**warehousing, distribution & e-commerce fulfillment**

SERVICE agreement

****

**TERM – Section 1**

1. The initial term of this Agreement is one (1) year, subject to termination in accordance with Section 17 below, that will begin on the date upon which this Agreement is executed by both parties or, if not executed, on the date that SEKO first accepts Goods from Client at a Facility (the “Initial Term”).
2. The term of this Agreement will automatically extend for successive additional terms of one year thereafter (each a “Renewal Term”), subject to termination in accordance with Section 17 below.
3. The date on which the Agreement terminates pursuant to Section 17 is the “Termination Date”; provided that notwithstanding any provision to the contrary, this Agreement will remain in effect during any period after the Termination Date, as long as any Goods remain at any Facility, until all such Goods are removed or disposed of (such period being the “Holdover Period”). Client agrees to pay the Holdover Rates (as herein after defined) during the Holdover Period.
4. The entire time that this Agreement (including any Holdover Period) is in effect is the “Term”.

**LOCATION OF THE GOODS – Section 2**

1. SEKO shall store the Goods at one or more of the Facilities.
2. SEKO may without notice and at SEKO’s expense move the Goods within and between Facilities.

**SERVICES AND FEE SCHEDULE – Section 3**

1. The Services to be performed, and the applicable initial rates for such Services are as specified on Exhibit C.
2. Unless otherwise agreed, the applicable rates shall increase each year at the rate of 5% per annum, on each anniversary of the Initial Term.

**MINIMUM CHARGES – Section 4**

1. SEKO shall charge Client a minimum warehousing service charge of $3,500 per month.
2. If the Client requires separate recordkeeping and billing for any of the Goods, then the minimum service charge shall be $3,500 per month for each set of Goods for which separate recordkeeping and billing is maintained.

**PAYMENT TERMS – Section 5**

1. Payment for warehousing services shall be due and payable net 15 days following the mailing or electronic delivery of the invoice. Payment for Final Mile Services shall be due and payable upon receipt of invoice.

**ERRORS IN BILLING – Section 6**

1. In the event that Client believes any invoices or amounts due for Services are in error or contain a discrepancy, it waives the right to contest such amounts unless it gives written notice of such alleged error or discrepancy to SEKO with sixty (60) days following receipt of such invoice.

**SHIPMENTS TO WAREHOUSE – Section 7**

1. Client agrees that all Goods shipped to SEKO shall identify Client, and not SEKO, on the bill of lading or other contract of carriage as the named consignee.
2. If, in violation of this Agreement, Goods are shipped to SEKO as named consignee on the bill of lading or other contract of carriage, SEKO shall have the right to refuse such Goods and in such event, Client releases and agrees to indemnify, defend and hold harmless SEKO from any loss, damage or other liability arising out of such refusal.
3. If SEKO accepts such mislabeled Goods, Client agrees to notify carrier immediately, in writing, with copy of such notice to SEKO, that SEKO was the “in care of party” only.
4. Whether SEKO accepts or refuses Goods shipped in violation of this Section, Client agrees to indemnify, defend and hold SEKO harmless from all claims for transportation, storage, handling and other charges relating to such Goods, including undercharges, rail demurrage, truck/intermodal detention and other charges of any nature whatsoever.

**TENDER OF GOODS – Section 8**

1. Shipments to SEKO must be in conformity with the requirements of the Routing Guide. SEKO is hereby authorized to charge extra charges, at the labor rates, for extra work reasonably required, due to Client’s failure to comply with the Routing Guide, and Client agrees to promptly pay such amounts.
2. SEKO is not responsible for, and Client agrees to indemnify, defend and hold SEKO harmless from and against, any liability arising in connection with erroneous carton markings, concealed shortages, and/or incorrectly labeled styles, colors or sizes or any other markings specific to any Goods.
3. Cut-off time for receiving is 1:00 p.m. (PST), Monday thru Friday. Deliveries after cut-off time are considered received the next business day.
4. If there is not enough of one SKU to complete a full pallet, partial quantities will be consolidated onto one pallet.

