

**FULFILMENT TERMS AND CONDITIONS**  
**03-2022 Rev.2**

**1. Definitions**

In these terms and conditions:

- a) **"Conditions"** refers to these terms and conditions of business.
- b) **"Provider"** pertains to Fidelity Supply Chain Solutions Ltd., trading under the name Fidelity Fulfilment.
- c) **"Client"** denotes any individual, business, or agent that utilizes the services provided by the Provider.
- d) **"Customer"** any recipient to whom the Provider ships goods. At no point does the Provider have a direct contract with any Customer of the Client.
- e) **"Services"** all services provided by the Provider in accordance with these Conditions.
- f) **"Goods"** the products or goods covered by the Contract, stored and serviced by the Provider as per the Client's request.
- g) **"Contract"** refers to any agreement for the delivery of services by the Provider to the Client, as stipulated within these Conditions.
- h) **"Initial Term"** denotes the agreed-upon minimum duration of the contract, starting from the Commencement Date and including the Contract Term as defined in the Fulfilment Services Quotation (FSQ).
- i) **"Demand"** any legal action, claim, complaint, cost, debt, expense, fine, liability, loss, outgoing, penalty, or proceeding.
- j) **"Provider's Premises"** encompasses all global locations from which the Provider operates its business.
- k) **"Force Majeure"** signifies an unforeseeable event beyond the reasonable control of the Provider, including but not limited to strikes, lock-outs, utility service failures, acts of God, wars, civil disturbances, damage, compliance with laws or governmental orders, accidents, machinery breakdowns, fires, floods, storms, or the default of Providers or subcontractors.
- l) **"Commencement Date"** is defined in the Fulfilment Services Quotation (FSQ).

Any reference to a clause will be (unless expressly provided otherwise) a reference to a clause of this Contract. Appendices have the same force and effect as if set out in the body of this Contract, provided that in the event of any conflict or inconsistency between the main body of the Contract and the Appendices, the main body of the Contract shall prevail. Any reference to the singular includes the plural and vice versa and any reference to one gender includes all genders including the neuter gender. Any reference to a person will, unless the context otherwise requires, include individuals, partnerships, companies, and all other legal persons. The words include, includes, including and included and similar words and expressions will be construed without limitation unless inconsistent with the context. Any reference in the Contract to law or to any statute, statutory instrument, directive, regulation, order, or other enactment mean the same as may be amended, enacted, replaced, extended, modified, consolidated or repealed from time to time. The use of any services provided by the Provider constitutes your acceptance of these terms.

**2. Commencement and Duration**

The Contract will commence on the Commencement Date and continue for the Initial Term as defined in the FSQ, unless terminated earlier in accordance with the Contract. After the Initial Term, and or in the absence of such, the Contract will continue until either the Client or Provider serves a written termination notice with a minimum of 90 days' notice.

**3. Authority to Enter into Agreements and Service Provision**

3.1 Client's Responsibilities:

- a) The Client assures that it either owns the Goods or possesses the requisite legal rights to store them with the Provider and to oversee their release and delivery to the Customer.
- b) The Goods must be appropriately labelled and packaged for storage and handling.
- c) All information supplied by the Client to the Provider is accurate and complete.

3.2 Provider's Obligations:

The Provider will furnish services to the Client, commencing with the initial order placed by the Client and continuing throughout the duration of the contract. In rendering these services, the Provider commits to:

- a) Collaborate with the Client on all matters concerning the services and adhere to the Client's reasonable instructions.
- b) Execute the services with the utmost care, skill, and diligence, in accordance with industry best practices.
- c) Ensure the safety and maintenance of the Goods, utilizing them solely as per the Client's written directives.

**4. Contractual Terms**

- a) The Contract is governed by these Conditions, which hold priority over any terms and conditions presented by the Client. The Provider shall not be obligated by any alteration, waiver, or inclusion of terms within the Conditions without written confirmation from the Provider.
- b) The Provider will not be bound by any oral warranties or representations unless confirmed in writing.
- c) The Provider retains the right to modify the Conditions, giving 30 days' notice to the Client. If such change is not acceptable to the Client, the parties shall discuss the reasons for the amendment in good faith. If the Client finds the change unacceptable, they may cancel the Contract, providing no less than 30 days' notice in writing. During this period no changes to the Conditions will take effect.

