



# SERVICE TERMS AGREEMENT

## SERVICE TERMS AND CONDITIONS

These terms and conditions of service constitute a legally binding contract between the "Company" and the "Customer". In the event the Company renders services and issues a document containing Terms and Conditions governing such services, the Terms and Conditions set forth in such other document(s) shall govern those services.

### 1. Definitions.

(a) "Company" shall mean The Delivery People, its subsidiaries, related companies, agents and/or representatives;

(b) "Customer" shall mean the person for which the Company is rendering service, as well as its principals, agents and/or representatives, including, but not limited to, shippers, importers, exporters, carriers, secured parties, warehousemen, buyers and/or sellers, shipper's agents, insurers and underwriters, break-bulk agents, consignees, etc. It is the responsibility of the Customer to provide notice and copy(s) of these terms and conditions of service to all such agents or representatives;

(c) "Documentation" shall mean all information received directly or indirectly from Customer, whether in paper or electronic form;

(d) "Ocean Transportation Intermediaries" ("OTI") shall include an "ocean freight forwarder" and a "non-vessel operating carrier";

(e) "Third parties" shall include, but not be limited to, the following: "carriers, truckmen, cartmen, lightermen, forwarders, OTIs, customs brokers, agents, warehousemen and others to which the goods are entrusted for transportation, cartage, handling and/or delivery and/or storage or otherwise".

2. **Company as agent.** The Company acts as the "agent" of the Customer for the purpose of performing duties in connection with the entry and release of goods, post entry services, the securing of export licenses, the filing of export and security documentation on behalf of the Customer and other dealings with Government Agencies, or for arranging for transportation services or other logistics services in any capacity other than as a carrier.

3. **Limitation of Actions.** (a) Unless subject to a specific statute or international convention, all claims against the Company for a potential or actual loss, must be made in writing and received by the Company, with SEVEN (7) business days of the event giving rise to claim; the failure to give the Company timely notice shall be a complete defense to any suit or action commenced by Customer.

4. **No Liability For The Selection or Services of Third Parties and/or Routes.** Unless services are performed by persons or firms engaged pursuant to express written instructions from the Customer, Company shall use reasonable care in its selection of third parties, or in selecting the means, route and procedure to be followed in the handling, transportation, clearance and delivery of the shipment; advice by the Company that a particular person or firm has been selected to render services with respect to the goods, shall not be construed to mean that the Company warrants or represents that such person or firm will render such services nor does Company assume responsibility or liability for any actions(s) and/or inaction(s) of such third parties and/or its agents, and shall not be liable for any delay or loss of any kind, which occurs while a shipment is in the custody or control of a third party or the agent of a third party; all claims in connection with the Act of a third party shall be brought solely against such party and/or its agents; in connection with any such claim, the Company shall reasonably cooperate with the Customer, which shall be liable for any charges or costs incurred by the Company.