**STORAGE PERIOD AND CHARGES – Section 9**

1. Unless otherwise agreed in writing, all charges for storage are per cubic foot, per month.
2. Goods are subject to storage charges upon the date that SEKO accepts delivery of the Goods, regardless of the unloading date.
3. Except as provided in sub-paragraph (d) of this section, regular storage charges will apply to Goods physically in the warehouse on the 1st of each month.
4. Long-term storage of Goods will be subject to a premium fee at the rate of two-times the storage rate identified on Exhibit C. For purposes of the foregoing, long-term storage refers to Goods remaining in storage for more than 90-days.
5. Long-term staging refers to palletized/staged orders not picked up by the 3rd day in the staging area, and it shall be subject to the rate specified on Exhibit C.

**DELIVERY REQUIREMENTS – Section 10**

1. Ordinarily, SEKO shall deliver or transfer Goods only upon receipt from the Client of complete written instructions. Written instructions include, but are not limited to, FAX, EDI, TWX or similar communications. Client releases SEKO from, and agrees to indemnify, defend and hold SEKO harmless from and against, any liability, loss or damage arising out of SEKO delivering or transferring Goods in accordance with such written instructions.
2. Should Client request, in writing, that SEKO act upon verbal instructions, SEKO may refuse to do so. Should SEKO agree to act upon such verbal instructions, Client releases SEKO from, and agrees to indemnify, defend and hold SEKO harmless from and against, any liability, loss or damage arising out of SEKO shall have no liability when acting delivering or transferring Goods in accordance with such verbal instructions, and Client assumes all risk that the instructions will be misunderstood in whole or part.
3. Client is responsible for providing to SEKO vendor guidelines, including any and all updates, to ensure orders are properly prepared, routed, and shipped.

**HANDLING – Section 11**

1. SEKO will use reasonable commercial efforts to ready Goods for transport out of the Facility within 48 hours after receipt of delivery orders.
2. Drop shipment/eCommerce orders have a noon (12:00 p.m. PT) cut-off time. Orders received after cut-off time are considered received the next business day. Such orders will be shipped the same day, or within 24 hours, depending on volume.
3. Shipment to boutiques or specialty stores will be processed within 48 hours; major department stores within 72 hours or according to routing guidelines. SEKO is not liable for carrier’s failure to pick-up Goods timely upon routing.
4. Shipment processing times will be extended by 24-48 hours when an order is received with rework instructions. Rework includes, but is not limited to, applying and/or removing price tickets, UPC stickers, hangers, making prepacks, repackaging, and relabeling.
5. The handling charge covers the ordinary labor involved in receiving Goods at warehouse door, placing Goods in storage, and returning Goods to the warehouse door. Handling charges are payable on receipt of Goods.
6. Unless otherwise agreed in writing, labor for unloading and loading Goods will be subject to labor charges identified on Exhibit C.
7. Additional expenses incurred by SEKO in receiving and handling damaged Goods, and additional expenses in unloading from or loading into cars or other vehicles not at warehouse door will be charged to and paid by the Client.
8. Labor and materials used in loading rail cars or other vehicles are chargeable to and will be paid by the Client.
9. When Goods are ordered for outbound shipment in quantities less than those received and/or in stock, the SEKO may make an additional charge for each order or each item of an order.
10. The SEKO shall not be liable for any demurrage or detention, any delays in unloading inbound cars, trailers or other containers, or any delays in obtaining and loading cars, trailers or other containers for outbound shipment unless any of the foregoing occurs due to SEKO failing to exercise reasonable care.

**EXTRA HANDLING SERVICES – Section 12**

1. SEKO labor required for services other than storage and normal in and out handling are subject to the rates described on **Exhibit C**, under the section entitled Extra Handling Services.
2. By prior arrangement, Goods may be received or delivered during other than usual business hours, subject to overtime charges. Hours of operation are Monday through Friday, 8:30 a.m. to 5:00 p.m. Pacific Time.
3. Requests for rush receiving, processing, and/or shipment shall be accommodated by SEKO in its discretion. Such services shall be subject to overtime charges at the hourly labor rates identified on **Exhibit C**.
4. SEKO may provide for Client dunnage, bracing, packing materials and other supplies. Client will reimburse SEKO for the cost of these supplies, plus a 20% administrative fee or $1.50 per carton, whichever is greater.
5. SEKO may from time-to-time process shipping charges under SEKO’s UPS, FedEx and/or USPS accounts and/or prepay other freight carriers. Client will reimburse SEKO for these charges plus a 20% administrative fee.
6. SEKO may charge Client for communication expenses, including postage, overnight delivery, or telephone charges, if such concern more than normal inventory reporting or if, at the request of the Client, communications are made by other than regular United States Mail.

