

# Tu Pack

## Terms of Service of Tu Pack Limited.

### DEFINITIONS

**Customer** - any person, agent or firm that accepts the services of Tu Pack Ltd.

**Company** - Tu Pack Ltd

**Stock** - any goods or merchandise that Tu Pack stores and services on behalf of the Customer.

**Agreement** - all governing documents relating to the provision of services by Tu Pack for the Customer. This includes the Picking, Warehousing and Distribution Agreement, Service Level Commitments and these Terms and Conditions. This combination of documents forms the entire 'Agreement'.

**Services** - any activities that are undertaken which Tu Pack is obliged to perform in accordance with this Agreement.

**WMS** - Warehouse Management System.

**Go Live Date** - the date that the Customer's first order is despatched by Tu Pack.

**TUPE** - means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (and any successor legislation) and also includes any other legislation under which employment or liabilities arising from employment transfer by operation of law.

**Inward TUPE Transfer** - means a situation where the Company is (or is expected to be) a transferee for the purposes of TUPE as a result of providing services to or for the benefit of the Customer (or intending to do so).

**Outward TUPE Transfer** - means a situation where the Company is (or is expected to be) a transferor for the purposes of TUPE as a result of the transfer of operations carried out for the Customer.

### PRELIMINARY INFORMATION

The parties have agreed that the Terms and Conditions, the Service Level Commitments and the Picking, Warehousing and Distribution Agreement collectively form the Entire Agreement between the two parties.

Tu Pack reserves the right to amend these Terms and Conditions by giving one (1) month's notice to the Customer. If the changes highlighted in the notice are not accepted by the Customer then the Customer is entitled to give the contractual notice period, not restricted by the minimum term as outlined in Clause 2.2. During this time the disputed changes will not be in effect.

By signing the Picking, Warehousing and Distribution Agreement, both parties agree to use their best endeavours to comply with the Terms and Conditions at all times. Where either party foresees a breach of the Terms and Conditions they will notify the other party as soon as possible to mitigate any detrimental impact.

Any words following the words for example, including or any similar expression are for illustrative purposes only and shall not limit the sense of the words, description, definition phrase or term preceding those terms. Nor shall it impose any limitations on the applicability of the term. Further, words in the singular shall include the plural and vice versa.

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## SECTION I

### FULFILLMENT AND WAREHOUSING SERVICES

**1.1 Equipment.** Tu Pack agrees to provide the existing warehousing equipment in the Facility, including racking, desks, shelving, and lighting. Tu Pack will also provide maintenance of existing equipment and replacement equipment if any of the foregoing is no longer fully operational at any time during the term of this Agreement.

**1.2 Exclusions.** The provisions of the Schedule, Service Level Commitments and Terms and Conditions shall not apply in the case of items that have not been received by Tu Pack or are not available to Tu Pack for any inability to fill such orders for reasons including lack of customer documentation (such as commercial invoices), strike, riots, storms, fires, explosions, acts of God, war or governmental action, or any other cause which is beyond the reasonable control of Tu Pack. In such a case, Tu Pack will use reasonable efforts to complete such instructions and shall promptly advise the Customer of such action.

**1.3 Provision of Services:** All services provided by Tu Pack are subject to the provisions of this Agreement, including any Schedules, Exhibits and Appendices hereto.

**1.4 Third Parties:** The Company's duty is to the Customer only and not to any third party. Any advice given is for the Customer only and cannot be relied on by any other party.

## SECTION II

### TERM AND TERMINATION

**2.1 Contract Renewal.** Each contract shall automatically renew for a subsequent period of the same length as the initial term unless either party gives the other written notice of termination at least thirty (30) days prior to the expiration of the current term. Upon renewal, the Customer's account becomes subject to Tu Pack's most recent price tariff. The most recent tariff will be sent to the Customer by email forty-five (45) days before the new term commences.

**2.2 Termination.** Either party may terminate the Agreement by giving thirty (30) days written notice and provided the contract has been effective for a minimum of twelve (12) months from the Go Live date. With the exemption of Clause 2.4, if at the point of termination the contract has not been effective for the minimum term, then the Customer will be subject to an early exit fee of one month's fees which will be calculated as an average based on your past three months' worth of invoices, plus a £250 administration fee. Upon termination, the Customer agrees to pay all transportation and shipping charges, fees and expenses incurred and owed by the Customer to Tu Pack pursuant to the Agreement. Handling, order, packaging and all other non-transportation, transportation and shipping charges, fees and expenses shall be paid within five (5) days after final billing to the Customer and a minimum of two (2) days in advance of removing the Customer's goods. After the removal of the Customer's Stock from Tu Pack premises, any

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additional work including processing returns and liaising with courier companies will be charged at the hourly rate, which can be found in the Schedule of Costs.