## SERVICE TERMS AGREEMENT

5. **Quotations Not Binding.** Quotations as to fees, rates of duty, freight charges, insurance premiums or other charges given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless the Company in writing agrees to undertake the handling or transportation of the shipment at a specific rate or amount set forth in the quotation and payment arrangements are agreed to between the Company and the Customer.
6. **Reliance On Information Furnished.**
  - (a) Customer acknowledges that it is required to review all documents and declarations prepared and/or filed with U.S. Customs & Border Protection, other Government Agency and/or third parties, and will immediately advise the Company of any errors, discrepancies, incorrect statements, or omissions on any declaration or other submission filed on Customers behalf;
  - (b) In preparing and submitting customs entries, export declarations, applications, security filings, documentation and/or other required data, the Company relies on the correctness of all documentation, whether in written or electronic format, and all information furnished by Customer; Customer shall use reasonable care to ensure the correctness of all such information and shall indemnify and hold the Company harmless from any and all claims asserted and/or liability or losses suffered by reason of the Customer's failure to disclose information or any incorrect, incomplete or false statement by the Customer or its agent, representative or contractor upon which the Company reasonably relied. The Customer agrees that the Customer has an affirmative non-delegable duty to disclose any and all information required to import, export or enter the goods.
7. **Declaring Higher Value To Third Parties.** Third parties to whom the goods are entrusted may limit liability for loss or damage; the Company will request excess valuation coverage only upon specific written instructions from the Customer, which must agree to pay any charges therefore; in the absence of written instructions or the refusal of the third party to agree to a higher declared value, at Company's discretion, the goods may be tendered to the third party, subject to the terms of the third party's limitations of liability and/or terms and conditions of service.
8. **Insurance.** Unless requested to do so in writing and confirmed to Customer in writing, Company is under no obligation to procure insurance on Customer's behalf; in all cases, Customer shall pay all premiums and costs in connection with procuring requested insurance.
9. **Disclaimers; Limitation of Liability.**
  - (a) Except as specifically set forth herein, Company makes no express or implied warranties in connection with its services;
  - (b) In connection with all services performed by the Company, Customer may obtain additional liability coverage, up to the actual or declared value of the shipment or transaction, by requesting such coverage and agreeing to make payment therefor, which request must be confirmed in writing by the Company prior to rendering services for the covered transaction(s).
  - (c) In the absence of additional coverage under (b) above, the Company's liability shall be limited to the following:
    - (i) where the claim arises from activities other than those relating to customs business, \$50.00 per shipment or transaction, or 0.50 per pound, whichever is less.
    - (ii) where the claim arises from activities relating to "Customs business," \$50.00 per entry or the amount of brokerage fees paid to Company for the entry, whichever is less;
  - (d) In no event shall Company be liable or responsible for consequential, indirect, incidental, statutory or punitive damages, even if it has been put on notice of the possibility of such damages, or for the acts of third parties.
10. **Advancing Money.** All charges must be paid by Customer in advance unless the Company agrees in writing to extend credit to customer; the granting of credit to a Customer in connection with a particular transaction shall not be considered a waiver of this provision by the Company.



## SERVICE TERMS AGREEMENT

11. **Indemnification/Hold Harmless.** The Customer agrees to indemnify, defend, and hold the Company harmless from any claims and/or liability, fines, penalties and/or attorneys' fees arising from the importation or exportation of customers merchandise and/or any conduct of the Customer, including but not limited to the inaccuracy of entry, export or security data supplied by Customer or its agent or representative, which violates any Federal, State and/or other laws, and further agrees to indemnify and hold the Company harmless against any and all liability, loss, damages, costs, claims, penalties, fines and/or expenses, including but not limited to reasonable attorney's fees, which the Company may hereafter incur, suffer or be required to pay by reason of such claims; in the event that any claim, suit or proceeding is brought against the Company, it shall give notice in writing to the Customer by mail at its address on file with the Company.
12. **General Lien and Right To Sell Customer's Property.**
  - (a) Company shall have a general and continuing lien on any and all property of Customer coming into Company's actual or constructive possession or control for monies owed to Company with regard to the shipment on which the lien is claimed, a prior shipment(s) and/or both;
  - (b) Company shall provide written notice to Customer of its intent to exercise such lien, the exact amount of monies due and owing, as well as any on-going storage or other charges; Customer shall notify all parties having an interest in its shipment(s) of Company's rights and/or the exercise of such lien.
  - (c) Unless, within thirty days of receiving notice of lien, Customer posts cash or letter of credit at sight, or, if the amount due is in dispute, an acceptable bond equal to 110% of the value of the total amount due, in favor of Company, guaranteeing payment of the monies owed, plus all storage charges accrued or to be accrued, Company shall have the right to sell such shipment(s) at public or private sale or auction and any net proceeds remaining thereafter shall be refunded to Customer.
13. **No Duty To Maintain Records For Customer.** Customer acknowledges that pursuant to Sections 508 and 509 of the Tariff Act, as amended, (19 USC §1508 and 1509) it has the duty and is solely liable for maintaining all records required under the Customs and/or other Laws and Regulations of the United States; unless otherwise agreed to in writing, the Company shall only keep such records that it is required to maintain by Statute(s) and/or Regulation(s), but not act as a "recordkeeper" or "recordkeeping agent" for Customer.
14. **Obtaining Binding Rulings, Filing Protests, etc.** Unless requested by Customer in writing and agreed to by Company in writing, Company shall be under no obligation to undertake any pre- or post Customs release action, including, but not limited to, obtaining binding rulings, advising of liquidations, filing of petition(s) and/or protests, etc.
15. **Preparation and Issuance of Bills of Lading.** Where Company prepares and/or issues a bill of lading, Company shall be under no obligation to specify thereon the number of pieces, packages and/or cartons, etc.; unless specifically requested to do so in writing by Customer or its agent and Customer agrees to pay for same, Company shall rely upon and use the cargo weight supplied by Customer.
16. **No Modification or Amendment Unless Written.** These terms and conditions of service may only be modified, altered or amended in writing signed by both Customer and Company; any attempt to unilaterally modify, alter or amend same shall be null and void.
17. **Compensation of Company.** The compensation of the Company for its services shall be included with and is in addition to the rates and charges of all carriers and other agencies selected by the Company to transport and deal with the goods and such compensation shall be exclusive of any brokerage, commissions, dividends, or other revenue received by the Company from carriers, insurers and others in connection with the shipment. On ocean exports, upon request, the Company shall provide a detailed breakout of the components of all charges assessed and a true copy of each pertinent document relating to these charges. In any referral for collection or action against the Customer for monies due the Company, upon recovery by the Company, the Customer shall pay the expenses of collection and/or litigation, including a reasonable attorney fee.



