



STANDARD TERMS AND CONDITIONS

UK Warehousing, Fulfilment and Distribution Services

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1. **Purpose**

Unless otherwise agreed in writing this Agreement sets out the terms and conditions under which Cygnia Logistics Limited (Company number 03748474) whose registered office is at DC139 Style Way , Pineham, Northampton NN4 9EX (hereinafter called "Cygnia") will provide the Services (as defined in this Agreement) to its customer (hereinafter called "the Customer"). The Schedules form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement will include the Schedules.

2. **Duration**

This Agreement will commence on the Commencement Date and will continue until terminated by either Party giving not less than 180 days written notice to that effect to the other Party, such notice to expire no earlier than 23:59 on the day preceding the third anniversary of the Commencement Date (the "**Initial Period**"). If such notice is not served, this Agreement will be automatically renewed annually for successive one-year periods unless notice is received by no later than 180 days before such annual expiry date.

3. **Exclusive Agreement**

It is agreed that this Agreement gives Cygnia exclusive rights to provide the Services to the Customer for the Initial Period and any extension of the Initial Period.

4. **Definitions**

"**Affiliate(s)**" means in respect of either Party, its Holding Companies, its Subsidiaries and the Subsidiaries of any of its Holding Companies from time to time.

"**Benchmarks, Targets and Metrics**" means any numeric criteria against which performance under this Agreement is to be measured and as may be agreed in writing by Cygnia and the Customer from time to time .

"**Change Control Procedures**" means the agreed process to be followed when changes are requested either to this Agreement or to the Services and as is set out in Schedule C.

"**Characteristics**" means the principal physical characteristics of the Customers requirements for the Services and any assumption as to such requirements (as amended in accordance with this Agreement), as may be agreed in writing by Cygnia and the Customer from time to time .

"**Charges**" means the remuneration due to Cygnia for the provision of the Services as agreed in writing by Cygnia and the Customer from time to time .

"**Customer's Goods**" means any goods, equipment, systems, cabling or facilities provided by the Customer and used, transported, stored or contract packaged directly or indirectly in the performance of the Services.

"**Commencement Date**" is the date Cygnia commences the provision of the Services to the Customer

"**Confidential Information**" means any information belonging to or in the possession or control of a Party that is of a confidential, proprietary or trade secret nature including, but not limited to, the financial performance, rates, company structure including employees, fleet size, accounts, contract performance including KPI's, or such other commercially sensitive information.

"**Defective Performance**" or "**Inadequate Performance**" means where the performance levels of the Services do not meet the Benchmarks, Targets and Metrics.

"**Deferred Duty**" means duties and taxes payable for Customers Goods which has been deferred.

"**Disclosing Party**" means the Party who has disclosed Confidential Information to the other Party.

"**Employee(s)**" means the personnel involved in the performance of Cygnia's obligations under this Agreement from time to time.

"**Employee Liability Information**" has the meaning given to it in Regulation 11(2) of TUPE.

“Event(s)” means an act, event, omission or circumstance.

“Existing Service Provider(s)” means the contractor engaged by the Customer to perform the Services in part or in whole immediately before the Commencement Date.

“Holding Company” or **“Holding Companies”** has the meaning set out in section 1159 Companies Act 2006.

“Index” means the version of the United Kingdom all items retail prices index published by the Office for National Statistics as ‘RPI’ or such other equivalent or comparable index as is published in substitution for such index or such other appropriate index as the Parties may agree in writing from time to time.

“Intellectual Property Rights” mean all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trademarks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions.

“Key Personnel” means those persons employed by Cygnia who Cygnia has identified as having a key role in the delivery of the Services to the Customer.

“Liability” means liability arising out of or in connection with this Agreement, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in this Agreement and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a Party’s obligations under this Agreement, in each case howsoever caused including if caused by negligence.

“Problem Escalation” means the procedure for alerting and notifying increasingly senior members of Cygnia’s management of the non-resolution of problems as set out in Schedule B.

“Party” means either Cygnia or the Customer as the context so admits and **“Parties”** means both Cygnia and the Customer

“Problem Management” means the agreed procedures for providing support and problem resolution services to the Customer as set out in Schedule B.

“Receiving Party” means the Party who has received Confidential Information from the other Party.

“Redundancy Costs” means all damages, claims, losses, costs, awards, liabilities and expenses arising out of the termination of employment including but not limited to notice pay (including any payment in lieu of notice), statutory and enhanced redundancy payments payable on the termination of employment pursuant to any arrangement, whether contractual or statutory or otherwise which were in place at the Commencement Date, any entitlement to take early benefits on redundancy or early retirement benefits pursuant to the terms of any pension scheme in which Cygnia or any Sub-Contractors is not then participating, or pursuant to the Employee’s terms and conditions of employment prior to the Commencement Date and any employer national insurance liabilities associated with such payments.

“Replacement Service Provider(s)” means the contractor engaged by the Customer to perform the Services in part or in whole on the Termination Date.

“Re-Transferring Employee(s)” means those employees assigned to the Services who will transfer to the Customer or Replacement Service Provider on the Service Transfer Date.

