

WAREHOUSING, DISTRIBUTION & LOGISTICS TERMS AND CONDITIONS OF SERVICE

1. Structure of the Agreement. Customer desires to receive certain warehousing, distribution and/or logistics services provided by SCS as identified in that certain Master Services Agreement (the “MSA”) by and between Customer and SCS and as further specified in the service schedules referencing the MSA (the “Services”). Each Schedule may have attached one or more statements of work (“SOWs”) and exhibits. Each such service schedule, SOW, and exhibit are collectively referred to herein as the “Service Schedules.” These Terms and Conditions of Service and the Service Schedules are incorporated into the MSA. These Terms and Conditions of Service, the Service Schedules and the MSA are collectively referred to herein as the “Agreement.” Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the MSA.

2. Fees, Charges and Expenses.

2.1 Fees, Charges and Expenses. Customer shall pay to SCS all fees, charges and expenses (“Fees”) as specified in the Agreement with no right of set-off for any claim filed against SCS. SCS shall invoice Customer in accordance with the terms set forth in the applicable Service Schedule. If Customer in good faith disputes an amount set forth on an invoice, Customer shall pay the undisputed amount and shall promptly notify SCS of such dispute and work in good faith with SCS to promptly resolve the disputed amount. All Fees will be billed and paid in U. S. dollars, unless otherwise provided in a Service Schedule. Except as otherwise set forth in a Service Schedule, the Fees set forth therein may be adjusted at any time by the mutual written agreement of the Parties.

2.2 Surcharges. Customer shall pay all fuel, security or other surcharges (“Surcharges”) that may be imposed on SCS by law or by governmental agencies. Customer also agrees to pay Surcharges imposed on SCS by its providers, including its affiliates, provided that SCS uses commercially reasonable efforts to minimize Surcharges and SCS generally applies the Surcharges across its customer base.

2.3 Late Payments. If Customer fails to make a payment of the Fees when due, Customer shall pay to SCS a late payment charge which shall be equal to one and one-half percent (1.5%) of the unpaid amount of such Fees. Such late payment fee shall be charged for any month where Customer fails to make a payment of the Fees when due.

2.4 Taxes. Customer agrees to pay, indemnify and hold SCS and its affiliates harmless from and against all sales, use, personal property, gross receipts, excise, franchise and business taxes (including any penalties, fines or interest thereon), except for taxes on revenue earned by SCS, imposed by any federal, state or local government or taxing authority with respect to the Services performed by SCS under the Agreement.

2.5 Changes in Operating Parameters or Conditions. Customer acknowledges and agrees that SCS calculated the Fees based on and in reliance upon certain key assumptions or design criteria supplied to SCS by or on behalf of Customer (“Operating Parameters”). Such assumptions may be set forth in the applicable Service Schedule. In the event that Customer requirements cause a change in any Operating Parameter (i.e., a change that is encountered over the course of time and is anticipated to be ongoing) or a “Changed Condition,” (as defined below), SCS will propose an appropriate adjustment to the Fees. Customer shall not unreasonably withhold or delay its approval of such adjustment. If the Parties are unable to agree upon the proposed adjustment within thirty (30) days of SCS’s notice of such adjustment, either Party may submit the Dispute for resolution as set forth in Section 13. “Changed Condition” means the enactment or promulgation of any new law or regulation or the imposition of a new material condition on the issuance or renewal of any permit, license or approval after the Effective Date hereof that: (a) materially increases the obligations or costs of SCS or adversely affects the ability of SCS to perform the Services, or (b) materially decreases the Fees to which SCS would otherwise be entitled under a Service Schedule. SCS shall not be responsible for any liability for failure to meet performance commitments due to Changed Conditions, unless SCS specifically agrees in writing to the contrary.