**2.3 Termination for Insolvency.** The Agreement may be terminated at any time by either party, effective immediately upon notice if the other party: becomes insolvent, files a petition in bankruptcy, or makes an assignment for the benefit of creditors.

**2.4 Termination for Failure to Meet Service Level Commitment.** Service Level is calculated per calendar month. If, for a consecutive month, Tu Pack falls below the contractual Service Level Commitments set out in the Schedule, hereinafter referred to as the "Service Level figures", then the Customer can provide Tu Pack with thirty (30) days written notice to terminate the Agreement. This notice must be received no later than ten (10) days after receipt of the Service Level figures for the previous month. Notice served outside of the ten (10) working days from receipt of the Service Level figures will be subject to normal termination terms as outlined in Clause 2.2. Service Level figures are calculated monthly and will be reported in monthly KPI reports.

**2.5 Payment Obligation.** Clause 4.1, Section VI and VII (except for 7.11), and all accrued payment obligations shall survive any termination or expiration of the Agreement.

**2.6 Abandonment.** All stock that remains at the facility more than 60 days after the termination of the Agreement shall be deemed abandoned and shall at the option of Tu Pack become the property of Tu Pack. The Customer will be kept informed of the stock remaining and be given every assistance to collect. Upon termination, the Customer will be informed of the stock remaining and will be given every assistance to collect.

**2.7 Offboarding.** Upon receipt of notice, in accordance with the clauses hereunder Section II, Tu Pack will provide the Customer with the current offboarding policy within five (5) working days. A timeline for your exit will be agreed upon within ten (10) working days of receipt of the notice. If the Customer causes a delay in Stock being removed from Tu Pack premises, either by pushing back the date of removal or for failing to settle their final invoice, Tu Pack reserves the right to place the Stock on hold until it is collected or until their final invoice is settled. In this event, the Customer's stock will incur a holding charge as per the Schedule of Costs.

**2.8 Termination for non-payment.** In the event that the Customer fails to pay their invoice within 30 days of receipt, Tu Pack reserves the right to request a holding deposit from the Customer equal to three (3) months worth of invoices or to terminate the Agreement by giving 30 days' written notice to the Customer.

**2.9 Termination for volume discrepancy.** If the Customer's quarterly volumes are fifty percent (50%) less than what was disclosed during the pre-onboarding phase, Tu Pack reserves the right to terminate this Agreement by giving the Customer a written notice of thirty (30) days.

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## SECTION III

### PRICING AND PAYMENT

**3.1 Payment.** The Customer shall pay for the services performed by Tu Pack in accordance with the fees, rates, charges, and terms set forth on the attached Schedule of Costs. Your invoice will be generated through the Warehouse Management System/Xero and you will have daily access on the Warehouse Management System to view this. Payment is required via direct debit from the start of the Agreement term. Billing to the Customer is weekly and direct debit will be taken one week after. All customers will be required to sign up via GoCardless which can be set up using the link provided in your welcome to Tu Pack email.

**3.2 Quotations and tenders.** Quotations and tenders issued by Tu Pack are valid for 30 days from the date of issue unless agreed in writing by Tu Pack.

**3.3 Additional Charges.** If the Customer requests Tu Pack to perform services not listed in the Schedule and Tu Pack is willing to provide such services, the parties shall agree in advance and in writing the services to be performed and the charges to be paid for the services.

**3.4 Indexation Charge.** All prices quoted below in the Schedule of Costs include an annual price increase (rounded up to the nearest whole pence), which will be calculated by multiplying the charges individually by a percentage comprised of the Consumer Price Index (CPI) rate figure published by the Office for National Statistics in January of that year (ignoring any negative figure). The increase will take effect on the invoices dated on or after 31<sup>st</sup> March of each year, using the CPI figure published in January of that year. If the CPI figure is negative, our charges will remain fixed.