“Service Availability” means the times and periods that Cygnia will make the Services available to the Customer as may be agreed in writing by Cygnia and the Customer from time to time .

“Service Component” means a divisible and identifiable part of the overall Services to be delivered.

“Service Review Meetings” mean regular meetings that are held between representatives of Cygnia and the Customer specifically to discuss issues arising from the performance and delivery of the Services.

“**Service Transfer Date**” means the date on which the Services (or any part of the Services), for whatever reason transfer from Cygnia to the Customer or any Replacement Service Provider.

“the **Services**” means those services which are specified in Schedule A or as otherwise may be agreed in writing by Cygnia and the Customer from time to time .

“**Stock Loss Tolerance**” means an amount equal to 1% of the aggregate value of the throughput of all the Customers Goods during a Year, where throughput is the value of all the Customers Goods delivered in, plus the value of all the Customers Goods dispatched out, divided by 2.

“**Sub-Contractor(s)**” means any person or body corporate who has a contract with Cygnia or any other person apart from the Customer for the provision of all or part of the Services.

“**Subsidiary**” or “**Subsidiaries**” has the meaning set out in section 1159 Companies Act 2006.

“**Termination Date**” means the date this Agreement expires or terminates (for whatever reason).

“**Transferring Employee(s)**” means those employees whose contracts of employment transfer to Cygnia from the Customer or the Customer’s Existing Service Provider on the Commencement Date.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“**Working Hours**” means from 06:00 to 22:00 unless otherwise agreed in writing by Cygnia and the Customer .

“**Working Week**” means the Working Hours on Monday to Friday (inclusive) unless otherwise agreed in writing by Cygnia and the Customer .

“**Year**” means the period of 12 months starting on the Commencement Date, each successive period of 12 months during the term of this Agreement and the period (if any) starting on the day following expiry of the last such period of 12 months and ending on the Termination Date.

5. Cygnia’s Obligations

- 5.1. Cygnia will use all reasonable endeavours to provide the Services.
- 5.2. Cygnia will use reasonable endeavours to meet any agreed performance dates and/or to comply with the Customer’s reasonable written instructions, but time will not be of the essence for performance of the Services.

6. Customer’s Obligations

- 6.1. The Customer will:
 - 6.1.1. Co-operate with Cygnia in all matters relating to the Services;
 - 6.1.2. Be responsible (at its own cost) for providing the Customer’s Goods for the performance of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of the Customer’s Goods in accordance with all applicable laws, before and during the performance of the Services;
 - 6.1.3. Inform Cygnia of all health and safety rules and regulations and any other reasonable security requirements that apply to any of the Customer’s Goods;
 - 6.1.4. Ensure that the Customer’s Goods are in good working order and suitable for the purposes for which they are used in relation to the Services and conform to all relevant United Kingdom standards or requirements;
 - 6.1.5. Obtain and maintain all necessary licenses and consents and comply with all relevant legislation in relation to the Services and the use of the Customer’s Goods in relation to Cygnia’s equipment insofar as such licenses, consents and legislation relate to the Customer’s business, premises, staff and equipment, in all cases before the Commencement Date;

- 6.1.6. Take out and maintain at its own expense a policy or policies of insurance with reputable insurers in respect of destruction or loss of or damage to the Customer's Goods to their full value on an all risks basis whilst in the custody of Cygnia and whilst the in transit (covering both inbound and outbound to and from Cygnia);
- 6.1.7. Provide a rolling 12 month forecast of activity in relation to Services
- 6.2. The Customer will indemnify Cygnia for any claim of a third party arising out of an actual or alleged infringement to third party Intellectual Property Rights where the Customer has made amendments to original documents and similar works prepared by Cygnia without the express approval of Cygnia, or where the Customer fails to use the most recent versions of such works that have been delivered by Cygnia.
- 6.3. The Customer will ensure that Cygnia's employees and sub-contractors are given access to premises and equipment required for the provision of the Services in order that the Services may be delivered and maintained in accordance with the terms of this Agreement.

7. Charges and Payment

- 7.1. In consideration of the performance of the Services by Cygnia, the Customer will pay the Charges . Clause 7.2 will apply if Cygnia provides Services on a time and materials basis. Clause 7.3 will apply if the Supplier provides Services for a fixed price. The remainder of this Clause 7 will apply in either case.
- 7.2. Where Services are provided on a time and materials basis:
 - 7.2.1. the charges payable for the Services will be calculated in accordance with Cygnia's standard daily fee rates,(subject to any amendments or variations in accordance with the terms of this Agreement);
 - 7.2.2. Cygnia's standard daily fee rates for each individual person are calculated on the basis of a Working Week (subject to any amendments or variations in accordance with the terms of the Agreement);
 - 7.2.3. Cygnia will be entitled to charge an overtime rate of x 1.5 of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside of the Working Hours;
 - 7.2.4. all charges quoted to the Customer will be exclusive of VAT, which Cygnia will add to its invoices at the appropriate rate; and
 - 7.2.5. Cygnia will ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and Cygnia will use such time sheets to calculate the charges covered by each monthly invoice.
- 7.3. Where the Services are provided for a fixed price, the total price for the Services will be the amount as agreed in writing by Cygnia and the Customer from time to time (subject to any amendments or variations in accordance with the terms of this Agreement). The total price will be paid to Cygnia any without deduction, counterclaim or set-off. Cygnia will invoice the Customer for the charges that are payable, together with expenses and the costs of materials where appropriate.
- 7.4. The Charges may be varied by Cygnia if there is a change in the Characteristics,with the Charges to be reviewed against the Characteristics on a quarterly basis.
- 7.5. The Charges exclude VAT, which Cygnia will add to its invoices at the appropriate rate.
- 7.6. All Charges are to be paid to Cygnia in sterling, by BACS or equivalent to the account designated by Cygnia from time to time. All invoices are payable within 30 days of the invoice date. Payment by cheque or other means will not be accepted.
- 7.7. Cygnia will be entitled to review and vary the Charges having regard to the matters including (but not limited to):
 - 7.7.1. changes in the Index;
 - 7.7.2. changes in applicable taxes and duties;

