

BETWEEN:

(1) PALLETWAYS (UK) LIMITED (company number 2918303, RHA membership number 8853) whose registered office is at, Fradley Distribution Park, Wood End Lane, Lichfield, Staffordshire, WS13 8NE ("Palletways") and
 (2) The company identified in Schedule A ("The Customer");

WHEREAS:

(A) Palletways operates a palletised freight distribution network via its distribution hub at Fradley Park, Lichfield and utilising the services of a national network of hauliers and carriers.
 (B) The Parties now wish to enter into this Agreement for the purpose of setting out the terms upon which Palletways will provide its services to The Customer

IT IS AGREED AS FOLLOWS:

1. Definitions

"Agreement" means these terms and conditions and includes Schedule A and Schedule B and any other appended schedules ("the Schedules");
 "Business Day" means Monday to Friday of each week inclusive, but excluding any day that is a public or statutory holiday in the United Kingdom;
 "Commencement Date" means the date shown at Clause 3.1 below;
 "Confidential Information" means in respect of each party all confidential or sensitive information or data, whether obtained by the other party before or after the Commencement Date, in respect of The Customer, business, finances, assets, affairs, products, developments, trade secrets, personnel and suppliers of such party or any other information which may reasonably be regarded as the confidential information of such party;
 "Consignment" means goods, whether a single item or in bulk or contained in one or more parcels, packages or containers as the case may be, which go on one or more pallets presented in a manner fit for transit through the Palletways freight distribution network sent at one time in one load by or for The Customer from one address to another address;
 "Distribution Charges" means Palletways' charges for provision of the Distribution Services shown in Schedule B;
 "Distribution Services" means:
 (a) Carriage of Consignments on behalf of The Customer via the Hub ("Carriage Services"); and/or
 (b) Special deliveries of Consignments other than via the Hub ("Special Services");
 "The Hub" means Palletways dedicated distribution and storage facility at Fradley Distribution Park, Wood End Lane, Fradley Park, Lichfield, Staffordshire;
 "Initial Term" means the period defined in Schedule A, Section 10 starting on the Services Commencement Date;
 "Normal Working Hours" means the hours from 9.00am to 5.00pm inclusive on Business Days;
 "Order" means any order placed by The Customer for the provision of any specific item of Distribution Services including the distribution of any Consignment;
 "Profile" means the agreed profile information specific to The Customer as shown in Schedule B;
 "RHA Carriage Conditions" means the Road Haulage Association Conditions of Carriage 1st September 2009 (and excludes any subsequent amendment variation or update of the same);
 "Services" means the distribution services or any other service set out in Section 12 of Schedule A or otherwise agreed in writing by Palletways;
 "Services Commencement Date" means the date shown at Schedule A, Section 9;
 "Schedule A" and "Schedule B" ("The Schedules") means the documents marked up as such which cover contacts, Commencement Date, Initial Term, prices, pallet definitions and profile and which form part of this Agreement.
 "Sub-Contractor" means any person engaged by Palletways to provide all or any part of the Services on a sub-contract basis;
 "Term" means the duration of this Agreement, as set out in Clause 3;
 "Year" means each period of 12 consecutive months during which this Agreement subsists, commencing on the Services Commencement Date.

2. Agreement for Supply

2.1. Palletways agrees to provide the Services to The Customer and The Customer agrees to acquire the Services exclusively from Palletways during the Term.
 2.2. The Customer shall acquire the Services from Palletways in relation to the goods/accounts described in Schedule A, Section 11 ("the Accounts") with effect from the Services Commencement Date.
 2.3. The Customer shall not obtain the Services or any service competitive with the Services in relation to the Accounts from any source other than Palletways during the Term. The Customer acknowledges that Palletways is entering into this Agreement on the basis that Palletways will provide all of The Customer's requirements for the Services during the Term. The Customer is free to select their own provider for the distribution of parcel freight or may choose to use the provision for the distribution of parcel freight supplied by Palletways via its Sub-Contractor.
 2.4. In the event that, at any time during the Term, The Customer's requirements for the provision of the Services should materially diminish because of the disposal of a material part of The Customer business to a third party, then The Customer agrees that it will make the necessary introductions to any third party to allow Palletways the opportunity to provide the Services to such third party for the remainder of the Term.