**3.5 Notifiable Charges.** The Schedule list has been compiled on the instructions and information provided by the Customer. In the event that the nature of work, volume of work or product type substantially differs from the figures specified in the Schedule, Tu Pack will promptly conduct a review and notify the Customer of any necessary price adjustments by giving no less than 30 days' written notice.

**3.6 Freight Charges.** Distribution shall be at the Customer's expense (unless agreed otherwise) at the prices and rates set out on the Schedule.

#### **3.7 Price and Service Alterations.**

**3.7.1** Where the Customer requests an adjustment to their service or an additional service Tu Pack reserves the right to increase the price to account for these changes.

**3.7.2** Tu Pack reserves the right to change prices with immediate effect where there is an alteration in costs that are outside of Tu Pack's control, this includes but is not limited to packaging and couriers.

**3.7.3** If and when Tu Pack decides to increase their prices in line with Clauses 3.7.1 and 3.7.2 above, Tu Pack will issue a 30 days' notice of said price increase. If the increase is not acceptable to the Customer, then the Customer has the opportunity to serve notice in line with Clause 2.2 inside of the notice period herein. Termination of the contract in

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the context of a price increase is subject to a minimum term. Any price increase will apply during the termination notice period.

**3.8 Late Payment.** In circumstances where payment is not received per Clause 3.1 above, we shall allow a one-week grace period, thereafter an interest charge shall be assessed on the balance owed at the Bank of England's base rate plus two and half percent (2.5%) per month. Additionally, we shall also have the right to immediately cease all fulfilment services hereunder until we are in receipt of payment for the outstanding invoices. Assessment of such charge shall not be deemed a waiver of any other remedy Tu Pack may have hereunder or at law.

**3.9 Courier charges.** Courier charges are not set by Tu Pack, they reflect the charges imposed on Tu Pack by contracted courier providers. As such, these prices are not fixed and are subject to change at the discretion of the couriers. Tu Pack will endeavour to provide the Customer with 14 days' written notice if, and when, courier prices change.

**3.10 Disputing an invoice.** Tu Pack will use reasonable endeavours to ensure that all invoices are accurate. All invoice disputes must be submitted to Tu Pack within thirty (30) days from the date of the invoice. If a dispute is not raised within thirty (30) days, the invoice shall be considered correct, complete and conclusive between the Parties.

## SECTION IV

### WAREHOUSING

**4.1 Ownership.** Title and exclusive ownership of the Stock stored and warehoused by and in the possession and control of Tu Pack shall at all times remain with the customer. Neither the Agreement nor any warehouse receipt for the delivery and acceptance of the Stock by Tu Pack shall be construed to be anything other than a non-negotiable instrument of title. Neither the Agreement nor any warehouse receipt shall be construed to be the passing of title from the Customer.

**4.2 Stock from Vendors.** All Stock submitted for Tu Pack's services under the Agreement shall be delivered at the Customer's expense to Tu Pack's premises. Tu Pack shall have no duty or obligation to accept stock on a Cash on Delivery basis. All Stock submitted shall be in good condition, properly labelled, sized, packaged, and barcoded and in the majority of cases suitable for handling (unless otherwise agreed and specified in a Work Order).

**4.3 Notice of inbound shipments.** Notice of Stock deliveries shall be provided at a minimum of 2 working days prior to the inbound delivery via an Advanced Shipping Notice (ASN) created by the Customer on Tu Pack's Warehouse Management System (WMS). The Customer is responsible for ensuring the ASN and related product data are accurate, including delivery date, SKU numbers, size, weight, commodity codes and value of items, as are necessary for the despatch of the Stock. The ASN number needs to be displayed on the inbound delivery and each carton needs to display a packing list on the outside. Failure to comply with these requirements will exempt the inbound delivery from the Service Level Commitment. Any delivery date amendments to the Advanced Shipping Notice (ASN) need to be made 48 working hours prior to the previously declared delivery date.

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If any special precautions or additional measures are necessary, then the Customer shall inform Tu Pack prior to order delivery via a Work Order. If the Stock that arrives is different to the ASN, Tu Pack will hold the stock in a holding area until the Customer decides a course of action.