**NON-COMPLIANCE VIOLATIONS/CHARGEBACKS – Section 13**

1. SEKO will reimburse Client for actual chargebacks from the retail customer to Client resulting from SEKO’s shipping errors.
2. SEKO will not under any circumstances be held liable for concealed shortages, production inaccuracies, or discounts given to any retailer.
3. Client agrees to provide SEKO with written notice of a misshipment within fifteen (15) business days from date of the misshipment. In the event that Client fails to timely notify SEKO in writing of such misshipment, Client will release SEKO from any liability, loss or damage arising therefrom, and Client agrees to indemnify, defend and hold SEKO harmless from and against, any liability arising in connection therewith. “Misshipment” means the negligent shipment of Goods to the wrong place, or the negligent shipment of an incorrect type and/or quantity of Goods.
4. Chargebacks may not be deducted from SEKO invoices to Client unless SEKO issues a credit memo, accepting responsibility for the chargebacks.

**LIABILITY FOR MISSHIPMENT – Section 14**

* 1. In the event of a misshipment for which SEKO is liable, SEKO’s sole and exclusive liability shall be, at SEKO’s sole discretion, to pay the reasonable transportation charges incurred to return the misshipped Goods to the Facility or to the correct place, provided that if the consignee is not a party with whom the Client has a contractual relationship, and such consignee fails to return the Goods after a reasonable time period following request, SEKO’s sole and exclusive liability shall be to pay for the Client’s cost for the lost or damaged Goods (subject to the provisions of this Agreement relating to such liability), and the SEKO shall have no liability for damages due to the consignee’s acceptance or use of the Goods, whether such Goods be those of the Client or another.

**MYSTERIOUS LOSS – Section 15**

1. “Mysterious Loss” means loss of or inability to account for Goods while in the care, custody and control of SEKO, the cause of which is unknown. Client agrees to an annual Mysterious Loss allowance of 1% of the total inventory value of Client’s Goods stored in a Facility over the previous 12 months. SEKO shall not be liable for any Mysterious Loss of Goods within the 1% allowance.
2. Claims for Mysterious Loss will be reviewed only once per year upon completion of the annual physical inventory at each Facility where Goods are stored. Yearly physical inventories requested by Client will be carried out at the Client’s expense, subject to hourly labor rates quoted on Exhibit C.
3. Overages will be combined with shortages to determine Mysterious Loss.
4. Notwithstanding the provisions of this Section, SEKO shall not be liable (and Client will release SEKO from any such liability) for Mysterious Loss if the Client does not have an Enterprise Resource Planning (ERP) system in place for maintaining inventory.

**BREACH AND TERMINATION – Section 16**

1. Failure by Client to pay any sums due under this Agreement, within 15 days of the due date, shall constitute a material breach of this Agreement and entitle SEKO at its election to immediately terminate this Agreement.
2. Failure by Client to adhere to the terms of this Agreement in any other material respect shall, if not cured within 30 days of written notice by SEKO, entitle SEKO at its election to terminate this Agreement.
3. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by providing not less than 120 days prior written notice.
4. Upon termination, daily storage charges will apply until all Goods have been transferred out in full or sold/disposed of in accordance with this Agreement.
5. The “Termination Date” shall be,
   * 1. As it relates to Section 16(a) and 16(b), the date SEKO notifies Client,
     2. As it relates to Section 16(c), at the expiration of the 120 days’ notice.