2.6 SAS 70 Reporting. If Customer requests a SAS 70 Type II audit report that addresses SCS's internal controls related to Services, SCS will work with Customer to provide a report that complies with Statement of Auditing Standards 70. Customer acknowledges that any such SAS 70 report provided to Customer will contain Confidential Information of SCS, and Customer agrees to treat any SAS 70 report provided to Customer by SCS as Confidential Information of SCS in accordance with the terms of the Agreement. Customer will be responsible for payment of all costs related to providing the requested report, not to exceed \$100,000 (U.S.) per report, unless the service that SCS provides to Customer involves a unique operating system or is a highly customized operation, in which case the Parties will mutually agree on the cost, in writing, prior to SCS initiating preparation of any requested SAS 70 report. Customer agrees that the SAS 70 report process will be conducted by SCS through an external auditor. SCS will be responsible to remediate any exceptions to the extent that they arise from SCS’s failure to comply with its contractual requirements, however, SCS does not provide any assurance that any SAS 70 report requested by Customer will be unqualified during any reporting period. To initiate the preparation of a SAS 70 report, Customer must make a written request 180 days prior to the requested SAS 70 report date. SCS will prepare no more than one report in any twelve (12) month period.

3. Indemnification.

3.1 General Indemnification. Each Party (“Indemnitor”) shall indemnify, defend and hold harmless the other Party and any affiliated and controlling entities of such Party, and the directors, employees, officers, agents, subcontractors, licensors and suppliers of each of them (in each case “Indemnitee”) from and against all third party liabilities, claims, suits, demands, actions, fines, damages, losses, costs and expenses (including reasonable attorneys’ fees) (“Claims”) for injury to or death of any person or

damage to or loss of improvements to real property or tangible personal property to the extent caused by or resulting from such Party's negligent acts or omissions or willful misconduct, except to the extent caused by the Indemnitee; *provided, however*, that this Section shall not apply to any loss or destruction of, or any damage to, Customer's goods and property for which Services are provided ("Goods").

3.2 Third Party Claims. Customer shall indemnify, defend and hold harmless SCS and its Indemnitees from and against any third party Claim (including any Claim brought by Customer's customers) arising out of or in connection with the design, manufacture, packaging, distribution, delivery, marketing, use or sale of the Goods or Services or Customer's instructions regarding such Goods or Services.

3.3 Indemnification Procedures. With respect to a Claim for which indemnification is sought under this Section 3, the Indemnitee shall provide Indemnitor with a) prompt written notice, b) tender of the defense or settlement, and c) full cooperation in the defense. Failure to give prompt written notice of a Claim shall not affect the Indemnitee's right to indemnification unless the failure materially and adversely affects the rights, remedies or liability of the Indemnitor. If the Indemnitor fails to honor a timely request for indemnification and has a binding legal obligation to do so, the Indemnitee shall be entitled to all costs (including reasonable attorneys' fees) incurred in the enforcement of its indemnification rights. The Indemnitor shall not make a compromise or settlement of a Claim without the Indemnitee's consent unless all of the following apply: (i) there is no finding or admission of any violation of law or any violation of any person's rights by Indemnitee, (ii) there is no effect on any other Claim by or against Indemnitee, (iii) the sole relief is monetary damages that are paid by the Indemnitor, and (iv) the compromise or settlement contains an unconditional requirement to provide by the claimant or the plaintiff to the Indemnitee a release from all liability in respect of such Claim. The Indemnitee shall have no liability for any compromise or settlement made without its consent.

4. Title to Goods. Unless otherwise specified in a Schedule, title to Goods shall remain with Customer. Notwithstanding anything herein to the contrary, nothing in the Agreement shall be deemed to waive or otherwise limit any lien rights that SCS may have under applicable law with respect to the Goods.