In the event that the Customer fails to adhere to the outlined procedure, Tu Pack shall levy an administration fee proportionate to the supplementary workload incurred due to the breach of said procedure. In the event of any of the following procedural breaches - no ASN on the Warehouse Management System, late ASN notice, delivery out of expected date, no ASN on the carton, no advance notice of rework needed -, an admin. fee of £10.00 will apply for each instance. Should there be no packing list or a material discrepancy between the incoming stock and the ASN, the admin. fee will be £5.00 for each occurrence.

Should the product data be incomplete, the stock will still be booked in and any additional work required to fill in the missing data will be charged at the applicable hourly rate, as per your contract.

Once the inbound delivery arrives, the warehouse team will then book in your delivery using the scanners to book and allocate your stock to the warehouse. This will be charged at the rate per carton/pallet/ per unit (light accuracy check and visual inspection) within your quote.

Once the ASN has been booked in, you will then receive a notification via our WMS to advise you.

**4.4 Inspection.** Tu Pack reserves the right to open and inspect any packages of Stock received by it for warehousing or distribution. Stock shall not be deemed accepted by Tu Pack or become subject to the Agreement until it is delivered to the Facility and the bill of lading accepting shipment is signed for by Tu Pack.

**4.5 Investigations.** Tu Pack shall endeavour to investigate any potential errors promptly upon being notified by the Customer. The investigation process shall be conducted in good faith and with due diligence. The time expended by Tu Pack in investigating errors shall not be billed to the Customer. However, in the event that the investigation reveals the error is not attributable to any fault on the part of Tu Pack, the Customer shall be liable to pay an administrative charge of £10.00. Tu Pack shall inform the Customer in writing of the outcome of the investigation.

**4.6 Facility Access.** Employees and representatives of the Customer with proper identification and proof of employment by the Customer shall be allowed access to the warehouse facility providing Tu Pack is given a minimum of 3-day notice in writing. Tu Pack reserves the right to refuse access to the facility for non-Customer employees; however, such refusal shall not be unreasonably given. In the event that an employee, visitor, contractor or other people under the direction of the Customer violates any employee or visitor policies of Tu Pack, including but not limited to creating a danger to other employees, causing harassment of employees, or disturbing the operation of Tu Pack, Tu Pack in its sole discretion shall have the right to have such employee removed from the facility immediately. The Customer shall be liable for and shall indemnify and not hold Tu Pack responsible for any damages to property or equipment or injuries to persons caused to Customer's representatives or agents. The Customer and its representatives are not permitted to take photographs or video footage in the Tu Pack facility without the express written permission of Tu Pack.

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**4.7 Hours of Operation.** Inbound shipments to the facility shall be during Tu Pack's normal operational hours, currently, 8 am to 5 pm Monday to Friday, exclusive of public and bank holidays, and as such may change from time to time unless alternative arrangements have been made with Tu Pack prior to arrival. Any work requested to be carried out outside of Tu Pack's normal operational hours will be subject to additional charges and is dependent on available resources.

**4.8 Identification.** All Stock shall be kept and remain identifiable as Customer Stock at all times.

**4.9 Removal.** No Stock shall be removed from Tu Pack's Facility without an order logged on the Warehouse Management System.

**4.10 Distribution.** Tu Pack shall enable the collection of outbound Stock by an agreed carrier for delivery in accordance with the authorised instructions of the Customer. The time between receiving the order and dispatching the order will be as agreed with the Customer and set out in the Schedule.

**4.10 Commitment of Assets.** Tu Pack hereby acknowledges and agrees that it has not and will not claim any security interest, lien or other encumbrance (a "Lien") of any kind (whether consensual or otherwise) in and to all or any portion of the assets of the Customer, including without limitation the Stock. To the extent any such Lien automatically arises by operation of law, Tu Pack hereby disclaims any such Lien and shall be deemed to have automatically released any such Lien in favour of the Customer.

However, In the event of monies being owed to Tu Pack, Customer's goods of cost value no greater than the sums claimed will act as security for payment of all sums (whether due or not) claimed by the Company from, or actually or prospectively payable to the Company by, the Customer on any account (relating to the Goods or not). Where a lien secures sums payable to or claimed by the Company, it shall continue to cover those sums notwithstanding any transfer of ownership of Goods or change of Customer. Storage shall be charged for any goods detained under lien or where the Company is required by any competent authority to retain them.

## SECTION V

### CUSTOMER UNDERTAKINGS

**5.1.** It is a condition of the Agreement, and the Customer represents, warrants and undertakes, that:-

**5.1.1** It is either the owner of the Stock or is authorised by the owner to accept these Conditions on the owner's behalf.