**5. Price**

- a) All payments under the Contract do not include VAT and other applicable taxes and duties, which the Client must pay at the applicable rate.
- b) The Provider reserves the right to adjust its prices to the Client under the following conditions:

- i. Immediate effect for cost increases beyond the Provider's control, including postal services, external couriers, pallet networks, and raw materials.
  - ii. On each January 1st in accordance with the latest published CPI figures for inflation.
  - iii. With at least 30 days' written notice for any other reason. If the Client finds such an increase unacceptable, they may cancel the Contract within the notice period, with no changes to prices taking effect during that time.
- c) Insurance for the Goods is not included in the price unless explicitly agreed upon in writing. Alternative insurance solutions are available upon request.

## 6. Payment

If credit has been approved:

- a) Invoices are payable in full, in the local currency, according to the Billing Cycle and Payment Terms specified in the Fulfilment Services Quotation (FSQ).
- b) If no credit has been approved, all invoices are payable immediately, and a deposit may be required in advance.
- c) The Provider may reevaluate or withdraw any credit extended to the Client if there are concerns about the Client's creditworthiness.
- d) All payments must be made through electronic bank transfer. The Provider may impose an administration charge and bill for additional costs related to processing payments made by other means.
- e) The Client cannot make deductions, set-offs, or withhold payment for undisputed invoices.
- f) The Provider has the right to suspend services immediately in case of non-payment of undisputed overdue invoices.
- g) The Provider can charge simple interest on undisputed overdue amounts, provided that a written notice of intention to charge interest is given at least 14 days before the due date. Interest will be charged at a rate of 2% per annum above the relevant base rate for the UK, EU, or US.

## 7. Lien

- a) The Provider has a specific lien on the Goods, granting them the right to retain the Goods as collateral for the payment of all outstanding sums owed by the Client, regardless of the reason, whether directly associated with the Goods or not. Storage charges, at the standard rate, will accrue on Goods held under such a lien. The Provider can exercise this lien as detailed in Section 13(h) below, which may include the sale of all or part of the Goods in compliance with applicable laws.
- b) The Client is required to maintain insurance coverage for the Goods while they are under a lien, and the Provider will not assume additional liability for any damage or loss beyond what is stipulated in the Contract.

## 8. TUPE

If the parties agree that the contract might constitute a relevant transfer under TUPE, the Client and Provider will cooperate in good faith to meet their obligations under TUPE.

## 9. Client Undertakings

The Client commits to:

- a) Ensure that the Goods are prepared for packing in a manner that does not pose any risk or harm to the Provider's property, employees, agents, or Customer.
- b) Assume full responsibility to obtain any necessary import licenses or permits for the entry of the Goods into relevant territories and their delivery to the Provider.
- c) Be responsible for all customs duties, clearance charges, taxes, broker's fees, and other payments connected to the importation and delivery of the Goods.
- d) Adhere to all applicable laws and regulations concerning the manufacturing, sale, packaging, and labelling of the Goods.
- e) Ensure that all Goods presented are adequately tested and approved for safe use in their intended purposes.
- f) Notify the Provider in writing before presenting Goods of any special precautions, necessitated by the nature, weight, or condition of the Goods, as well as any specific laws and regulations applicable to the Goods during storage, handling, or shipment within a relevant country.
- g) Provide the Provider with safety datasheets related to the Goods, where available.
- h) Supply all necessary information to enable international customs clearance, including cost prices, sale prices, HS codes, customs descriptions, instructions, documents, licenses, authorisations, and permissions.

## 10. Delivery & Performance

- a) Goods shall be deemed delivered to the Customer (and no longer the Provider's responsibility) when they are accepted by the Client, the Client's agent, the Customer, or any carrier acting as the Client's agent. The Provider will use its best endeavours to prepare the Goods ready for dispatch by the quoted or requested date, but time is not essential to the Contract.
- b) The Provider is not liable for any penalties, losses, injuries, damages, costs, or expenses resulting from delivery delays.
- c) If the Client, its agents, or the Customer fail to accept the Goods at the agreed time or provide the necessary documents or instructions for delivery, the Client will be responsible for the reasonable costs and expenses incurred by the Provider, including storage, administration time, and other charges due to the Client's failure.
- d) The Provider has the right to reject deliveries of Goods or components that were not previously communicated by the Client. This includes cases including where the Goods do not conform to the description in the Quotation or other written agreements with the Provider, or where the goods are presented in an unsafe manner.
- e) The Provider is entitled to refuse the delivery of Goods or components that are considered unsafe or unsuitable for storage or packaging.

## 11. Online Systems & Reporting

- a) The Provider will make reasonable efforts to ensure that the order API is available at all times, subject to scheduled maintenance.
- b) The Provider does not provide warranties regarding the accuracy of data displayed on the Client's web portal and will not be held responsible for any losses, delays, or costs resulting from decisions made by the Client based on data or reports.