3. Term

3.1. This Agreement shall be deemed to come into force on the date when it is signed by both the parties ("Commencement Date") and subject to the provisions contained in this Agreement for prior termination, shall remain in force for the Initial Term. This Agreement may be terminated at the end of the Initial Term by either party serving on the other not less than six months' prior written notice of termination, to expire no earlier than the end of the Initial Term.
 3.2. Should this Agreement not have been terminated by the end of the Initial Term then subject to the provisions contained in this Agreement for prior termination, it shall remain in force thereafter unless and until either party serves on the other not less than 6 months' prior written notice of termination.

4. Scope of the Distribution Services

4.1. Palletways shall perform or procure the performance Services:
 4.1.1. subject to the terms and conditions of the Agreement in accordance with the terms of any Order accepted by Palletways during the Term;
 4.1.2. in accordance with Palletways' normal working methods and procedures;
 4.1.3. subject to any specific protocols adopted by the Parties in accordance with Clause 5;
 4.1.4. Palletways shall use reasonable endeavours to ensure that the Services are provided in accordance with the key performance indicators described in Clause 4.3.
 4.2. Palletways shall provide access to electronic proof of delivery in respect of each Consignment.
 4.3. Palletways shall provide the Customer with a regular schedule of actual data of performance against the Key Performance Indicator targets as follows:
 4.3.1. Delivery OTEIF (Delivered on time or early in full) (Target 97.0%)
 4.3.3. POD retrieval (Target 97.0%)
 4.4. Any time specified for performance of all or any part of the Services shall not be of the essence but indicative only.

5. Services Management Procedure

5.1. Each party shall nominate a key account manager responsible for liaison in relation to the operation of the Services. The key account managers shall meet regularly to review the provision of the Services and to agree and adopt a protocol of working policies and methods applicable to the provision of the Services. The minutes of such meetings shall be provided to each party.
 5.2. The key account managers shall have responsibility for arranging approval, consents and authorisations required for the purposes of any matter pertaining to the provision of the Services.

6. The Customer's Obligations

6.1. The Customer shall cooperate with Palletways and its Sub-Contractors to facilitate the effective performance of the Services in accordance with this Agreement
 6.2. The Customer shall fulfil any requirements or protocols agreed with Palletways from time to time in order to enable the effective delivery of the Services by Palletways.

7. Price and Payment

7.1. Subject to the further provisions of this Clause 7, the prices payable by The Customer for the provision of:
 7.1.1. the Distribution Services shall be the Distribution Charges set out in Schedule B; and
 7.1.2. any other Services agreed in writing by Palletways shall be those agreed in writing for those Services.
 7.2. The Distribution Charges shall be reviewed in good faith by the parties in the months prior to each anniversary of the Commencement Date to take into account any variation in the cost to Palletways of the provision of the Services and, shall be varied with effect from each such anniversary for the subsequent Year including by reference to any factors such as costs and the rise in the consumer price index;
 7.2.1. between the Services Commencement Date and that anniversary in the first Year;
 7.2.2. and between the previous anniversary and that anniversary in each subsequent Year.
 7.3. The Distribution Charges are based on an assumed price of fuel in pence per litre "Base Fuel Price". At the end of each calendar month the fuel price shall be reviewed with reference to the AA website (www.theaa.com). If the price of fuel as therein stated shall be at least £0.01 more or less than the Base Fuel Price then Palletways shall be entitled to add a fuel charge / rebate as defined in Schedule B, in respect of each delivery made during the following month.
 7.4. Palletways may amend the prices charged for the Services at any time to take into account any change in the cost to Palletways of providing the Services which is due to any factor beyond the reasonable control of Palletways (such as, without limitation currency regulation, alteration of duties or other significant increase in the costs of carriage), such price amendment to have effect in respect of Orders or other Service requirements fulfilled after the expiry of the period of 20 Business Days from service of a notice from Palletways to The Customer stating the relevant amendment in the prices charged and the reasons therefore.
 7.5. Palletways may raise an additional charge over and above the prices specified in Schedule B in respect of any Order where additional costs have been incurred by Palletways as a result of any change in delivery or collection requirements and which arise as a result of any request or action on the part of The Customer or due to the failure of The Customer to give Palletways adequate information and instructions.
 7.6. In the event that there is a material difference between the volume, extent or nature of the Services actually required by The Customer once provision of the Services has commenced, compared to the requirements anticipated in the Profile, then Palletways shall be entitled to adjust the Distribution Charges in a manner which is fair and reasonable to reflect this difference, such price change to have effect in respect of Orders fulfilled after the expiry of a period of 20 Business Days from service of a written notice from Palletways to the Customer stating the relevant change in the prices charged and the reasons therefore.
 7.7. Where Palletways agrees to accept an Order for Special Services which are not covered by the prices contained in Schedule B, then the price payable by The Customer shall be in accordance with Palletways' normal rate for the provision of such Special Services at the relevant time as notified to the Customer in writing.
 7.8. Palletways' invoices for the Distribution Charges and any other charges shall be raised on a weekly basis and shall be due for payment not later than 30 days from the date of the invoice, subject to credit facilities and credit limits which are at the discretion of Palletways.
 7.9. Time for payment shall be of the essence of this Agreement.
 7.10. Invoice queries must be raised within 5 Business Days of the invoice being received and must be sent by email to invoicequeries-corporatesales@palletways.com. For the avoidance of doubt, all due amounts shall be paid in full with no deduction withholding, set off or counterclaim for any reason whatsoever.
 7.11. If The Customer fails to make any payment on the due date then, without limiting any other right or remedy available to Palletways (whether under this Agreement or pursuant to the terms of the RHA Carriage Conditions) Palletways may:
 7.11.1. suspend the performance of the Services until The Customer account is brought fully up to date; and/or
 7.11.2. exercise the right of lien over the goods in the possession of Palletways (or their Sub-Contractors) as described in RHA Carriage Conditions; and/or
 7.11.3. charge The Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 8% per annum above the base rate of the Bank of England from time to time, until payment in full is made (a part of the month being treated as a full month for the purpose of calculating interest).