**5.1.2** The Goods shall be presented to the Company (and/or anyone else dealing with them) securely and properly packed in compliance with any applicable statutory regulations, recognised standards and Clause 4.3; and that they and any Stock Transport Unit are and will remain in a condition to be safely handled, stored and/or carried and so as not to cause injury, damage, contamination or deterioration (or the possibility of them) to any person, premises, property, the environment, drains or watercourses, equipment or to any other items in any way. Where the Company is performing an operation or process on the Stock, they will be delivered to the Company in a condition where that operation or process can be done without further work (other than unpacking) or without a Work Order to carry out the further work by the Company.



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**5.1.3** Before the Company assumes any responsibility for or by reference to the Stock, the Customer will inform the Company in writing of any relevant matters; including any special precautions necessitated by the nature, size or shape, weight, condition or potential for deterioration of the Stock and any statutory or other requirements relevant to the Stock with which the Company or others may need to comply; and will promptly after invoicing pay the Company's reasonable extra charges for complying.

**5.1.4** Within seven (7) days after invoicing indemnify the Company against all duties, taxes and expenses that the Company has paid or may be required to pay in respect of the Stock; including where the liability to pay them is triggered by the fault, act or omission of the Company or its employees or sub-contractors.

**5.1.5.** The Customer agrees to pay and/or indemnify Tu Pack from all taxes applicable to the sale, delivery, shipment, or storage of Customer's Stock, including but not limited to sales, use, personal, franchise, Import / Export duty, VAT, business taxes, together with any penalties, fines, or interest thereon, imposed by any UK or overseas government, or any other taxing authority, but excluding any taxes based on Tu Pack's net or gross income and any taxes based on Tu Pack's use, lease or ownership of the Premises, including without limitation any property taxes etc. For the avoidance of doubt, this clause only relates to taxes that are incurred by the Customer in the operation of the Customer's own business and not relating to Tu Pack's business or services provided.

**5.1.6** Except to the extent previously notified in detail to, and accepted by, the Company in writing none of the Stock: is or may become hazardous or contaminated; may cause pollution of the environment or harm to human health if they escape from their packaging; require any official consent or licence (or would be illegal for the Company) to handle, possess, deal with or carry; or will at any time whilst in the care or control of the Company constitute waste.

**5.1.7** It will comply with any reasonable requirements of the Company relating to the handling, packing, carriage, storage or forwarding of Goods (and ancillary matters) which are notified in writing from time to time.

**5.1.8** Information given by or on its behalf shall be correct and complete. The Customer will provide promptly when, and in a format, reasonably requested by or on behalf of the Company, any documentation, instructions or information which is relevant to the Stock, to any interest in them, to any services to be provided for the Customer, or to any actual or anticipated obligation of the Company related to either the Goods or the Customer.

**5.2** The Customer will indemnify the Company against any expense, loss or damage it suffers as a result of the Customer's instructions (or failure to give instructions or information), or which is related to any breach of the Customer's obligations or the Customer's insolvency, or complying with the instructions of a competent authority in respect of the Goods, and will pay all costs and expenses (including professional fees) incurred in, and the Company's reasonable charges for, dealing with such matters and their consequences. The Customer will pay an extra charge equal to the amount of any fine or penalty payable by the Company wholly or partly as a consequence of compliance with the instructions, or of acts or omissions of the Customer. If the Company suspects a breach of Condition 2, it may refuse to accept the Goods, demand their immediate removal, or itself arrange their removal without notice, at the Customer's expense.



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## SECTION VI

### LIABILITY/INDEMNIFICATION/INSURANCE/SECURITY/WARRANTIES

**6.1** The Customer is required to self insure or make arrangements to cover the Stock against all insurable risks to their full insurable value (including all duties and taxes). The insurance referred to in Condition 3.5 is insurance against the Company's potential liability for breach of its obligations and not to cover the Stock themselves against loss, damage, etc.

**6.2** Subject to Condition 6.3, the Company shall have no liability for Loss however arising.

**6.3** If and to the extent that Loss is directly caused by negligence or wilful act or default of, or breach of duty owed to the Customer by, the Company, its employees (acting in furtherance of their duties as employees) or sub-contractors or agents (acting in furtherance of their duties as subcontractors or agents) and subject to Conditions 6.4, 6.7 and 6.8, the Company will accept liability for Loss assessed on normal legal principles but not exceeding the Limit fixed by Condition 6.5. Any quantification of amount or value includes duties and taxes.