5. Limitation of Liability.

5.1 Limitation of Liability for Loss or Damage to Goods. Except as specifically provided in a Schedule or SOW, SCS's maximum liability to Customer arising out of or related to loss or damage to Goods shall not exceed the SCS standard liability amounts which are as follows (the "SCS Standard Liability Limits"): (a) for Claims arising from SCS's warehousing, fulfillment and consolidation Services occurring in SCS's facilities or premises, including owned or leased property, \$0.50 per pound; (b) for Claims arising from SCS's customs brokerage Services, \$50 per entry or the amount of brokerage fees paid to SCS related to the entry, whichever is less; (c) for Claims arising from SCS's freight forwarding or motor broker Services, including arranging for inland or air transportation, \$50 per shipment; and (d) for Claims arising from air, ground or ocean transportation, the liability limits set forth in the bills of lading, air waybills, or other transportation documents issued in conjunction with the Services; provided, however, if a bill of lading or other transportation document issued in conjunction with ground transportation Services does not include a liability limit, SCS's liability limit shall be \$0.50 per pound. Customer and SCS agree that they have negotiated a reasonable limit of liability based on the value of the Goods and the Parties' respective business interests and rates charged. Customer may obtain additional protection in excess of the SCS Standard Liability Limits, up to the actual or declared value of the Goods, shipment or transaction, by written request and payment of an additional charge prior to the provision of Services. Customer waives all rights of subrogation on behalf of its insurers for any loss or damage in excess of the SCS Standard Liability Limits set forth herein, or if applicable, such different limits of liability specified in a Schedule or SOW. Notwithstanding the foregoing, SCS shall not be liable for delay, loss or damage of any kind which occurs while Goods are in the care, custody or control of a third party unless otherwise provided in SCS's transportation documents or a Service Schedule. "Third party" as used in the previous sentence includes, but is not limited to, carriers, warehouseman, forwarders, ocean transportation intermediaries, customs brokers, affiliates, brokers, or agents to which Goods are entrusted for transportation, handling, delivery, and/or storage. All claims in connection with acts of a third party shall be brought against the third party. SCS shall reasonably cooperate with Customer regarding such claims.

5.2 Filing of Claims. Unless otherwise set forth in a Service Schedule or otherwise expressly required by applicable statute, international convention or other mandatory national law all claims against SCS for a potential or actual loss or damage to Goods must be filed in writing within sixty (60) days from the event giving rise to the claims, or such claims are deemed waived, except that the claims filing requirements set forth in a bill of lading, air way bill or other transportation document issued in conjunction with the Services shall apply for claims arising from loss or damage to Goods. Any litigation brought by Customer against SCS under this Agreement must be filed within two (2) years from the event giving rise to the claim, or such claims are deemed waived. No settlement will be made on any claim made by Customer until Customer has paid all outstanding Fees.

6. Exclusions. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PURELY ECONOMIC LOSSES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, USE, INCOME, BUSINESS OPPORTUNITIES, COSTS OF ALTERNATIVE MEANS OF TRANSPORT, MERCHANTABILITY, OR CUSTOMER GOODWILL, OR FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES, IN CONNECTION WITH THE AGREEMENT OR THE SERVICES PROVIDED HEREUNDER WHETHER PLED UNDER TORT, CONTRACT OR ANY OTHER LEGAL THEORY. SCS SHALL HAVE NO LIABILITY TO CUSTOMER IN CONNECTION WITH THE AGREEMENT EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENT. THIS EXCLUSION APPLIES TO DAMAGES OF ANY KIND, INCLUDING BUT NOT

LIMITED TO, PERSONAL INJURY AND PROPERTY DAMAGE, WHETHER OR NOT RELATED TO THE GOODS BEING TRANSPORTED.

7. Confidentiality. As used herein, the term “Confidential Information” shall mean confidential information relating to the business, technology, operations and financial condition of a Party. For two (2) years from the date of disclosure by a Party of any of its Confidential Information, and in the case of Confidential Information that constitutes a trade secret under applicable law for so long as such Confidential Information remains a trade secret, the Party receiving such Confidential Information will not disclose such Confidential Information except as permitted herein and shall exercise the same degree of care to avoid disclosure of such Confidential Information as it employs with respect to its own Confidential Information, but not less than reasonable care. Confidential Information shall not include such information that: (a) is now or hereafter becomes publicly known without violation of the Agreement; (b) was known to the recipient prior to the time of disclosure without obligation to preserve confidentiality; (c) was received by the recipient from a third party without obligation to preserve confidentiality; (d) was independently developed by the recipient; (e) is authorized to be disclosed by the disclosing Party; or (f) (i) is contained on the exterior of a package, including information contained in plain text or bar code form on shipping labels, or (ii) package level detail or smart label information, including but not limited to, consignee’s full name, complete delivery address, package weight and zone, and package labeling that contains Maxicode, postal barcode, current routing code, appropriate service level icon, a 1Z tracking number bar code and address details related thereto and delivery information (collectively, ‘Shipping Information’). SCS will use Shipping Information only as permitted by the UPS Privacy Policy located at www.ups.com as it may be revised from time to time or as permitted by law. In addition, if the recipient receives a subpoena or other process demanding the disclosing Party’s Confidential Information, the recipient may comply with the demand, in which case the recipient will inform the disclosing Party and allow the disclosing Party reasonable time to seek a protective order.