## SERVICE TERMS AGREEMENT

18. **Force Majeure.** Company shall not be liable for losses, damages, delays, wrongful or missed deliveries or nonperformance, in whole or in part, of its responsibilities under the Agreement, resulting from circumstances beyond the control of either Company or its sub-contractors, including but not limited to: (i) acts of God, including flood, earthquake, storm, hurricane, power failure or other natural disaster; (ii) war, hijacking, robbery, theft or terrorist activities; (iii) incidents or deteriorations to means of transportation, (iv) embargoes, (v) civil commotions or riots, (vi) defects, nature or inherent vice of the goods; (vii) acts, breaches of contract or omissions by Customer, Shipper, Consignee or anyone else who may have an interest in the shipment, (viii) acts by any government or any agency or subdivision thereof, including denial or cancellation of any import/export or other necessary license; or (ix) strikes, lockouts or other labor conflicts.
19. **Severability.** In the event any Paragraph(s) and/or portion(s) hereof is found to be invalid and/or unenforceable, then in such event the remainder hereof shall remain in Full force and effect. Company's decision to waive any provision herein, either by conduct or otherwise, shall not be deemed to be a further or continuing waiver of such provision or to otherwise waive or invalidate any other provision herein.
- 20.



# SERVICE TERMS AGREEMENT

## WAREHOUSE SERVICES TERMS AND CONDITIONS

This Agreement for Warehouse Services (this “Agreement”) is entered into as of the day signed below (the “Effective Date”) by an authorized representative of Canuck Inc. dba The Delivery People, with mailing address at P.O. Box 30377, Honolulu, Hawaii 96820 (“Delivery People”), and the undersigned customer (“Customer”).

The term of this Agreement is for an initial period of one (1) year, and thereafter will be extended on a month-to-month basis, but may be terminated by either party at any time by providing thirty (30) days advance written notice to the other party or as otherwise provided herein.

### 1. Storage

1.1 *Product*. All goods and products (“Goods”) to be warehoused and/or delivered by Delivery People under this Agreement are the property of Customer. Customer agrees not to ship goods to Delivery People as the named consignee. Customer agrees to notify its carrier in writing prior to any such shipment, with a copy of such notice to the Delivery People, stating that should Delivery People be named as consignee, that it is a warehouseman only and has no beneficial title or interest in such property and Customer further agrees to indemnify and hold harmless Delivery People from any and all claims for unpaid transportation charges, including demurrage, undercharges, detention or charges of any nature, in connection with all Goods so shipped. Customer further agrees that, if it fails to notify carrier as required by the preceding sentence, Delivery People shall have the right to refuse such Goods and shall not be liable or responsible for any loss, injury or damage of any nature to, or related to, such Goods.