8. Incorporation of RHA Carriage Conditions

8.1. Each Order for the Distribution Services shall be deemed to incorporate the RHA Carriage Conditions.
 8.2. In the event that there should be any conflict between the terms of this Agreement and the provisions of any of the RHA Carriage Conditions or the terms of any Order placed by The Customer, then precedence shall be given as follows:
 8.2.1. this Agreement shall prevail over the RHA Carriage Conditions and any Order;
 8.2.2. the RHA Carriage Conditions shall take precedence over the terms of any Order.
 8.3. Copies of the RHA Carriage Conditions are available on request from Palletways or from <http://www.palletwaysbirmingham.co.uk/en/services/terms-and-conditions.html>

9. Liability

9.1. Subject to the provisions of the RHA Carriage Conditions Clause 9 sets out Palletways entire liability to The Customer in respect of:
 9.1.1. any breach of Palletways contractual obligations arising under this Agreement or in respect of any Order (including implied terms); and/or
 9.1.2. any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement and/or any Order; and/or
 9.1.3. any other liability arising by virtue of the provision of the Services, or any delay or failure to provide the Services
 9.2. Nothing in this Agreement shall limit or exclude Palletways' liability for:
 9.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
 9.2.2 fraud or fraudulent misrepresentation; or
 9.2.3 breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982 (Title and Quiet Possession)
 9.3. Subject to Clause 9.2, in respect of Distribution Services, Palletways liability for physical loss, mis-delivery of or damage to goods comprised in a Consignment, howsoever arising, shall (subject to the

further provisions of the RHA Carriage Conditions and subject to the requirements and restrictions of the Palletways claims procedure detailed in Clause 9.7) in all circumstances be limited to the lesser of:

- 9.3.1. the cost of the goods actually lost, miss-delivered or damaged; or
- 9.3.2. the cost of repairing any damage or of reconditioning the goods; or
- 9.3.3. A sum calculated at the rate of £1,300 sterling per tonne on the gross weight of the goods actually lost, miss-delivered or damaged.

9.5. Save as herein provided or to the extent liability is accepted under the provisions of the RHA Carriage Conditions, Palletways shall not be liable to The Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any loss or damage to property, any loss of profit, any indirect, special or consequential loss, damages, costs, expenses or any other claims arising under or in connection with the Agreement or for any loss of profit or business or any indirect, special or consequential loss, damage, costs, expenses or other claims.

9.6. Palletways shall have no liability to The Customer for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by The Customer which are incomplete, incorrect, inaccurate, illegible, out-of sequence or in the wrong form, or arising from their late arrival or non arrival, or any other fault of The Customer.