8. Force Majeure. If and to the extent that either Party may be precluded or delayed from performance hereunder by (a) acts of war, acts of public enemies, terrorist attacks, insurrections, riots, sabotage, earthquakes, floods, acts of God, embargoes, authority of laws, labor disputes (including strikes, lockouts job actions, or boycotts) or (b) fires, air conditions, explosives, failure of electrical power, heat, light, air conditioning or communications equipment (provided that the events described in clause (b) are not due to such Party’s fault or negligence of the Party claiming relief under this Section 8) or (c) other events beyond its control (each a “Force Majeure Event”), such performance shall be excused to the extent and for the time necessitated by such Force Majeure Event. This provision shall not apply to monetary amounts owed by either Party to the other. SCS is not liable for any loss or damage to Goods caused by a Force Majeure Event, and Customer shall have the risk of loss for such loss or damage and the responsibility to insure against the same. If SCS takes steps outside the ordinary course of business to protect Goods due to a Force Majeure Event, Customer shall pay the storage or other similar charges associated with SCS’s efforts.

9. Insurance. Each Party shall maintain commercial general liability insurance including premises or operations, broad form property damage, independent contractors, and contractual liability covering its obligations hereunder for bodily injury and property damage, with a combined single limit of not less than \$1,000,000 each occurrence. In addition, SCS shall maintain workers’ compensation insurance in statutory amounts covering SCS and its employees, and employer’s liability insurance, and Customer shall maintain, during the term of the Agreement, product liability insurance in an amount not less than \$2,000,000 on a per occurrence basis. All insurance required herein shall be carried with insurance companies licensed to do business in the state(s) where operations are maintained. All policies shall provide that such coverage under these policies shall not be canceled or materially changed without at least thirty (30) days prior written notice to the other Party.

10. Independent Contractor. SCS is an independent contractor under the Agreement. Each Party shall comply with all payroll tax withholdings, social security, unemployment and related employer obligations applicable to it. Except as set forth in a duly authorized Power of Attorney, neither Party shall hold itself out as an agent of or in a joint venture with the other Party, and neither Party shall have authority to act on behalf of the other Party.

11. Subcontractors. SCS may subcontract all or portions of the Services to its parent, affiliates or third party service providers. SCS may disclose to its parent, affiliates or third party service providers any Customer Confidential Information necessary to perform the Services and as permitted by the UPS Privacy Policy in effect at the time of performance which is located at www.ups.com. Customer hereby authorizes and appoints SCS (including its successors or assigns) to share records referenced in 19 C.F.R., Parts 111 and 163, including any documents, data or information pertaining to the business of Customer, with its parent and any or all of its affiliates.

12. Hazardous Materials, Dangerous Goods and Other Regulated Goods. Unless SCS expressly agrees in a Schedule, SCS will not handle, receive, accept, ship, carry, dispose of, transport, store, or arrange for the handling, disposal, storage or transportation of: (a) any type of hazardous materials, dangerous goods, or Goods containing hazardous materials or dangerous goods, or (b) any type of Goods which may be regulated by a governmental body, entity or agency, including but not limited to those Goods which are regulated by the United States Food and Drug Administration, the United States Department of Agriculture, the United States Drug Enforcement Administration, the United States Bureau of Alcohol, Tobacco, Firearms and Explosives, and analogous regulatory agencies in countries in which the Services are provided (collectively, “Hazardous, Dangerous or Regulated Goods”). Customer warrants and covenants that it will not itself or through others offer, present or otherwise tender any Hazardous, Dangerous or Regulated Goods to SCS, its affiliates, assignees, agents or subcontractors under the Agreement. Notwithstanding the foregoing,