1.2 *Services*. Delivery People will provide the following services for Goods tendered to it by Customer:

- Goods receipt and visual inspection and verification against shipping list;
- Notification to Customer of any noticeably damaged goods within 48 hours of receipt;
- Notification to Customer of any missing goods after receipt of full shipment, provided that Customer notifies Delivery People when all goods have shipped;
- Transportation of Goods to Customer’s retail location designated herein or to Customer’s customer location in the territory designated herein;
- Pick-up and restorage from Customer’s retail location of any returned or unsaleable Goods;
- Goods stored using system-segregated SKU warehouse locators.

Goods will be stored according to displayed Stock Keeping Unit (SKU) and may be relocated within the Warehouse as necessary in Delivery People’s discretion. Goods will be stored in the original packaging they are received in by Delivery People. Delivery People will have no obligation to repackage, reconfigure, or otherwise handle the Goods other than to unload them from the common carrier and store them in the Warehouse for future delivery as contemplated herein. Delivery People is not responsible for manufacturer defects in the Goods, or for coordinating the return of Goods which are received damaged from the manufacturer, except where specifically agreed to in writing by Delivery People. Delivery People will notify Customer of noticeably damaged Goods and will make arrangements with Customer for the return of those Goods to the designated supplier and/or manufacturer, but at no cost to Delivery People.

1.3 *Request for Services*. Customer may request Goods be stored under this Agreement by providing Delivery People with the carrier delivery information, the quantity, and SKU numbers. Delivery People agrees to store the Goods for Customer at the Warehouse and provide Customer with a warehousing receipt that includes (a) location of the warehouse where the Goods are stored, (b) the date the receipt was issued, (c) the storage rate or handling charges, (d) a description of the Goods, and (e) signed by an authorized representative of Delivery People. The Parties agree that any such warehouse receipt may be in electronic format and transmitted to Customer electronically. If Customer wishes to have the Products stored at a facility other than the Warehouse identified in this Agreement, and assuming such alternative space is available, Delivery People will transfer the Goods thereto and Customer agrees to pay Delivery People a transfer fee and all shipping costs incurred in transferring the Product to such alternative storage location.



## SERVICE TERMS AGREEMENT

1.4 Storage. For purposes described herein, “Inventory” means Goods that are stored by Delivery People under this Agreement in the Warehouse or alternative agreed to space. Delivery People will store the Inventory received in accordance with this Agreement at the Warehouse. All right, title and interest to the Inventory will remain at all times with Customer, unless expressly stated otherwise hereunder. Delivery People will hold all Inventory as a bailee only and will not permit any lien or other encumbrance to be placed against the Inventory while in Delivery People’s care, custody and control.

### 2. Shipping

2.1 Shipping Releases. From time to time, Customer will instruct Delivery People to ship Inventory to the residences and/or businesses of Customer’s customers or to the Customer’s retail location by submitting a request for shipment (the “Shipping Release”) that shall include: (i) product description, (ii) unit quantity, (iii) the SKU number assigned to the Inventory, and the (iv) ship-to address within the territory.

2.2 Special Shipping Instructions. Delivery People will ship Inventory in accordance with Delivery People’s standard shipping practices. If Customer requests Delivery People to ship using Customer’s special shipping instructions, the Delivery People will make commercially reasonable efforts to follow those instructions provided that (a) those instructions have been provided to Delivery People in a timely manner and (b) Delivery People will not incur additional expenses in processing those shipments. If Customer’s special shipping instructions require additional programming or resources in order for Delivery People to comply with them, Delivery People will notify Customer of those requirements and estimated additional costs. If Delivery People and Customer have not agreed on the applicability of Customer’s special shipping instructions, Delivery People will not be liable for any additional fees, fines, or costs incurred due to Delivery’s People failure to comply with Customer’s special shipping instructions.

2.3 Returns. Any product returned to Delivery People or requested by Customer to be picked up at Customer’s location of the residence of business of a customer of Customer following outbound shipment per Customer’s instructions, e.g. refusals or errors in shipping instructions, returns, unsaleable Inventory, will be re-stored at the Warehouse and returned to Inventory and additional storage fees will be incurred in connection therewith and from that date forward. Additional handling fees may also apply.