**6.4** In no case shall the Company be liable for any lost profit, income or savings, wasted expenditure, liquidated damages, or indirect or consequential loss suffered by anyone.

**6.5** In no case shall any liability of the Company (including inter alia any liability in respect of duties and taxes) exceed the Limit, fixed as follows:-

**6.5.1** Where potential Loss relates to Goods, the Customer may specify the Limit as an amount (in Sterling, US Dollars or Euros) per tonne weight of the Goods by notice in writing stating the Limit and the nature and maximum value of the Goods, including duty and taxes. The Limit so nominated by the Customer shall apply in respect of any cause of action arising after the Date and in the period in which the nomination remains in effect. It is a condition of the contract that the Customer pays within 7 days of receipt the Company's invoices for its costs in insuring against its potential liability up to the Limit, and/or to the extent that the Company elects to carry the risk itself, its extra charge equivalent to the estimated or likely cost of such insurance.

**6.5.2** If the Company having made reasonable efforts is unable to obtain insurance on reasonable terms to cover its liability up to the Limit nominated by the Customer, or if the Customer has not yet paid any invoice issued under Condition 3.5.1, the Company may give 3 working days written notice, and the Limit for causes of action arising after the giving of the Customer's notice under 3.5.1 shall be £100 sterling per tonne weight of the Goods.

**6.5.3** Unless and until a higher Limit has been fixed under Condition 3.5.1 and continues in effect, the Limit shall be £100 sterling per tonne.

**6.5.4** Where Loss does not relate directly to Goods (for example alleged negligent advice or data irregularities) the Limit applicable shall be £1000 per incident or series of connected incidents.

**6.6** Without prejudice to the Company's rights under Condition 6 to be paid free from deduction or set-off, any limitation of liability on the part of the Company shall be applied to any claim by the Customer before any set-off or counterclaim is asserted against money payable to the Company.

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**6.7** The Company shall not be liable for any claim unless:

**6.7.1** it has received written notice of it within 10 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee; and it has received, within 21 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee, sufficient detail in writing to enable investigation. In the case of failure to deliver, time shall run from the second working day after the expected date of delivery.

**6.7.2** No legal proceedings (including any counterclaim) may be brought against the Company unless they are issued and served within 9 months of the event giving rise to the claim.

**6.8** The Company shall not be liable for any loss to the extent that it is caused or contributed to by a breach of any of the Customer's obligations, or by a person for whom the Company is not responsible, or by any of the circumstances by virtue of which the Company is relieved of its obligations under Condition 8.

**6.9 Force Majeure:** Tu Pack shall not under any circumstances be liable to the Customer for any damage, injury, loss, demurrage, or default in its obligations of any kind which arise from the following (each, a "Force Majeure Event"):

- a) Fire, war, Act of God, acts of Terrorism, or any natural disaster.
- b) Power outages.
- c) Strikes, lockouts or labour disputes at its carriers, or at any party providing services to Tu Pack.
- d) Any governmental actions.
- e) Acts of negligence or misconduct of the employees of the Customer.
- f) Pandemics, Tu Pack will continue to honour your agreement unless instructed to do otherwise by the government, we shall implement provisions to ensure all business as usual with longer shipping times, extended returns process, inbound SLA extended etc
- g) Or other cause beyond the reasonable control of the Company.

If a Force Majeure Event which materially affects Tu Pack's ability to perform its obligations under this Agreement continues for more than fifteen (15) business days, then the Customer may terminate this Agreement upon written notice to Tu Pack.

**6.10 Loss or Damages during Transit.** Tu Pack shall not be responsible for any loss or damage to the Stock caused in transit to or from Tu Pack's warehouse facility. Tu Pack's ability to recoup the value of the loss or damage on behalf of the Customer will depend on the Courier's policies and the Customer providing written consent to Tu Pack to act on their behalf. Furthermore, the Customer must use its best endeavours to cooperate with Tu Pack in recouping the value of the loss or damage caused to the Stock in transit from Tu Pack's warehouse facility.