- 7.7.3. changes in law;
 - 7.7.4. changes in the cost of raw material and labour; and/or
 - 7.7.5. changes in other operating costs including without limitation the cost of fuel and the impact of the National Living Wage or Minimum Wage;
 - 7.7.6. Cygnia will give the Customer at least 15 days prior written notice of any such variation. The variation will be effective from the first day of the next calendar month following expiry of the notice (or, if later, the date specified in the notice) and will apply to all Services performed on or after the date from which the variation is effective.
- 7.8. The rights set out in Clause 7.7 above are in addition and separate to Cygnia's right to vary the Charges should there be any change in the Characteristics.
 - 7.9. Cygnia will submit invoices to the Customer for the Charges due in arrears. The frequency of the invoice (weekly or monthly) can vary at Cygnia's discretion based on volume. Each invoice will clearly state the Services performed.
 - 7.10. All amounts due and payable in respect of Deferred Duty incurred as part of the performance of the Services by Cygnia must be received in cleared funds no later than the 10th day of the month following the month for which the Deferred Duty liability relates.
 - 7.11. Where any item on an invoice, or an invoice in its entirety, has been notified to Cygnia as being in Dispute in accordance with Schedule B, payment is still required in accordance with this Clause and cannot be withheld. Once agreement between the Parties is reached in relation to any dispute in accordance with Schedule B, any credit or repayment where required will be made within 30 days of agreement.
 - 7.12. Subject to the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 should any invoice not be settled by the due date for payment, Cygnia may add interest to the outstanding amount. Cygnia may also charge an administrative fee to compensate it for the increased administration of pursuing the debt with the administrative fee being an appropriate and genuine amount in order to compensate Cygnia for such increased administrative expense.
 - 7.13. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Cygnia on the due date, Cygnia may suspend the provision of all Services until all undisputed invoices have been paid.
 - 7.14. Cygnia may, without prejudice to any other rights it may have, set off any liability to the Customer against any liability of the Customer.
 - 7.15. In the event that the Customer enters into administration, Cygnia is entitled to withhold the Customers Goods until all outstanding monies are paid.
 - 7.16. Cygnia shall (on its own behalf and as agent for any assignee of its invoices) have a general and particular lien on the Customer's Goods (and any associated documentation or records) as security for the payment of the Charges and all other sums (whether due or not) claimed by Cygnia from, or actually or prospectively payable to Cygnia by the Customer on any account (relating to the Customer's Goods or not), or otherwise claimed in respect of the Customer's Goods and on giving 14 days' notice in writing to the Customer, Cygnia shall be entitled to sell or dispose of such Customer's Goods and/or associated documentation or records at the expense of the Customer and without any liability to the Customer and apply the proceeds in or towards the payment of such sums. Upon accounting to the Customer for any balance remaining after payment of any sum due to Cygnia and the costs of sale or disposal, Cygnia shall be discharged of any liability whatsoever in respect of the Customer's Goods and/or any associated documentation or records. Where a lien secures sums payable to or claimed by Cygnia, it shall continue to cover those sums notwithstanding any transfer of ownership of Customer's Goods, or change of customer. Storage shall be charged for any of the Customers Goods detained under lien or where the Customer is required by any competent authority to retain them.

8. Confidentiality and Cygnia's Property

- 8.1. Both Parties agree to keep confidential all information concerning the other Party's business or its ideas, products, customers or services that could be considered to be "**Confidential Information**". Confidential Information will remain the property of the Disclosing Party and the Receiving Party will not acquire any rights to that Confidential Information. Each Party (the Receiving Party and the Disclosing Party) will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Re-

ceiving Party by the Disclosing Party, its employees, agents, consultants or subcontractors and any other Confidential Information concerning the Parties' business or their products which each Party may obtain. The Parties will not use any such information for any purpose other than to perform their obligations under this Agreement.