**TRANSFER, TERMINATION OF STORAGE, AND REMOVAL OF GOODS – Section 17**

1. Client’s instructions to SEKO to transfer Goods to a third-party storage facility shall not be effective until delivered to and accepted by SEKO. All charges up to the time transfer is made are chargeable to the Client. If a transfer involves re-handling the Goods, such re-handling will be subject to a charge.
2. When Goods are ordered to be transferred out of a Facility, a reasonable time (not less than 7 working days) shall be given to SEKO to carry out such instructions.
3. Upon the termination of this Agreement, Client shall promptly (i) pay all charges owed to SEKO under this Agreement, and (ii) remove all Goods from any Facilities by the end of the Termination Date. If the Goods are not removed before the Termination Date, such Goods shall be deemed to have been abandoned. From the Termination Date until all Goods have been removed from any Facilities (either by Client or pursuant to Section 17), Client will pay rates for Services in amounts equal to 150% of the rates in effect immediately prior to the Termination Date (the “Holdover Rates”).
4. If at any time, in the sole discretion of SEKO, the Goods have become a hazard to the SEKO or other property or persons, SEKO may sell the Goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the Goods. If SEKO after a reasonable effort is unable to sell the Goods, SEKO may dispose of them in any lawful manner and shall incur no liability (and Client agrees to release SEKO from any liability) by reason of sale or other disposition authorized by this section. Pending such disposition, sale, or return of the Goods, SEKO may remove the Goods from the Facility and shall incur no liability by reason of such removal. All costs incurred by SEKO in carrying out the actions authorized by this provision shall be borne by Client, and Client agrees to promptly reimburse SEKO for any costs paid by SEKO in connection therewith.

**ABANDONMENT OF GOODS – Section 18**

1. If at any time, Client abandons goods at a Facility, SEKO may sell the Goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the Goods. If SEKO after a reasonable effort is unable to sell the Goods, SEKO may dispose of them in any lawful manner and shall incur no liability by reason of sale or other disposition authorized by this section. Pending such disposition, sale, or return of the Goods, the SEKO may remove the Goods from the warehouse and shall incur no liability by reason of such removal. All costs incurred by SEKO in carrying out the actions authorized by this provision shall be borne by Client. Abandonment shall be defined as failure to remove goods from the SEKO facility in accordance with Section 17.

**FORCE MAJEURE – Section 19**

1. If SEKO is unable to carry out instructions or fulfill any of its obligations under this Agreement due to acts of God, war, public enemies, seizure under legal process, strikes, lockouts, riots, pandemic, and civil commotions, or any reason beyond the SEKO’s control, the SEKO shall not be liable for any resulting losses, and such inability shall not be a breach of this Agreement.

**WAREHOUSE LIEN – Section 20**

1. SEKO shall have a lien on Goods in its possession for all lawful charges for storage, preservation, and handling of such Goods and any other Goods even if such Goods are no longer in SEKO’s care, custody and control, as well as other sums due under this Agreement and by law. SEKO reserves the right to exercise its lien rights under the terms of any applicable law and/or agreement between the Client and SEKO. To protect its lien, SEKO reserves the right to require advance payment of all charges prior to shipment of Goods. Client acknowledges SEKO’s lien rights, acknowledges that they may be enforced against Client as provided by law, and agrees that SEKO may require advance payment to preserve those rights.

**LIABILITY AND LIMITATION OF DAMAGES – Section 21**

1. Except for Mysterious Loss, SEKO shall not be liable for any loss of or damage to Goods stored, however caused, unless such loss or damage resulted from the failure by the SEKO to exercise reasonable care, and the SEKO shall not be liable for damages that could not have been avoided by the exercise of such care.
2. IN NO EVENT SHALL SEKO BE LIABLE FOR LOST SALES REVENUES, LOST PROFITS, LOST CUSTOMERS, OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, RELATING TO THE GOODS OR THIS AGREEMENT.
3. Goods are not insured by SEKO against loss or injury. Client agrees to carry insurance sufficient to cover its Goods while stored against all reasonably anticipated hazards.
4. Where loss of or damage to stored Goods occurs, for which SEKO is not liable, the Client shall promptly remove and dispose of such Goods and shall be responsible for the cost of removing and disposing of such Goods and the cost of any environmental cleanup and site remediation resulting from the loss of or damage to the Goods.
5. In the case of lost or damaged Goods for which SEKO is responsible, Client agrees that the measure of damages shall be the manufacturer’s cost of the lost or damaged Goods. However, Client further agrees that in no instance shall SEKO be liable for such loss or damage in amounts exceeding twenty-five (25) times the base monthly storage rate per unit of the affected Goods subject to a per occurrence limit of USD $500, and a per annum limit of $10,000. The base storage rate is the storage rate per unit received as described on Exhibit C, unless Client declares excess value at the time Goods are tendered for storage. In the event storage is charged per cubic foot, the base storage rate will be calculated by dividing the monthly inventory by the monthly space charges. Rates quoted are on the basis of this maximum monetary liability.
6. Clients has the option to purchase additional “All-Risk” Insurance to cover loss of or damage to the Goods while in SEKO’s care, custody and control, at a rate of $\_\_\_\_\_\_\_ per $100.00 value of Goods covered per month. Client initials below acknowledge in the affirmative or negative, their intent to purchase this insurance through SEKO. In the event that Client declines such coverage, SEKO shall have no other claim for a higher limit of liability than what has been agreed to in this MSA.