SCS may take any action that SCS, in its sole discretion, deems appropriate or necessary in relation to any actual or suspected Hazardous, Dangerous or Regulated Goods. Customer hereby fully and completely releases and forever discharges SCS and its Indemnitees from and against all Claims arising out of or caused by actual or suspected Hazardous, Dangerous or Regulated Goods. Customer shall indemnify, defend, and hold harmless SCS and its Indemnitees from and against all Claims related to or arising out of any SCS action taken in relation to such actual or suspected Hazardous, Dangerous or Regulated Goods, Customer's noncompliance with applicable laws and regulations, or the breach of any covenant of Customer contained in or made pursuant to this Section.

13. Dispute Resolution Process. The Parties agree to utilize the dispute resolution process to resolve any disputes, claim or question between them with respect to the Agreement ("Dispute") as expeditiously as possible. The Parties shall keep confidential, and shall not disclose to any person except as may be required by law, all aspects of the Dispute and the Dispute resolution process. One Party shall give written notice to the other Party of the Dispute and request commencement of the Dispute resolution process. Then, the project managers from each Party shall meet within five (5) business days to negotiate and use commercially reasonable efforts to promptly reach a resolution of the Dispute. If the Dispute is not resolved by the project managers within such five (5) day period, either Party may give notice to the other Party that the Dispute must be escalated to the senior officers of each Party, who will meet within ten (10) business days to negotiate and use commercially reasonable efforts to resolve the Dispute. In the event the senior officers are unable to resolve the Dispute within sixty (60) days (unless the Parties mutually agree to extend their discussions) either Party shall be free to pursue any remedies that may be available at law or in equity.

14. Warranties. ANY WARRANTIES OF THE PARTIES EXPRESSLY SET FORTH IN THE AGREEMENT ARE THE SOLE WARRANTIES MADE BY THE PARTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, OF TITLE OR NONINFRINGEMENT, OF FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. IN ANY JURISDICTION WHICH DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, ANY IMPLIED WARRANTIES, TO THE MAXIMUM EXTENT PERMITTED BY THE APPLICABLE LAWS OF ANY SUCH JURISDICTION, SHALL BE LIMITED TO THE TERM OF THE AGREEMENT. EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN THE APPLICABLE SCHEDULE, CUSTOMER'S SOLE REMEDY FOR BREACH OF ANY SUCH WARRANTY SHALL BE LIMITED TO THE REPERFORMANCE OF THE SERVICE AT ISSUE.

15. Import and Export Laws.

15.1 The Parties acknowledge and agree that all activities hereunder, including the export, reexport, import, transshipment, transfer, release, delivery, or pickup of all Goods, as well as any software and technology provided to SCS by Customer or on behalf of Customer ("Software and Technology"), are subject to all applicable U.S. and non-U.S. laws, including any statutes, executive orders, regulations, governmental agency decisions, judicial decisions, or any other written decrees that have the force and effect of law in the country in question (collectively defined as "Laws" for purposes of this Section 15) governing the import and export of Goods, Software, and Technology, including, but not limited to, laws concerning exports and economic sanctions, and customs Laws, (collectively, "Import and Export Laws").