- 8.2. The Receiving Party may disclose Confidential Information: (i) to the extent required by law or by any governmental or regulatory authority (including but not limited to any stock exchange or listing authority or the Panel on Takeovers and Mergers); (ii) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Parties' obligations under the Agreement to be performed and the Receiving Party's rights under this Agreement to be exercised.
- 8.3. On the Termination Date the Receiving Party, at the option of the Disclosing Party, will use reasonable endeavours to return or destroy all Confidential Information belonging to the other Party.
- 8.4. The Parties will ensure that their employees, officers, representatives, advisers, agents or subcontractors to whom they disclose such information comply with this Clause 8.
- 8.5. All materials, equipment and tools, drawings, specifications and data supplied by Cygnia to the Customer will, at all times, be and remain as between Cygnia and the Customer the exclusive property of Cygnia, but will be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Cygnia, and will not be disposed of or used other than in accordance with Cygnia's written instructions or authorisation.

9. **Limitation Of Liability**

- 9.1. This Clause 9 sets out the entire Liability of Cygnia (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer.
- 9.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 9.3. Nothing in this Agreement limits or excludes the Liability of Cygnia :
 - 9.3.1. for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977); or
 - 9.3.2. for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or
 - 9.3.3. for breach of its obligations arising under section 12 Sale of Goods Act 1979;
 - 9.3.4. for breach of its obligations arising under Section 2 Supply of Goods and Services Act 1982;
 - 9.3.5. for breach of its obligations arising under Section 8 Supply of Goods (Implied Terms) Act 1973;
 - 9.3.6. for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its Liability,

and any Liability of Cygnia which falls within this Clause 9.3 will not be taken into account in assessing whether the financial limit in Clause 9.4.2 has been reached.

- 9.4. Subject to condition 9.2 and condition 9.3
 - 9.4.1. Cygnia will not be liable for:
 - Loss of or damage to the Customer's Goods during transportation when it is not part of the Services; or
 - Loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct, indirect or consequential); or
 - Loss of anticipated savings or loss of margin (in each case whether direct, indirect or consequential); or

- Loss of contract (whether direct, indirect or consequential); or
- Loss of profit (whether direct, indirect or consequential); or
- Loss of revenue, loss of production or loss of business (in each case whether direct, indirect or consequential); or
- Loss of bargain (whether direct, indirect or consequential); or
- Liability of the Customer to third parties (whether direct, indirect or consequential); or
- Loss of use or value of any data or software (whether direct, indirect or consequential);
- Wasted management, operational or other time (whether direct, indirect or consequential); or
- indirect, consequential or special loss.

9.4.2. Subject to Clauses, 9.2, 9.3 and 9.4.1, Cygnia's maximum aggregate Liability which arises from all Events which occur in any one Year will be limited to a sum equivalent to one months Charges for warehousing services only

10. Data Protection

The Parties personal data shall be obtained only for the purpose of this Agreement and shall not be further processed in any manner incompatible with that purpose. Data must not be disclosed to other parties without the consent of the Party whom it is about, unless there is legislation or other overriding legitimate reason to share the information (for example, the prevention or detection of crime).

11. Termination

11.1. Without prejudice to any other rights or remedies which the Parties may have either Party may terminate this Agreement without liability to the other immediately on giving notice to the other if:

- 11.1.1. the other Party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 45 days after being notified in writing to make such payment; or
- 11.1.2. the other Party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within 45 days of that Party being notified in writing of the breach; or
- 11.1.3. the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
- 11.1.4. the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 11.1.5. the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or
- 11.1.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or
- 11.1.7. An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party; or

- 11.1.8. a floating charge holder over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or
 - 11.1.9. A person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party; or
 - 11.1.10. a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
 - 11.1.11. any event occurs or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 11.1.4 to Clause 11.1.10 (inclusive); or
 - 11.1.12. the other Party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 11.2. On termination of this Agreement for any reason:
- 11.2.1. the Customer will immediately pay to Cygnia all of its outstanding unpaid invoices and interest which are not the subject of a reasonable bona fide dispute and, in respect of Services performed but for which no invoice has been submitted, Cygnia may submit an invoice, which will be payable immediately on receipt; providing it is not subject to a reasonable bona fide dispute. Any overdue sums which are as a result of a bona fide dispute will be referred to adjudication.
 - 11.2.2. The accrued rights and liabilities of the Parties as at the Termination Date and the continuation of any provision expressly stated to survive or implicitly surviving termination will not be affected.
 - 11.2.3. On termination of this Agreement (however arising), the following Clauses will survive and continue in full force and effect:
 - Clause 8;
 - Clause 9;
 - Clause 10; and
 - Clause 15.
- 11.3. On the termination of this Agreement, Cygnia shall make the Customers Goods available for collection within a reasonable period, subject to all outstanding Charges and other sums being paid.
- 11.4. The Parties will comply with provisions of Part 2 of Schedule D.

12. Force Majeure

Except in respect of obligations to make payment, neither Party will be liable for any failure or delay in its performance under this Agreement due to reasons beyond its reasonable control, including (but not limited to) acts of war, acts of God, earthquake, strikes, flood, riot, embargo, sabotage, governmental act or failure of the Internet, provided the delayed Party gives the other Party notice within a reasonable period of the force majeure event commencing and provides the reasons for such cause. In the event that the force majeure event last for a period of 30 days or more either Party may be entitled to terminate this Agreement on giving ten days' notice in writing.