Client Accepts Insurance per above: \_\_\_\_\_\_\_\_\_\_\_\_

Client Declines Insurance and accepts SEKO’s standard liability limits outlined in Section 21(e):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NOTICE OF CLAIM – Section 22**

1. No claim for damage or loss may be maintained by Client against SEKO unless notice of that claim is presented in writing to the SEKO within a reasonable time, and in no event any later than: (i) 60 days after delivery of the affected Goods by the SEKO or (ii) 60 days after learning of the damage or loss, whichever comes later.
2. Notice of a claim may be presented via certified mail or overnight delivery addressed to SEKO at the address specified on the first page hereof, or via email at [sekoclaims@sekologistics.com](mailto:sekoclaims@sekologistics.com), attention: Director of Claims.

**RIGHT TO STORE GOODS – Section 23**

* 1. The Client represents and warrants that the Client is lawfully possessed of the Goods and has the right and authority to store them with SEKO. The Client agrees to indemnify, defend and hold harmless SEKO from all loss, cost and expense, including reasonable attorneys’ fees that SEKO pays or incurs as a result of a third-party claim against SEKO, disputing Client’s right, title or interest in the Goods. Such amounts shall be charges in relation to the Goods and subject to SEKO lien.

**ACCURATE INFORMATION – Section 24**

1. The Client will provide SEKO with information concerning the stored Goods that is accurate, complete, and sufficient to allow SEKO to timely satisfy its obligations under this Agreement and comply with all laws and regulations concerning the storage, handling, and transporting of the Goods.
2. The Client will indemnify, defend and hold SEKO harmless from all loss, costs, penalties and expense, including reasonable attorneys’ fees, that the SEKO pays or incurs as a result of a third-party claim against SEKO, due to Client’s failure to fully comply with its obligations under this section. Such amounts shall be charges in relation to the Goods and subject to SEKO’s lien.

**ASSIGNEES – Section 25**

1. Neither SEKO nor Client may assign this Agreement to a third party without the prior written consent of the other party. Client acknowledges that SEKO may subcontract out certain or all of the Services. This Agreement, including but not limited to its arbitration provisions, shall inure to the benefit of the parties and their permitted successors and assigns.

**SEVERABILITY and WAIVER – Section 26**

1. If any provision of this Agreement should be held to be invalid or unenforceable, the remaining provisions shall not be affected thereby but shall remain in full force and effect.
2. SEKO’s failure to require strict compliance with any provision of this Agreement shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision of this Agreement.

**INTEGRATED AGREEMENT – Section 27**

* 1. This Agreement and its attachments contain the complete and exclusive statement of all terms of the parties’ agreement relating to the Goods and the Services. The parties each represent that, in entering into this Agreement, such party is not relying upon any promises, statements, or representations not expressly contained herein. This Agreement may not be amended except by a written instrument signed by all parties hereto.

**GOVERNING LAW – Section 28**

1. This Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the substantive laws of the State where any Facility that stored Goods under this Agreement is located.

**CHANGES IN GOVERNING LAWS AND REGULATIONS -- Section 29**

1. SEKO and Client will comply with all laws, ordinances, rules and regulations of federal, state, municipal, and other government authorities or agencies in connection with this Agreement. Should such laws, rules and/or ordinances governing or regulating the Goods change and materially change the cost of providing the specified services under this Agreement, the parties will negotiate in good faith to arrive at an agreed pricing structure.