9.7. In the event that Palletways is unable to provide a signed, proof of delivery document with no note of damage or shortage thereon, or an electronic image of the same ("Clean POD") for any Consignment then The Customer may submit a claim subject to the following procedure;

- 9.7.1. All claims must be notified within the timings specified in the RHA Carriage Conditions;
- 9.7.2. a fully completed insurance claim form (available on request from Palletways) must be submitted to Palletways for each claim;
- 9.7.3. a credit note for proven claims will be raised, calculated in line with Clause 9.3 and Clause 9.4 of this Agreement as appropriate; and
- 9.7.4. Payment shall not be withheld against any invoice pending the resolution of a claim.

9.8. The Customer agrees to indemnify Palletways against any liability (and all associated legal costs) arising from any person alleging that their employment has transferred to Palletways as a result of this Agreement pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

10. Insurance

10.1. Palletways agrees to maintain in force insurance in respect of its liabilities under the RHA Carriage Conditions and shall make available details of such insurances to The Customer upon reasonable request.

11. Confidentiality

11.1. Each of the Parties hereby undertakes to the other to maintain in strict confidence and not to use (other than for the purposes of this Agreement) any Confidential Information of the other.

11.2. The provisions of Clause 11.1 shall not apply to the whole or any part of the information to the extent it is:-

- 11.2.1. already in the other's possession other than as a result of any breach of this Clause or other breach of obligation of confidentiality;
- 11.2.2. in the public domain other than as a result of a breach of this Clause or other breach of obligation of confidentiality; and/or
- 11.2.3. required to be disclosed at the direction of any statutory or governmental authority or through the order of any Court or competent tribunal.

11.3. The Customer hereby authorises Palletways to make reference to The Customer and the fact that Palletways is providing the Services to The Customer in Palletways' marketing and promotional material provided that such references shall be subject to the prior approval of The Customer, such approval not to be unreasonably withheld or delayed.

12. Force Majeure

12.1. Neither party shall be liable for any delay or failure in performing any of its obligations (other than any payment obligation of The Customer) hereunder to the extent that such delay or failure is a result of or is caused by any circumstances beyond the reasonable control of that party, including, without limitation, war, fire, lack of power supplies or breakdown of plant, machinery or vehicles or significant accidents which result in any government body restricting the operation of the Hub ("Event Of Force Majeure").

12.2. Where Palletways is unable to provide the any of the Services due to an Event Of Force Majeure, The Customer will be entitled to make alternative arrangements for the provision of such services, without being in breach of Clause 2.1. Palletways will notify The Customer when it is again able to provide the relevant Services, and their provision under this Agreement will re-commence upon The Customer terminating the alternative arrangements it has put in place. The Customer will ensure that alternative arrangements are terminable on notice within a reasonable period.

12.3. In the event that either party is unable to comply with any material obligation imposed upon it under this Agreement due to an event of force majeure during a continuous period of 2 months, the other party may at any time after expiry of such period terminate this Agreement forthwith by written notice to the party affected.

13. Termination

13.1. Notwithstanding the terms of Clause 3, either party shall be entitled to terminate this Agreement forthwith by written notice to the other in the event that:-

- 13.1.1. that other party shall cease to carry on business (except in circumstances falling within Clause 2.4);
- 13.1.2. a receiver is appointed over any part of the business or assets of that other party or becomes subject to an administration order;
- 13.1.3. that other party makes a composition or arrangements with any of its creditors;
- 13.1.4. that other party is subject to a winding up order or goes into liquidation (except for the purposes of a solvent reconstruction or amalgamation whereby the company succeeding to the business of that other party agrees to be bound by the terms of this Agreement); or
- 13.1.5. that other party commits or permits a substantial breach of the terms of this Agreement and fails to remedy such breach within such reasonable period (to be not less than 14 days) as is specified in a written notice requiring such from the Party not in breach. For the avoidance of doubt, a delay in delivering or collecting or failure to collect or deliver any individual Consignment shall not constitute a substantial breach of this Agreement.
- 13.1.6. that other party is in breach of its obligations as regards time of payment.

13.2. Termination of this Agreement shall be without prejudice to any rights of either party against the other which may have accrued up to the date of such termination.

13.3. Any provision of this Agreement which is intended expressly or by implication to remain in force despite termination of this Agreement shall remain in force in accordance with its terms.