13. Export Control

- 13.1. The Parties agree to comply fully with all relevant export laws and regulation of the country or countries where their offices are located.
- 13.2. The Customer must inform Cygnia of all rules and regulations and other reasonable security requirements relating to the dispatch of the goods and compliance with the law in the destination country.

14. Services

- 14.1. The Services to be performed are as listed, described and specified in Schedule A or as may be agreed in writing by Cygnia and the Customer from time to time .
- 14.2. Any services outside of the list in Schedule A are deemed to be beyond the scope of the Services and the Charges for the performance of the services outside of the list in Schedule A are to be quoted by Cygnia as and when necessary with the charge for the provision of such services to be agreed in writing by both Parties.
- 14.3. The availability, operational reliability and response times of the Services to be delivered under this Agreement are as may be agreed in writing by Cygnia and the Customer from time to time .
- 14.4. When required to perform outside of this service availability period, additional charges may be charged by Cygnia and the fees for the performance of the services outside of the service availability period are to be quoted by Cygnia as and when necessary, with the fees for the provision of such services to be agreed in writing by both Parties.
- 14.5. Either Party may propose changes to the scope, nature or time schedule of the Services . Such changes shall only occur where the Parties agree to any proposed changes, including any adjustments to the Charges as a result of any changes to the Services. All changes must be agreed in writing.
- 14.6. Should Cygnia be liable for any sums or refunds in respect of Defective Performance, such sums or refunds will be reasonably reduced if the reason for the Defective Performance is due wholly or partly to any reasons beyond the reasonable control of Cygnia or to any act or omission of the Customer.
- 14.7. Except where inconsistent with the terms and conditions of this Agreement , in which case such terms and conditions will take precedence , the UKWA terms and conditions 2014 Edition shall be deemed to be incorporated into this Agreement and shall be applicable to the Services provided by Cygnia .

15. Employees

The Parties will if relevant comply with provisions of Schedule D.

16. Stock Loss Liability

Subject always to the provisions of Clause 9.4.2 Cygnia shall be liable for unaccountable stock loss of the Customer's Goods above the Stock Loss Tolerance for each Year.

17. Performance, Tracking and Reporting

- 17.1. Key Personnel are not required to be specifically named within this Agreement but Cygnia will notify the Customer at least two weeks in advance of changes to any Key Personnel that could materially affect the performance of the Services .
- 17.2. The performance of each individual Service will be monitored by Cygnia who shall use reasonable endeavours to meet or exceed any agreed Benchmark, Target or Metric specified for that particular Service.
- 17.3. Reports on any agreed Benchmarks, Target and Metric levels achieved will be provided to the Customer. These will cover each Service Component delivered and the performance achieved compared with the target performance.
- 17.4. Each Party will at all times have a nominated representative ("**Contract Manager**") to act as its primary point of contact for co-ordination of the performance or (as appropriate) receipt of the Services and will notify the other Party of such nominated representative on or before the Commencement Date. Each Party will notify the other Party in writing within 5 working days of any change to the identity of its Contract Manager occurring.

- 17.5. Service Review Meetings will be held between the Customer's Contract Manager and Cygnia's Contract Manager on a monthly basis at an agreed meeting place, unless otherwise agreed. The issues to be covered will be agreed by the Parties not later than 48 hours before such Service Review Meeting.
- 17.6. Cygnia will provide ongoing assistance to the Customer to support the Services performed. This will include a day to day contact and backup member (the details of whom will be provided to the Customer in writing) to deal with issues as they arise.
- 18. Disputes**
- 18.1. In the event of dispute, the Parties will attempt to resolve any such disputes within 4 weeks through the dispute escalation process set out in Schedule B.
- 18.2. Subject to the Customer having correctly followed the earlier stages of the Problem Escalation procedure set out in Schedule B, if the Customer deems that the issue is one that requires input from a director of Cygnia , then a director of the Customer will contact the Chief Finance Officer of Cygnia who will then determine how this is dealt with
- 19. Customer Duties and Escalation**
- 19.1. The Customer will respond promptly, and in any case, within two working days, to any requests from Cygnia to provide direction, information, approvals, authorisations or decisions that are reasonably necessary for Cygnia to perform the Services.
- 19.2. Notwithstanding any other term of this Agreement Cygnia will not be in breach of this Agreement to the extent its failure to perform or delay or defect in performance of its obligations under this Agreement arises as a result of: (i) any breach by the Customer of its obligations contained in this Agreement; (ii) Cygnia relying on any incomplete or inaccurate data provided by the Customer or by a third party; (iii) the Customer failing to promptly provide any direction, information, approval, authorization, or decisions requested by Cygnia and/or (iv) Cygnia complying with any instruction or request by the Customer or one of its employees.
- 20. Warranties and Remedies**
- 20.1. Cygnia warrants that the Services will be performed in a professional and workmanlike manner consistent with the agreed Benchmarks, Targets and Metrics. If a breach of this warranty has occurred and the Customer notifies Cygnia in writing stating the nature of the breach, Cygnia will use reasonable endeavours to correct any affected Services in order that they comply with this warranty.
- 20.2. In the event of any Defective Performance from Cygnia or failure to furnish the agreed level of service, Cygnia will make reasonable efforts to restore the Service to a good operating condition as soon as possible.
- 21. Security and Disaster Recovery**
- 21.1. In the event that the Customer operates formal security policies and full details of those policies have been notified to Cygnia, Cygnia will use reasonable endeavours to ensure that its employees and sub-contractors are made aware of such policies and will also use reasonable endeavours to maintain ongoing compliance with these policy statements. The Customer will provide Cygnia with up to date information on its security policies and will keep Cygnia informed about any changes to these policies.
- 21.2. Cygnia will manage information and data security, taking all reasonable steps to restrict unauthorized access. Cygnia will ensure that its employees, sub-contractors and representatives are fully aware of the risks associated with information and data security issues.
- 21.3. Cygnia will ensure that information and data under its responsibility is properly backed up on a daily basis and also that arrangements are made for recovery processes to be installed to minimise any potential disruption to the Customer's business. Cygnia is required to ensure that proper measures are in place to enable continuation of the Services in the event of unexpected disruptive events. These measures should include implementation and pre-testing of formal disaster recovery and business continuity planning within Cygnia's business.