**EXCLUSIVITY – Section 30**

1. During the term of this Agreement, SEKO shall be the exclusive provider of warehousing, distribution, and fulfillment services to Client.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be dully executed and shall be deemed effective as of the Effective Date.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **(“Client”)**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SEKO Worldwide, LLC (“SEKO”)**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A “FACILITY LOCATION(S)”**

**(Insert SEKO Locations for client operations)**

**EXHIBIT B “CLIENT PROFILE”**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **CONTACT INFORMATION** | | | | | | | | | | | | | | | | | | | | | | | | | |
| **COMPANY NAME** | |  | | | | | | | | **ADDRESS** | | | |  | | | | | | | | | | | |
| **CONTACTS** | | **CEO/OWNER** | | | | | **COO/OPERATIONS MGR.** | | | | | | | | | | **LOGISTICS COORDINATOR** | | | | | | | **ACCOUNTING** | |
| **NAME** | |  | | | | |  | | | | | | | | | |  | | | | | | |  | |
| **PHONE NUMBER** | |  | | | | |  | | | | | | | | | |  | | | | | | |  | |
| **EMAIL** | |  | | | | |  | | | | | | | | | |  | | | | | | |  | |
| **TYPE OF BUSINESS** | | | | | | | | | | | | | | | | | | | | | | | | | |
| **PRODUCT** | **DESCRIPTION** | | | | | | | | | | | | | | **CUBIC FEET PER CARTON** | | | | **WEIGHT PER CARTON** | | | | | | **PACKAGING TYPE** |
|  |  | | | | | | | | | | | | | |  | | | |  | | | | | |  |
|  |  | | | | | | | | | | | | | |  | | | |  | | | | | |  |
|  |  | | | | | | | | | | | | | |  | | | |  | | | | | |  |
| **CROSS DOCK %** | | | | **STORAGE %** | | | | | | | | **PICK & PACK %** | | | | | | | | | **eCOMMERCE %** | | | | |
| **INBOUND INFORMATION** | | | | | | | | | | | | | | | | | | | | | | | | | |
| **LOADS VIA** | | | CONTAINER % | | | | | TRUCK % | | | | | | | | FLOOR LOADED % | | | | | | PALLETIZED % | | | |
| **AVERAGE CARTONS PER** | | | CONTAINER | | | | | TRUCK | | | | | | | | PALLET | | | | | | YEAR | | | |
| **AVERAGE SKU’S PER** | | | CONTAINER | | | | | TRUCK | | | | | | | | PALLET | | | | | |  | | | |
| **OUTBOUND INFORMATION** | | | | | | | | | | | | | | | | | | | | | | | | | |
| **AVERAGE LOADS** | | | TRUCK | | | | | LTL | | | | | | | | SMALL PACKAGES | | | | | | UPS FED-EX USPS | | | |
| **AVERAGE ORDERS** | | | PER WEEK | | | | | CASES/ORDER | | | | | | | | SKU’S/ORDER | | | | | | PALLETS/ORDER | | | |
| PICK & PACK % | | | | | LEAD TIME | | | | | | | | PRE-PAID % | | | | | | COLLECT % | | | |
| **MAJOR RETAILERS** | | |  | | | | | | | | | | | | | **INTERNATIONAL SHIPPING** YES NO | | | | | | | | | |
| **STORAGE** | | | | | | | | | | | | | | | | | | | | | | | | | |
| **CARTONS** | AVERAGE | | | | | | | | HIGHEST | | | | | | | | | | | LOWEST | | | | | |
| **PALLETS** | AVERAGE | | | | | HIGHEST | | | LOWEST | | | | | | | **STACKABLE?** YES NO | | | | | | | **HOW HIGH?** | | |
| **SKU’S IN ACTIVE INVENTORY** | | | |  | | | | | | | **INVENTORY TURN AROUND PER YEAR** | | | | | | | | | | |  | | | |
| **INBOUND/STORAGE SEASON** | | | | **HIGH** (months) | | | | | | | | | | | | **LOW** (months) | | | | | | | | | |
| **EXTRA SERVICES** | | | | | | | | | | | | | | | | | | | | | | | | | |
| **ORDER TRANSMITTAL METHOD** | | | | | Email EDI Portal Login | | | | | | | | **HANGERS / SIZERS** | | | | | YES NO | | | | | | | |
| **ROUTING** | | | | | YES NO | | | | | | | | **PRINT** | | | | | STICKERS LABELS HANGTAGS | | | | | | | |
| **RUSH ORDER PROCESSING** | | | | | YES NO | | | | | | | | **POLY BAGS** | | | | | YES NO | | | | | | | |
| **R/A PROCESSING** | | | | | YES NO | | | | | | | | **CARTONS** | | | | | YES NO | | | | | | | |