### 3. Service Fees and Payment Terms.

3.1 Service Fees. The fees for Services provided under this Agreement are identified on the first page hereof. For any services not specified in this Agreement, Customer shall pay to Delivery People such consideration as may be mutually agreed upon in advance in writing. Charges shall be paid by Customer within thirty (30) days of Delivery People’s statement or invoice for such services. All invoices will include applicable General Excise Tax.

3.2 Payment. Except as otherwise set forth in these Terms and Conditions, any sum due Delivery People pursuant to these Terms and Conditions is payable in accordance with Delivery People’s payment terms as stated on the invoice. If Customer has a good faith dispute with respect to an invoiced fee amount, Customer agrees to pay the undisputed amount of the invoice and notify Delivery People of the disputed amount and the reasons for that dispute no later than the date on which payment of the invoice is due. The parties will use their best efforts to resolve any such dispute within five (5) days.

### 4. Loss and Damage

4.1 Lost and Damaged Inventory. Delivery People’s sole obligation with respect to loss and damage of any Inventory directly and solely the result of Delivery People’s negligence or misconduct, shall be to reimburse Customer the current replacement cost, as shown in Customer’s or Delivery People’s system, of all units of Inventory that become lost or damaged due to Delivery People’s gross negligence or willful misconduct. Customer will bear all other risks of loss and damage to the Inventory, including without limitation, third-party theft, catastrophic loss, natural disaster, fire, etc., while in Delivery People’s possession.

4.2 Loss and Damage Allowance. Delivery People’s obligation to pay for lost or damaged Inventory under Section 4.1 will be reduced by an amount equal to one percent (1%) of the total replacement cost of all Inventory held by Ingram at the time of the loss.



## SERVICE TERMS AGREEMENT

4.3 Claims. Claims by Customer must be presented to Delivery People within a reasonable time, and in no event later than the earlier of ten (10) days after delivery of the goods by Delivery People, or ten (10) days after Customer is notified by Delivery People that loss or injury to part or all of the Goods has occurred. No action may be maintained against Delivery People for loss or injury to the Goods stored unless timely written claim has been given as provided above and unless such action is commenced within six (6) months after either delivery of the Goods by Delivery People or the Customer is notified that the loss or injury to part or all of the Goods has occurred. Delivery People will pay any amounts due pursuant to Section 4.1 above within 60 days after the loss occurred and Delivery People's responsibility is clear.

5. **Failure to Pay Service Fees or Product Price.**

If Customer fails to pay Delivery People any fees relating to Services that are due and owing, Delivery People may elect to reclaim any Inventory from in-progress delivery, lien any remaining Inventory in its possession, and/or liquidate the remaining Inventory to satisfy the amount owed, at Delivery People's sole discretion. Delivery People's exercise of its rights to lien and liquidate any Inventory will be in addition to any other rights or remedies it may have to recover the fees for the Services provided in law or in equity, including Haw. Rev. Stat. Sections 490:7-101 et seq.

6. **Disclaimers and Limitation of Liability**

IN NO EVENT WILL EITHER PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES, ARISING FROM OR RELATED TO THE PERFORMANCE OR ANY FAILURE TO PERFORM ANY OF THE PARTY'S OBLIGATIONS UNDER THIS AGREEMENT. DELIVERY PEOPLE SHALL NOT BE LIABLE FOR ANY LOSS OR INJURY TO GOODS STORED HOWEVER CAUSED UNLESS SUCH LOSS OR INJURY RESULTED FROM THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF DELIVERY PEOPLE. CUSTOMER ACKNOWLEDGES THAT THE GOODS MAY NOT BE INSURED BY DELIVERY PEOPLE AGAINST LOSS OR INJURY HOWEVER CAUSED. CUSTOMER IS RESPONSIBLE FOR OBTAINING ITS OWN INSURANCE FOR THE GOODS AND REMAINS SOLELY LIABLE FOR ANY LOSS OR DAMAGE TO THE GOODS EXCEPT AS OTHERWISE STATED HEREIN. THE PARTIES DECLARE THAT DAMAGES ARE LIMITED TO REPLACEMENT COST OF THE INVENTORY UNDER SECTION 4.1 ABOVE. WHERE LOSS OR INJURY OCCURS TO STORED GOODS, FOR WHICH DELIVERY PEOPLE IS NOT LIABLE, CUSTOMER SHALL BE RESPONSIBLE FOR THE COST OF REMOVING AND DISPOSING OF SUCH DAMAGED GOODS AND THE COST OF ANY ENVIRONMENTAL CLEAN UP AND SITE REMEDIATION RESULTING FROM THE LOSS OR INJURY TO THE GOODS.