22. General

- 22.1. Any notices required under this Agreement are to be sent to the persons specified in Part 2 to Schedule B . Notices are to be sent in writing by either registered post, recorded post, express courier service or be delivered personally.
- 22.2. Neither party may assign, novate or transfer this Agreement to any other party without the prior written consent of the other. Such consent will not to be unreasonably withheld or delayed.
- 22.3. This Agreement constitutes the entire agreement between the Parties and supersedes all other prior agreements.
- 22.4. All changes to this Agreement must be approved in writing by authorised officials of both Parties and follow the formal Change Control Procedures set out in Schedule C of this Agreement.
- 22.5. During the term of this Agreement and for two years after its expiration or termination, neither Party will solicit any employee of the other Party for the purposes of offering employment, with the exception of those staff that would be transferred under the laws of TUPE.
- 22.6. The provisions of this Agreement shall be deemed severable, and the unenforceability of any one of the provisions shall not affect the enforceability of other provisions. In the event that a provision is found to be unenforceable, the Parties shall substitute that provision with an enforceable provision that preserves the original intent and position of the Parties.
- 22.7. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, will be governed by, and construed in accordance with the laws of England and Wales. The Parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

Schedule A – Services

- Receipt of goods (including saleable stock and ancillary items such as shop fittings, point of sale etc.) from the Customer and its suppliers – stock to be suitable for storage on standard pallets.
- Palletising inbound stock where necessary.
- Checking items and quantities on inbound.
- Putting stock away into racking and recording in WMS.
- Storage of stock until called for.
- Picking of stock and preparing for dispatch.
- Preparing, palletising, packing suitable for dispatch.
- Loading stock onto outbound vehicle.

Any services outside of the list above are deemed to be out of scope and are to be quoted for when necessary and agreed in writing by both Parties

Schedule B – Problem Management and Escalation

Part 1 – Problem Escalation

Escalation level	Contact	
First escalation	Account Manager	
Second escalation (only to take place following the unsuccessful resolution of the problem at first escalation stage for a period of not less than 14 days from the commencement of the first escalation stage)	Senior Manager	
Third escalation (only to take place following the unsuccessful resolution of the problem at first and second escalation stages for a period of not less than 28 days from the commencement of the first escalation stage)	Director	

If following completion of the Problem Escalation procedure, any dispute arises out or in connection with this Agreement, the Parties will, if they both agree to in writing to do so, attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure.

Part 2 - Notices

Contact	Details
Cygnia	Chief Finance Officer
Customer	Managing Director

Schedule C – Changes to Agreement

This Schedule C sets out the Change Control Procedures to be followed for changes to this Agreement.

- Formal submission in writing of a requested change from either Party
 - The days required to agree and implement will vary based on the magnitude of the change, but intention is that agreement will be reached within a period of 14 days and that;
 - Following agreement being reached, a written agreement setting out the agreed amendment(s) is to be issued by the Party requesting the change and signed on behalf of both Parties within 7 days of agreement being reached;
 - Implementation of the change will take place no longer than 14 days after the reaching of agreement

Neither Party is obliged to agree to a proposed change, provided that there is reasonable and demonstrable reasons for such refusal.

Schedule D – Employees

Part 1 - Transfer of Transferring Employees to the Supplier on the Commencement Date