**EXHIBIT C “FEE SCHEDULE”**

Subject to the terms and conditions agreed upon by both parties. SEKO will provide the listed services at the following rates, quoted in US Funds, due Net-15 days.

|  |  |  |  |
| --- | --- | --- | --- |
| **RECEIVING** | **RATE** | **PER** | **HANDLING DESCRIPTION** |
| IN FEE |  | PIECE |  | |
| OUT FEE |  | PIECE | *Invoiced at receiving* | |
| UNITS PICKED AND PACKED |  | PIECE |  | |
| UNITES REPACKED |  | PIECE |  | |
| WEB ORDERS |  | PIECE |  | |
| RETURN PROCESSING |  | PIECE | *Return Merchandise Authorization (RMA)* | |
| MISSING RMA | 2.50 | ORDER |  | |
| **VALUE ADDED SERVICE (VAS)** | **RATE** | **PER** | **HANDLING DESCRIPTION** |
| RETURN WERE RESTOCKED |  | BOX |  |
| PRINTED & ATTACHED SHIPPING LABEL |  | EACH |  |
| BILL OF LADING (BOL) |  | SHIPMENT | Wholesale and Cross-dock |
| PRINTING |  | PIECE | Carton label, price ticket, UPC/SKU or barcode sticker |
| APPLICATION |  | PIECE | Shipping label |
| REMOVE POLY BAG |  | PIECE |  |
| APPLY POLY BAG |  | PIECE |  |
| REMOVE LABELS |  | PIECE |  |
| INTERNATIONAL PAPERWORK |  | SHIPMENT |  |
| INSPECTIONS GOODS |  | PIECE |  |
| \*LABOR CHARGE |  | HOUR/PERSON | *Invoiced in 30-minute increments* |
| OVERTIME |  | HOUR/PERSON | *Invoiced in 30-minute increments* |
| BACK TO STOCK |  | PIECE |  |
| CUSTOM REQUEST |  | EACH | *Pictures taken at client request* |
| CLERICAL /ACCOUNT MANAGER |  | MONTH | *Includes, among other tasks, Routing and schedule Pick-ups, Processing orders* |
| PALLETIZING |  | PALLET |  |
| SHRINK WRAP |  | PALLET |  |
| HEAT TREATED PALLETS |  | PALLET | *Palletizing & Shrinkwrapping For Shipping* |
| REGULAR SIZE CARTONS |  | CARTON | *Oversized cartons 3.20* |
| **STORAGE** | **RATE** | **PER** | **HANDLING DESCRIPTION** |
| LONG TERM STAGING | 20.00 | PALLET/DAY | * *Staged orders not picked up by 3rd day in the staging area* | |
| STORAGE |  | CUFT | *Invoiced on the 1st of the month* |

|  |  |
| --- | --- |
| **\*Additional services requested not listed on Fee Schedule, will be charged at the labor rate.** | |
| **\*\*Clerical Services:** |  |
| * **Order Management** * **EDI Order Management** * **Picking/Allocating/Packing** * **Routing/Schedule Carrier** * **Invoicing** | * **Ecommerce Management** * **Returns Processing** * **Inventory Management** * **Documentation** * **Receiving Processing** |

**EXHIBIT D “CONFIDENTIALITY AGREEMENT”**

Mutual Non-Disclosure and Confidentiality Agreement

This Mutual Non-disclosure and Confidentiality Agreement ("Agreement") is entered into on the Effective Date (as set forth in the Agreement), by and between SEKO Worldwide, LLC (“SEKO") and [Insert Company Name] ("Company").