**6.11 Consequential Damages.** Neither party shall be liable to the other or any third party for any indirect or consequential loss or damages, however arising, including but not limited to, loss of income, loss of profit or loss of opportunity, provided that such loss is not caused by the misconduct or negligence of such party.

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**6.12 Inventory Shrinkage.** Tu Pack will take all reasonable precautions to maintain the stock in a secure environment. It will be accessible by Tu Pack employees or agents except by prior agreement with the Customer.

Tu Pack retains accurate and contemporaneous records in the Warehouse. Tu Pack will perform full stock counts on a minimum of a bi-annual basis, at a time determined by the Company.

Tu Pack does not anticipate inventory shrinkage for Stock held by Tu Pack. Shrinkage is an uncorrectable negative difference between the physical and book inventory of Stock on Tu Pack's WMS. Tu Pack shall not be liable for any Customer losses as a result of inventory shrinkage unless such shrinkage causes the inventory to fall below the Ninety-nine point five percent (99.5%) inventory accuracy level. Tu Pack shall be liable for the entire percentage of the discrepancy below this accuracy level. Tu Pack will replace such a percentage of inventory below this accuracy level at the price equal to the Customer's cost price.

Inventory accuracy shall be defined as inventory overages minus inventory shortages, as measured by the pound (GBP) value of the discrepancy as a percentage of total inventory value at cost. The measurement period shall constitute the period of time between physical inventories, which shall be no fewer than two (2) times per calendar year, and no more than four (4) times per year, as determined by the Customer. Accountability shall begin upon receipt of Stock, using the physical counts conducted by Tu Pack as the beginning book inventory.

**6.13 Warranties; Representations; and Indemnity.** Tu Pack represents and warrants that: (1) the services provided hereunder will be performed in a professional manner by competent personnel and in accordance with generally accepted industry standards; (2) the performance by Tu Pack of its obligations under this Agreement will not cause Tu Pack to be in breach of any agreement by which it is bound; (3) except as otherwise provided herein, Tu Pack's equipment at the premises is not and will not be subject to any security interest, lien or other encumbrance; (4) Tu Pack's underlying lease to the facility does and will allow Tu Pack to perform its obligations during the term of this Agreement

The Customer will indemnify the Company against any loss or damage it suffers as a result of carrying out the Customer's instructions or which is related to any breach of the Customer's obligations and will pay all costs and expenses (including professional fees) incurred in, and the Company's reasonable charges for, dealing with the breach and its consequences. The Customer will pay an extra charge equal to the amount of any fine or penalty payable by the Company wholly or partly as a result of a breach by the Customer.

## SECTION VII

### MISCELLANEOUS

**7.1 Business Transfer.** The rights and obligations of the Customer created under this Agreement may not be transferred or assigned to a third party, or for the benefit of a third party, either directly or indirectly, without the prior written notice to Tu Pack. In the event of sale, merger, or acquisition of the Customer by a third party, this Agreement can be assigned to the third party and Tu Pack may choose to terminate this Agreement without penalty with three months' written notice to the other party. In the event of sale, merger, or acquisition of Tu Pack by a third

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party, the Customer may choose to terminate this Agreement without penalty with three months' written notice to the other party.

**7.2 Notice.** Any notice shall be duly given if left at or sent by first class prepaid post to the last known address of the other party or by facsimile to the last notified number evidenced by a successful transmission record, or by email to the last address notified for the purpose of service. It shall be deemed to have been received: if posted 2 working days after posting (4 working days if sent abroad), and if sent by facsimile or email, one working day after sending subject to confirmation of successful transmission (fax) or delivery (email).

**7.3 Governing Law, Jurisdiction.** If any fees or costs are incurred to enforce this Agreement, or if any suit or action is brought to enforce any provision of this Agreement, or for damages for the breach of any of the terms of this Agreement, the prevailing party shall be entitled to reasonable legal fees and costs as awarded through the arbitration process. This Agreement shall be interpreted and enforced in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.

**7.4 Confidentiality.** The Customer and Tu Pack each acknowledge the sensitivity and importance of information and documents exchanged or acquired pursuant to this Agreement. Customer's client's names, Stock, prices for Stock, ordering and shipping quantities, prices for packaging materials and freight, the details of this Agreement, and any other information which is marked "confidential" or which would reasonably be understood to be confidential, whether written or oral, are the confidential information property of Customer. The details of this Agreement, Tu Pack's, software, quotations, operations, costs, Customer's names, price schedules, and all other related documents, information and appendixes are confidential and owned by Tu Pack. Neither party shall disclose any of the other party's confidential information to any third party except such party's lawyers and accountants (subject to the confidentiality provisions of this Agreement) without first obtaining the prior express written authorisation of the other party.