1. The Parties believe that, pursuant to TUPE, on the Commencement Date, Cygnia will become the employer of the Transferring Employees so that the contracts of employment of the Transferring Employees (except in respect of terms relating to occupational pension) will have effect from the Commencement Date as if originally made between the Customer and the Transferring Employees.
2. The Customer shall and shall procure that the Customer's Existing Service Provider shall perform and discharge all its obligations in respect of all the Transferring Employees for its own account up to and including the Commencement Date. The Customer shall indemnify Cygnia in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by Cygnia including without limitation all reasonable legal expenses and other professional fees (together with any VAT thereon) in relation to:
 - 2.1. the Customer or Existing Service Provider's failure to perform and discharge any such obligation;
 - 2.2. the employment or termination of the employment of any of the Transferring Employees at any time prior to the Commencement Date by the Customer or Existing Supplier;
 - 2.3. anything done or omitted to be done in respect of any of the Transferring Employees which is deemed to have been done by Cygnia, or liability is attributed to Cygnia, by virtue of TUPE, and which arises from any act or omission of the Customer or Existing Service Provider on or before the Commencement Date;
 - 2.4. any claim by or on behalf of any of the Transferring Employees arising from the Customer's or the Existing Supplier's failure to inform or consult as required under Regulation 13 or 14 of TUPE, save to the extent that the failure is caused by the failure of Cygnia to comply with its obligations under Regulation 13(4) of TUPE in relation to the transfer referred to at Paragraph 1.1;
 - 2.5. any claim by a Transferring Employee that such person is entitled for any reason to take early benefits on redundancy or early retirement benefits pursuant to the terms of any pension scheme in which Cygnia is not then participating, or pursuant to the Transferring Employee's terms and conditions of employment prior to the Commencement Date;
 - 2.6. any act or omission of the Customer or Existing Service Provider in relation to its obligations under Regulation 11 of TUPE;
 - 2.7. any claim arising out of the Client or the Customer's Existing Service Provider making or offering to make any change to (i) any benefit, (ii) term or condition or (iii) working condition of any Transferring Employee;
 - 2.8. all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, holiday pay, pension contribution and otherwise) accrued and payable up to and including the Commencement Date;
 - 2.9. any statement communicated to or action done by the Customer or the Customer's Existing Service Provider in respect of any Transferring Employee on or before the Commencement Date regarding the entry into this Agreement which has not been agreed in advance with Cygnia in writing;
3. If the employment or any liabilities in respect of any employee of the Customer or any Existing Service Provider (other than the Transferring Employees) transfers to Cygnia or any Sub-Contractor by virtue of TUPE or is alleged to have done so as a consequence of the commencement of this Agreement or the provision of the Services ("**Unexpected Employee**"), then the Supplier may either:
 - 3.1. elect to continue the employment of such Unexpected Employee; or

- 3.2. upon becoming aware of such effect, or an allegation of such effect, within 14 days, notify the Customer of the effect of such contract or the allegation and the Customer or any Existing Service Provider may, if it wishes, make an offer in writing to employ or settle the claims of the Unexpected Employee within a further 14 days (“Offer Period”). Within 7 days of the expiry of the Offer Period, Cygnia or any Sub-Contractor shall (unless Cygnia otherwise agrees in writing with the Customer) be entitled to dismiss the Unexpected Employee.
4. The Customer will fully indemnify Cygnia and any Sub-Contractor against all damages, losses, costs, awards, liabilities and expenses which Cygnia or any Sub-Contractor incurs or suffers arising directly or indirectly in connection with:-
 - 4.1. in relation to those Unexpected Employees referred to in Paragraph 1.3.1 arising from any act, omission, obligation or liability of the Customer or Existing Service Provider or any other event, occurring prior to the date of electing to continue the Unexpected Employee’s employment;
 - 4.2. in relation to those Unexpected Employees referred to in Paragraph 1.3.2 the employment or termination of the employment of an Unexpected Employee, whether before, on or after the commencement of this Agreement or the provision of the Services and whether by the Customer, the Existing Supplier, Cygnia or any Sub-Contractor; and
 - 4.3. in relation to any Unexpected Employees any claim for a failure to properly inform and consult under TUPE in relation to such an Unexpected Employee by the Customer, the Existing Supplier, Cygnia or any Sub-Contractor.

PROVIDED always the Customer shall not be liable to indemnify Cygnia or any Sub-Contractor in respect of any claims where they arise directly from any discriminatory act or omission of Cygnia or any Sub-Contractor or where Cygnia or any Sub-Contractor has terminated the employment of an Unexpected Employee not in accordance with Paragraph 1.3.2.
5. Cygnia shall indemnify in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Customer including without limitation all reasonable legal expenses and other professional fees (together with any VAT thereon) in relation to:
 - 5.1. any failure by Cygnia to comply with its obligations under Regulation 13(4) of TUPE, in relation to the transfer at Paragraph 1.1 above; and
 - 5.2. subject to Paragraph 1.4.1, the employment or termination of the employment of the Transferring Employees at any time on or after the Commencement Date.
6. At least 28 days before the Commencement Date, the Customer shall provide to Cygnia, in respect of each Transferring Employee, their:
 - 6.1. Employee Liability Information;
 - 6.2. pay slip data for the most recent month;
 - 6.3. cumulative pay for tax and pension purposes;
 - 6.4. cumulative tax paid;
 - 6.5. tax code;
 - 6.6. voluntary deductions from pay; and
 - 6.7. bank or building society account details for payroll purposes.
7. In the event that Cygnia or any Sub-Contractor terminates the employment of any Transferring Employee on the grounds of redundancy (within the meaning of section 139 of the Employment Rights Act 1996) in the 3 months after the Commencement Date, then the Customer will keep Cygnia and any Sub-Contractors indemnified in full against all Redundancy Costs arising directly or indirectly in connection with any such termination PROVIDED always that the Customer shall not be liable to the extent that the Redundancy Costs (or any part thereof) arise from a failure by Cyg-

nia or any Sub-Contractor to undertake a fair redundancy procedure and/or fails to use its reasonable endeavours to redeploy the Employees.

