data to us so that we may lawfully use, process and transfer the personal data in accordance with the **Contract** on your behalf.

10.4 You shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection law from time to time.

10.5 Any assistance we provide at your request in demonstrating or achieving compliance with applicable data protection law from time to time, or dealing with a request from a data subject, shall be at your expense.

10.6 We shall process the personal data only in accordance with the terms of the **Contract** and any lawful instructions reasonably given by you from time to time (and by entering into the **Contract** you instruct us to process the personal data as required in the provision of the **Services** and the exercise of our rights under the **Contract**).

10.7 You shall be responsible for all liabilities, fines, penalties, costs, expenses, damages and losses arising out of or in relation to your breach of this clause 10.

10.8 Each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

11 Notices

11.1 Any notice given to us under or in connection with the **Contract** (other than in relation to legal proceedings or any method of dispute resolution) shall be in writing and shall be delivered by hand, first-class post or other next day delivery service to Eurolink Industrial Estate, Castle Rd, Sittingbourne ME10 3UP FAO: The Chief Operating Officer. Such notices shall be deemed received on the third **Business Day** after being sent or given.

12 Force majeure

12.1 We shall not be in breach of the **Contract** nor liable for delay in performing, or failure to perform, any of our obligations under the **Contract** if such delay or failure result from events, circumstances or causes beyond our reasonable control, including but not limited to acts of god, war, compliance with any law, adverse weather conditions, civil commotion, collapse of building structures, failure of plant machinery, machinery, computers or vehicles, or interruption or failure of utility service (including but not limited to electric power, gas or water).

13 General

13.1 **Non-solicitation.** You shall not, without our prior written consent, during the term of the **Contract** and for a period of 12 months following its termination, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as our employee, consultant or subcontractor in the provision of the **Services** under the **Contract**.

13.2 **Assignment and other dealings.** Neither party may at any time assign its rights and obligations under the **Contract** (except to another company in its group) without the other party's prior written consent.

13.3 **Entire agreement.** The **Contract** constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.4 **Variation.** Except as set out in these **Conditions**, no variation of the **Contract** shall be effective unless it is in writing and signed by our authorised representative.

13.5 **Waiver.** A waiver by us of any right or remedy under the **Contract** or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

13.6 **Severance.** If any court (or other competent authority) finds that a provision or part-provision of the **Contract** is invalid, illegal or unenforceable, it shall be deemed modified (but only to the extent necessary to make it valid, legal and enforceable). If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or partprovision under this clause shall not affect the validity and enforceability of the rest of the **Contract**.

13.7 **Third party rights.** No one other than a party to the **Contract** shall have any right to enforce any of its terms.

13.8 **Governing law and jurisdiction.** The **Contract** shall be governed by and construed in accordance with English law and each party irrevocably submits to the jurisdiction of the English courts.

14 Interpretation

14.1 The following definitions and rules of interpretation apply in the **Contract**.

14.2 Definitions:

14.2.1 **BIFA Conditions:** the British International Freight Association's standard trading conditions (English Edition) in force from time to time.

14.2.2 **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

14.2.3 **Charges:** all charges (including the Service Charges) payable by you for the supply of the **Services** in accordance with clause 6 (Charges and payment).

14.2.4 **Charges Card:** our rate cards setting out our additional charges in relation to certain **Services** as updated by us in writing from time to time.

14.2.5 **Commencement Date:** has the meaning given in clause 1.3.

14.2.6 **Conditions:** these terms and conditions as amended from time to time in accordance with clause 13.4.

14.2.7 **Contract:** the contract between us and you for the supply of **Services** in accordance with these **Conditions**.

14.2.8 **Default:** has the meaning set out in clause 5.2.

14.2.9 **Goods:** any of your products or materials or consignments in relation to which we perform the **Services**.

14.2.10 **Initial Term:** the period described as such in the **Order Form**, or (if no such period is specified) 24 months.

14.2.11 **Logistics Services:** **Services** we provide in relation to **Goods** while they are outside of our warehouse buildings.

14.2.12 **Order Form:** the order form generated by us setting out the details of the **Services**.

14.2.13 **Projected Expenditure:** the expenditure set out in the **Order Form**.

14.2.14 **Renewal Period:** 12 months.

14.2.15 **Service Charges:** means the charges set out in the **Order Form**.

14.2.16 **Service Description:** the description of the **Services** referred to in the **Order Form** as updated under clause 2.1.

14.2.17 **Services:** any services supplied by us to you.

14.2.18 **Storage Facility:** the premises at which the **Goods** are stored and/or processed by us from time to time, as set out in the **Service Description**.

14.2.19 **UKWA Conditions:** the United Kingdom Warehousing Association Contract Conditions for Logistics in force from time to time.

14.2.20 **Warehouse Services:** **Services** we provide in relation to **Goods** while they are within our warehouse buildings.

14.3 Interpretation:

14.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

14.5 A reference to **writing** or **written** notice or communication to be given by you excludes email and fax.

14.6 The **Contract** includes the following documents, and in the event of any conflict between them they shall be given the following descending order of precedence:

14.6.1 the **Order Form**;

14.6.2 the **Charges Card**;

14.6.3 these **Conditions**;

14.6.4 the **Service Descriptions**;

14.6.5 the **UKWA Conditions**; and

14.6.6 the **BIFA Conditions**.