Tu Pack shall hold in confidence and secure all names, addresses and information processed on behalf of and/or provided by the Customer in accordance with the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR). All inventory and Customer Information, including without limitation: names, addresses, demographic information, purchasing data and history and marketing results, shall remain the sole property of the Customer and constitute the Customer's trade secrets. Tu Pack shall have no interest in such property or right to use it in any manner whatsoever (including, without limitation, selling or disclosing such information to others) except to perform its express obligations under this Agreement. Upon any termination or expiration of this Agreement, Tu Pack shall cause any remaining Inventory and all Customer Information and all copies thereof to be shipped to the Customer at the Customer's expense. Tu Pack will not retain data pertaining to the Customer or its clients beyond the termination of the Agreement.

**7.5 Non-Solicitation.** The Customer and Tu Pack agree that during the term of this Agreement and for a period of 6 months after its termination, neither party nor its Representatives will hire, employ or solicit for employment, directly or indirectly, any employees of the other party without the prior written consent of the other party, which consent may be withheld in its sole discretion. For purposes of this clause, employees shall include all employees of Tu Pack or the Customer as of the date of this Agreement.

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**7.6 Independent Contractor.** Tu Pack is an independent contractor and not an employee, partner or agent of the Customer. Neither party shall have the authority to commit or create any liability on the part of the other in any manner whatsoever. Personnel retained or assigned by Tu Pack to perform work under this Agreement shall at all times be considered employees, agents, or contractors of Tu Pack, and at no time employees of the Customer, and Tu Pack shall be fully responsible for employees' welfare, liability insurance, payroll, income tax, national insurance and any other legal requirements associated with employment. Tu Pack warrants and agrees that they shall not at any time assign any employee to work wholly or mainly on the Customer's work and indemnify the Customer for any liabilities or costs relating to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

## **7.7 TUPE and Service Provision Change**

**7.7.1.** Where there is an Inward TUPE Transfer, the Customer will indemnify Tu Pack against all liability and expense that Tu Pack may incur in connection with:

**7.7.1a** the employment or the termination of employment, before the Effective Time, of any Employee;

**7.7.1b** any failure by the Transferor to comply with its legal obligations in respect of any of the Employees;

**7.7.1c** the transfer to Tu Pack, by virtue of TUPE or otherwise, of the employment of any person or the applicability of terms of employment, other than those previously notified to, and previously accepted by, Tu Pack in writing;

**7.7.1d** any act or omission of the Transferor, on or before the Effective Time, for which the Company becomes liable by virtue of TUPE or otherwise; or

**7.7.1e** the Transferor's failure to comply with its obligations under regulation 13 of TUPE.

**7.7.2** Where there is an Outward TUPE Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with the Transferee's failure to comply with its legal obligations, including without limitation those under regulation 13 of TUPE.

**7.8 Wholesale.** In the event that an error in the preparation and/ or fulfilment of a wholesale order is caused by the negligence or wilful default of Tu Pack and results in a fine from the stockist, Tu Pack's liability will be limited to the lesser of 50% of the total fine or £250.

## **SECTION VIII**

### **DATA PROTECTION.**

**8.1** Each party will observe its obligations under the General Data Protection Regulation and other applicable data protection legislation including the Data Protection Act 2018.

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**8.2** Unless otherwise agreed in writing the Company will be a data processor and the Customer will be the data controller of personal data relating to or supplied by the Customer or consignees of the Goods.

**8.3** The Company will process personal data in accordance with the Customer's instructions. The Company may use data supplied by or on behalf of the Customer for purposes appropriate to the performance of the Company's obligations, the exercise of the Company's rights or for business planning by the Company. The Company may share data with a Subcontractor for the provision of the Company's services to the Customer, and with any government authority where appropriate.

**8.4** Subject to the provisions of this clause and applicable legislation, the Company and the Customer shall each keep confidential information or data supplied by or on behalf of the other which is expressed to be confidential or which is of such a nature that it should clearly be regarded as confidential by a reasonable person.