2. **Part 2 – Exit**

2.1. If TUPE does not apply upon the termination of this Agreement or on the Service Transfer Date the provisions set out in this Paragraph 2.1 shall apply. In the event that Cygnia or any Sub-Contractor terminates the employment of any Employee on the grounds of redundancy (within the meaning of section 139 of the Employment Rights Act 1996) in the 3 months after the Termination Date or Service Transfer Date, then the Customer will keep Cygnia and any Sub-Contractors indemnified in full against all Redundancy Costs arising directly or indirectly in connection with any such termination PROVIDED always that the Customer shall not be liable to the extent that the Redundancy Costs (or any part thereof) arise from a failure by Cygnia or any Sub-Contractor to undertake a fair redundancy procedure and/or fails to use its reasonable endeavours to redeploy the Employees.

2.2. If TUPE does apply upon the termination of this Agreement or upon the Service Transfer Date, the provisions set out in this Paragraph 2.2 shall apply:

2.2.1. Cygnia shall and shall use its reasonable endeavours to procure that any Sub-Contractor shall perform and discharge all of its obligations in respect of all Re-Transferring Employees for its own account up to and including the Service Transfer Date. Cygnia shall indemnify the Customer in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer including without limitation all reasonable legal expenses and other professional fees (together with any VAT thereon) in relation to:

2.2.1.1. Cygnia's or its Sub-Contractor's failure to perform and discharge any such obligations in respect of all the Re-Transferring Employees for its account up to and including the Service Transfer Date;

2.2.1.2. the termination by Cygnia or its Sub-Contractor of the employment of any of the Re-Transferring Employees prior to the Service Transfer Date;

2.2.1.3. any failure by Cygnia or its Sub-Contractor to comply with its obligations under Regulation 13 of TUPE save to the extent that such liability arises from the Client or the Replacement Service Provider's failure to comply with their obligations under TUPE;

2.2.1.4. anything done or omitted to be done in respect of any of the Re-Transferring Employees which is deemed to have been done by the Customer or its Replacement Service Provider, by virtue of TUPE, and which arises from any act or omission of Cygnia or its Sub-Contractor on or before the Service Transfer Date;

2.2.1.5. any act or omission of Cygnia or its Sub-Contractor in relation to their obligations under Regulation 11 of TUPE;

2.2.1.6. all and any claims in respect of emoluments and outgoings in relation to the Re-Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) accrued and payable up to and including the Service Transfer Date;

2.2.1.7. subject to the Customer's compliance with Paragraph 2.2.4 below, any person who is not a Re-Transferring Employee, arising out of any act, omission, obligation or liability of Cygnia or its Sub-Contractor or any event, occurring on or prior to the Service Transfer Date (including without limitation the dismissal of such person or change in his or her terms of employment) for which the Customer or its Replacement Service Provider is liable by reason of the operation Cygnia agrees that in the event that TUPE applies to transfer any of the Supplier or Sub-Contractor Employees to the Customer or its Replacement Service Provider on the Service Transfer Date who is not a Re-Transferring Employee notified to the Customer or its Replacement Service Provider in accordance with Regulation 11 of TUPE then within 7 days of becoming aware of such employee the Customer or its Replacement Service Provider may either:

- 2.2.1.8. elect to continue the employment of such employee, whereupon Cygnia shall indemnify the Customer in relation to all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Customer or Replacement Service Provider including without limitation all reasonable legal expenses and other professional fees (together with any VAT thereon) arising from any act, omission, obligation or liability of Cygnia or Sub- Contractor or any other event, occurring prior to the Termination Date; or
 - 2.2.1.9. notifies Cygnia before the Customer or Replacement Service Provider terminates the employment of such employee and allows Cygnia or Sub-Contractor a period of 21 days in which to re-engage the employee and, if such employee is not re-engaged or refuses to be re-engaged by Cygnia or Sub-Contractor, after expiry of this period Cygnia terminates such employee.
 - 2.2.2. The Customer will indemnify Cygnia in full against all actions, proceedings, demands, awards, costs, fines, orders, expenses and liabilities (including legal and other professional fees and expenses) in connection with any claim by any Employee in accordance with Regulation 4(9), 4(11) or 13(4) of TUPE.
 - 2.2.3. Cygnia will indemnify the Customer in full against all actions, proceedings, demands, awards, costs, fines, orders, expenses and liabilities (including legal and other professional fees and expenses) in connection with any claim by any Employee which is attributed to the Customer or the Customer's Replacement Service Provider by virtue of TUPE and which arises from any act or omission by Cygnia or Cygnia's Sub-Contractor on or before the Service Transfer Date.
3. Cygnia's rights under this Schedule are without prejudice to any additional or other rights which may be available to Cygnia on termination of this Agreement whether at common law or otherwise.
4. Any Sub-Contractor and the Existing Service Provider will be entitled to enforce any provisions of **this Schedule D** which confer a benefit upon it subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of this Agreement. The Parties may vary or rescind this Agreement without the written consent of any other person. Save as provided in this **Paragraph 4** the Parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any other person.