15.2 Customer agrees:

- (i) to act as the importer, exporter, or other principal party (as the case may be) under all Import and Export Laws;
- (ii) that Customer is responsible for complying with all Import and Export Laws applicable to the export, reexport, import, transshipment, transfer, or release of any Goods, Software, and Technology from any country;
- (iii) that Customer is solely responsible for (a) properly classifying under the Import and Export Laws all Goods, Software, and Technology; (b) obtaining any required licenses and other authorizations for export, reexport, import, transshipment, transfer, or release; (c) correctly completing and filing with any government, as appropriate, all documents required under the Import and Export Laws; and (d) ensuring that all export-related documents, including shipping and sales documents, generated in connection with the Services performed pursuant to this Agreement conform to and are maintained in accordance with the Import and Export Laws;
- (iv) that Customer is solely responsible for providing accurate written instructions to SCS and the carrier in advance of any export, reexport, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology, which instructions shall be in compliance with all Import and Export Laws and shall set forth all information required for SCS to comply with those Laws in connection with that export, reexport, transshipment, transfer, release, delivery, pickup, or other activity;
- (v) that, notwithstanding any other provision in this Agreement to the contrary, Customer will indemnify, defend, and hold harmless SCS and its Indemnitees from and against all Claims or investigations arising out of or in connection with: (a) Customer's breach of this Section; (b) SCS's or the carrier's compliance with Customer's instructions in the export, reexport, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology; or (c) error on the part of any government official, including any person employed by, representing, or acting on behalf of any government

agency in the United States or any other country, in connection with the export, reexport, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology

16. General Provisions.

16.1 Assignment; Third Party Beneficiaries. The rights and obligations under the Agreement may not be transferred or assigned to a third party by either Party without the prior written consent of the other Party; *provided however*, SCS may transfer or assign all or part of its rights and/or obligations of the Agreement to one or more of its parent or affiliates. Under no circumstances may Customer resell any of the Services to any third party without the express written consent of SCS. There are no third party beneficiaries under the Agreement, except that SCS's affiliates that perform Services are third party beneficiaries of SCS's rights, remedies and benefits under the Agreement.

16.2 Amendments; Waiver; Severability. The Agreement can only be modified or amended by a written instrument signed by the Parties. A waiver of any right by either Party will not constitute a waiver of such right on any subsequent occasion. Acceptance by SCS of the amounts (or lesser amounts) payable under the Agreement shall not be deemed a waiver of any default. If any provision of the Agreement is determined to be invalid, such invalidity will not affect the validity of the remaining portions of the Agreement.

16.3 Survival. The rights and obligations of the Agreement which by their nature are intended to survive expiration or termination shall so survive, including but not limited to: Sections 3, 4, 5, 6, 7, 12, 13, 14, 15 and 16.

16.4 Controlling Law. The Agreement shall be governed by the laws of the State of Georgia without regard to conflicts of laws provisions.

16.5 No Use of Trademarks. Neither Party shall use the other Party's or its affiliates' name, logo, trademarks, service marks or trade names without the other Party's prior written consent; *provided however*, SCS may disclose Customer's name as a reference to any current or prospective customer.

16.6 Non-Solicitation of Personnel. During the term of the Agreement and for two (2) years after its expiration or termination, neither Party shall actively solicit the employment of any employee of the other Party, which employee was engaged in the performance of the Agreement. Notwithstanding the foregoing, neither Party shall be precluded from conducting general recruiting activities, such as participating in job fairs or publishing advertisements for general circulation. The soliciting Party who violates this Section 16.6 shall pay to the other Party an amount equal to one (1) year's salary for any solicited employee as liquidated damages. The amount of annual salary shall be the annual salary in effect at the date the employee was solicited. The Parties agree that such amount is a reasonable estimate of the damages to be suffered by the aggrieved Party in such an event, which damages would be difficult to ascertain, and that such amount is not intended to be a penalty.

16.7 Intellectual Property Rights. Customer and SCS acknowledge that the other has certain intellectual property rights that may be revealed or provided to the other Party in accordance with the Agreement. Each Party acknowledges that the Agreement does not grant any right or title of ownership in their respective intellectual property rights to the other unless specifically provided in the Agreement. Any intellectual property shall remain the originator's property unless otherwise provided herein.

16.8 No Breach of Other Agreements. Customer and SCS each respectively represent and warrant that its execution of the Agreement does not violate any applicable law or breach any other agreement to which it is a Party or is otherwise bound.

16.9 Record Retention. Client acknowledges and agrees that SCS shall have no obligation to retain such records or any data pertaining to the Services or to Client beyond the period required under SCS's record retention policy, unless otherwise expressly set forth herein.