13.4. Upon termination of this Agreement all of Palletways' invoices shall immediately become due and payable.

13.5. Upon termination of this Agreement Palletways shall be entitled to exercise a lien on any goods or products belonging to The Customer in the possession of Palletways or its Sub-Contractors in respect of sums due to Palletways but unpaid by The Customer.

14. Alterations

14.1. No purported alteration of this Agreement shall be effective unless it is in writing, refers to this Agreement and is duly executed by each of the Parties hereto.

15. Severability

15.1. Each provision of this Agreement is severable and distinct from the others. The Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If

any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement but (except to that extent in the case of that provision) it and all other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired.

16. Counterparts

16.1. This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, each of which so executed and delivered will be an original, but all the counterparts will together constitute one and the same Agreement.

17. Successors and Assigns

17.1. Palletways may sub-contract the performance of its obligations under this Agreement to Sub-Contractors but shall remain responsible for the performance of such Sub-Contractors.

17.2. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other (which will not be unreasonably withheld or delayed).

18. Rights of Third Parties

18.1. No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

19. Notice

19.1. Except as otherwise provided in this Agreement, every notice under this Agreement shall be in writing and shall be deemed to be duly given if it (or the envelope containing it) identifies the party to whom it is intended to be given as the addressee and the envelope containing the notice is properly addressed to the addressee at its authorised address and duly posted by recorded delivery and, in proving the giving or service of such notice, it shall be conclusive evidence to prove that the notice was duly given within the meaning of this Clause 19.

19.2. A notice sent by post (or the envelope containing it) shall not be deemed to be duly posted for the purposes of Clause 19 unless it is put into the post properly stamped with all recorded delivery postal charges in respect of it prepaid.

19.3. For the purposes of this Clause 19 the authorised address of each of the Parties hereto shall be the address of each such party set out in this Agreement (or such other address as may from time to time be notified in writing to the other Parties for the purposes of this Agreement).

19.4. Any notice duly given within the meaning of Clause 19.1 shall be deemed to have been both given and received if it is duly posted in accordance with Clause 19.1 on the second Business Day after the day of posting. For the purposes of this Clause 19 notice shall include any request, demand, instructions, communications or other document.

20. Entire Agreement

20.1. Each of the Parties acknowledges and agrees that:-

20.1.1. this Agreement constitutes the whole and only agreement and understanding between the Parties in connection with the provision of the Services and supersedes all previous agreements or arrangements between the Parties, all of which are terminated by mutual consent with effect from the date of this Agreement;

20.1.2. it has not entered into this Agreement in reliance on any statement, representation, covenant, warranty, agreement or undertaking which is not expressly set out herein and, to the extent that any such statement, representation, covenant, warranty, agreement or undertaking was made or given and is not expressly set out herein it acknowledges that the same is hereby excluded and it irrevocably and unconditionally waives any claims, rights or remedies which it may otherwise have in relation thereto; and

20.1.3. it has no right of action or other remedy whatsoever against any other party arising out of or in connection with any statement, representation, covenant, warranty, agreement or undertaking not expressly set out in this Agreement provided always that this Clause 20 shall not exclude or limit any liability or any right which any party may have in respect of any statement, representation, covenant, warranty, agreement or undertaking made or given fraudulently or dishonestly.

20.2. No terms and conditions endorsed upon or contained in any acknowledgement of order, delivery note or any other document produced by or emanating from Palletways or The Customer during the Term shall have effect in relation to this Agreement.

21. Applicable Law and Submission to Jurisdiction

21.1. This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and each of the Parties submits to the exclusive jurisdiction of English courts.

22. Interpretation

22.1. In this Agreement, unless the context otherwise requires:

- 22.1.1. words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include corporations, partnerships and other unincorporated associations or bodies of persons;
- 22.1.2. the words herein, hereto, hereof and other similar words refer to this Agreement as a whole and not to any particular provision of this Agreement;
- 22.1.3. the descriptive headings to parts of this Agreement, Clauses, Schedules and paragraphs are inserted for convenience only, have no legal effect and shall be ignored in the interpretation of this Agreement;
- 22.1.4.

(a) Words introduced by the words and phrases such as include, including, other and in particular shall not be given a restrictive meaning or limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible; and

(b) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general word.

IF THESE TERMS AND CONDITIONS ARE TOO SMALL FOR YOU TO READ COMFORTABLY PLEASE CONTACT US AND WE WILL SEND YOU A LARGER PRINT VERSION