7. **Termination of Storage**

7.1 Suspension for Non-Payment. If Customer fails to make timely payment of any undisputed amounts invoiced for Services, Delivery People shall have the right to immediately suspend performance of any Services.

7.2 Termination. Either party may terminate the relationship upon 30 days prior written notice. Each party will return to the other any proprietary materials provided by the other party that relate to Delivery People's provision of Services under this Agreement.

7.3 Removal of Inventory upon Termination. Within 10 days following the termination date, Customer will take delivery of all Inventory stored by Delivery People, advise Delivery People of the ship-to address, and arrange to have the Inventory transported at Customer's cost to another location



## SERVICE TERMS AGREEMENT

### 8. Miscellaneous

- 8.1 Confidentiality. The terms of this Agreement are confidential information, and as such should not be disclosed to any third party without the express written consent of both parties. The parties agree to disclose this Agreement only to those personnel within their respective organizations who require this information to perform their duties.
- 8.2 Force Majeure. Neither party will be held in breach of this Agreement for a delay or failure to perform if and to the extent the delay or failure to perform under this Agreement is due to an Act of God or the public enemy, labor disorder, civil commotion, closing of public highways, government interference, government regulations, or any similar event or occurrence beyond the reasonable control of the affected party.
- 8.3 Notices. Except as otherwise specified in this Agreement, all notices, requests, consents, approvals and other communications required or permitted under this Agreement will be in writing and will be deemed given either when delivered personally, when sent by facsimile (with confirmation), or one business day after being sent by U.S. express mail or by reputable overnight courier service, delivery charges prepaid, to the respective addresses specified on the first page of this Agreement.
- 8.4 Severability. If, but only to the extent that, any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then both parties will be relieved of all obligations arising under that provision, it being the intent and agreement of the parties that this Agreement will be amended by modifying that provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective will be substituted. If the remainder of this Agreement is not affected by that declaration or finding and is capable of substantial performance, then the remainder will be enforced to the extent permitted by law.
- 8.5 Waiver. An effective waiver under this Agreement must be in writing and signed by the party waiving its right. A waiver by either party of any instance of the other party's noncompliance with any obligation or responsibility under this Agreement will not be deemed a waiver of subsequent or other prior instances of non-compliance.
- 8.6 Attachments. All attachments and documents referenced in or attached to this Agreement are an integral part of this Agreement. If there is any conflict between the terms and conditions of any exhibits, documents, or schedules and this Agreement, this Agreement will control unless otherwise agreed to in writing by authorized representatives of the parties. To the extent that there is any discrepancy and/or conflict between the terms and conditions of this Agreement and those contained in any warehouse receipt issued by Delivery People, the terms and conditions of the warehouse receipt shall control.
- 8.7 Governing Law. This Agreement will be construed, interpreted and enforced under an in accordance with the internal laws of the State of Hawaii, excluding its conflicts or choice of law rule or principles which might refer to the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- 8.8 Binding Effect/Assignment. This Agreement is binding upon and will inure to the benefit of the parties hereto, and their respective representatives, successors and permitted assigns. Neither party may assign its rights and or duties under this Agreement without the prior written consent of the other party given at the other party's sole option. Any such attempted assignment will be void. Notwithstanding the foregoing, Delivery People may assign this Agreement to a subsidiary or affiliate upon notice to Customer.
- 8.9 Entire Agreement; Amendment. This Agreement and its attachments constitute the entire agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements that are not fully expressed in this Agreement. This Agreement may be amended from time to time with 30 days' notice to Customer at Delivery People's sole discretion.