- c) The Provider will endeavour to adhere to modern web standards as defined by the World Wide Web Consortium (W3C). It is the Client's responsibility to use compatible software, including support for HTML, XML, CSS, JavaScript, canvas, and PDF. The Provider is not liable for any access or usage issues due to incompatible software.
- d)

## 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
- c) For the avoidance of doubt, the Provider shall not be liable for any loss, damage, deterioration, delay, non-collection, non-delivery, mis-delivery or unauthorised delivery caused by the Client or any of its agents.
- 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. Termination

13.1 If the Client fails to make payments or defaults on its obligations under the Contract, engages in illegal activities, or any activity which may bring the Provider into disrepute, becomes insolvent, has a receiver appointed, is wound up, or enters into an arrangement with creditors, the Provider may:

- a) Terminate the Contract immediately by providing written notice.
- b) Suspend the Contract immediately until the default is remedied.
- c) Require advance payment for the Services.

13.2 The Client and Provider each have the right to terminate the Contract in accordance with its terms. In case of early termination prior to the end of the initial term or any extended term, either by the Client in breach of the terms, or by the provider in accordance with this clause:

- a) For Clients on a bespoke charging model, the Client must pay the Provider an amount equal to the aggregate total of the minimum monthly picking fees over the remaining term of the relevant period.
- b) For Clients on a fixed percentage cost model, the Client must pay the Provider an amount equal to the agreed percentage charge of the Goods, calculated using the previous 6 month's aggregate sales split by type (B2C/B2B).
- c) A final collection date will be agreed by the Provider.
- d) The provider may immediately cease provision of the agreed services.
- e) The Goods will be packed, and a final invoice sent, covering all costs, including collection and final delivery.
- f) The Goods will not be released until all outstanding amounts are paid.
- g) The Client must collect the Goods within seven days of the agreed collection date, or within one month of the requested termination.
- h) In cases where any payment becomes overdue, the Provider will continue to levy storage charges. Moreover, without affecting any of its other rights and remedies against the Client, the Provider may issue a written notification to the Client, stipulating that the Goods could be sold or otherwise dealt with at the complete risk and expense of the Client if the outstanding payment is not settled within 21 days from the date of such notice. Upon the expiration of this period and in the absence of the required payment, the Provider may proceed to sell or dispose of the Goods, either wholly or partially, at the complete risk and expense of the Client, using an appropriate method. Following such sale or disposal, any proceeds shall be remitted to the Client, with deductions made for all expenses and any amounts owed to the Provider.
- i) The Provider shall, if so requested by the Client, provide all assistance reasonably required by the Client to facilitate the smooth transition of the Services to the Client or any replacement supplier appointed by it.

## 14. Force Majeure

- a) The Provider shall not be liable for any delay or failure to perform its obligations (except payment obligations) under the Contract due to a Force Majeure Event.
- b) If a Force Majeure Event prevents the Provider from meeting SLAs for more than three months, the Provider may terminate the Contract by providing written notice to the Client.

## 15. Confidentiality

Both parties agree not to disclose any confidential information about the other party's business, customers, clients, or suppliers during the Contract and for five years after its termination. Disclosure is permitted to certain parties who require this information to fulfil their obligations under the Contract or as required by law, court orders, or governmental authorities. This provision does not apply to information already known to the receiving party, in the public domain through no fault of the receiving party, obtained from a third party with the legal right to disclose it, or independently developed by the receiving party without relying on the disclosing party's confidential information.

## 16. Data Protection

In providing the Services, the Provider (data processor) will process data related to the Client (data controller) and their customers in accordance with applicable data protection laws and the relevant UK or EU GDPR Data Processing agreements.

**17. General**

- a) The Provider may subcontract or enter into a sub-contract agreement for the purpose of fulfilling its obligation to the Client.
- b) Notices between the parties must be in writing and served either by recorded delivery to the Provider's trading address or registered office or by email to the Provider's nominated email address.
- c) Waiver of any right or remedy must be in writing to be effective and does not constitute a waiver of subsequent rights or remedies.
- d) Failure or delay in exercising any right or remedy does not prevent or restrict further exercise of those rights or remedies.
- e) If any part of the Contract is invalid, illegal, or unenforceable, it will be deleted without affecting the validity and enforceability of the remaining terms.
- f) In case of deletion of any part of the Contract, the parties will negotiate in good faith to agree on a replacement provision that achieves the intended commercial result of the original provision.

**18. Governing Law**

The Contract and any disputes arising from it or its subject matter will be governed by the applicable law of the Provider's location in the UK, EU, or the US.

**19. Jurisdiction**

The parties agree that the courts of the relevant country where the Provider operates in the UK, EU, or the US will have exclusive jurisdiction to settle any disputes arising from the Contract or its subject matter.