1. Definitions. As used in this Agreement:

* "Affiliate"--A business entity controlling, controlled by, or under common control with a party to this Agreement. Control exists when an entity owns or controls more than 50% of any entity.
* "Confidential Information"--All information provided by the Disclosing Party to the Recipient in connection with this Agreement, including without limitation: any Request for Proposals issued in connection with this Agreement; all technical and nontechnical data; formulae; patterns; compilations; programs; software; devices; methods; techniques; designs; drawings; processes; business practices; plans or proposals; financial information; information relating to actual or potential customers or suppliers; sales and marketing information; training and operations materials; and pricing and other financial information relating to the business or affairs of the Disclosing Party. All Nonpublic Personal Information and Highly Sensitive Information shall be Confidential Information of the Disclosing Party. Confidential Information shall not include any disclosure relating to the tax treatment or tax structure of the transactions contemplated by this Agreement except to the extent confidentiality is required by applicable law, or any information that: (a) as in or enters the public domain through no fault of the Recipient; (b) is known by the Recipient at the time it is disclosed, as shown by Recipient's records, provided the source of such information was not known or reasonably suspected by the Recipient to be bound by a confidentiality agreement or other contractual, legal or fiduciary obligation with respect to such information; (c) is independently developed by the Recipient at any time, as shown by Recipient's records or other competent evidence; or (d) is rightfully obtained by the Recipient from a source other than the Disclosing Party who does not have a contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party; or (e) the Disclosing Party agrees in advance in writing does not constitute Confidential Information.
* "Disclosing Party"--The party furnishing the Confidential Information to the Recipient from time to time pursuant to this Agreement.
* "Highly Sensitive Information"-- Confidential Information of the highest sensitivity, including but not limited to: Nonpublic Personal Information; computer security information, PINs and passwords, encryption keys, software source code, and security logs; and all strategic analysis and work product generated from or prepared for the Office of the Chairman, Corporate Planning, Audit, Law, Risk Management, and Human Resources.
* "Marks"--the name, logo, signs, symbols, trademarks, service marks or slogans of either party to this Agreement and their respective Representatives.
* "Nonpublic Personal Information"--Nonpublic information relating to customers, employees and prospective customers or employees of the Disclosing Party, including without limitation names, addresses, telephone numbers, E-mail addresses, social security numbers, tax identification numbers, credit information, account numbers, account balances or other account information, personnel records, and lists derived from the foregoing, regardless of whether the Disclosing Party’s relationship with the customer or employee ceases. The parties understand and agree that the definition of "nonpublic personal information" herein is intended to be broader than the definition of that term in the Gramm-Leach-Bliley Act and regulations promulgated thereunder.
* "Recipient"--The party receiving the Confidential Information from the Disclosing Party from time to time pursuant to this Agreement.
* "Representatives"--Directors, officers, employees, subcontractors, agents, advisors or other representatives (including, without limitation, attorneys, accountants, consultants, bankers, investment bankers, other potential financing sources and financial advisors) of a party to this Agreement or an Affiliate of a party to this Agreement.
* "Transactions"--Potential business transactions between under evaluation by or negotiation between the parties or ongoing business transactions between the parties.

1. Covered Parties. For purposes of this Agreement, the definitions of the "Disclosing Party" and the "Recipient" shall be deemed to include any Representative and Affiliate of such party. Each party shall be solely responsible for all actions and obligations of its Representatives and Affiliates as if they were the actions and obligations of that party.
2. Non-Disclosure and Limitations of Use of the Confidential Information.
   1. The Recipient agrees that it shall use all the Confidential Information solely for the purposes of evaluating the Transactions, that all the Confidential Information will be kept strictly confidential and that the Recipient shall not disclose any Confidential Information in any manner whatsoever, directly or indirectly, to any third party except as expressly permitted in this Agreement. Recipient shall protect Confidential Information by using the same degree of care as Recipient uses to protect its own information of a like nature, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure, dissemination, or publication of the Confidential Information. The Recipient shall not copy or otherwise reproduce, in whole or in part, any Confidential Information without the prior written consent of the Disclosing Party.
   2. The Recipient may disclose any Confidential Information to its Representatives and Affiliates provided such Representatives and Affiliates have a need to know such Confidential Information for the purposes of this Agreement and such Representatives and Affiliates agree to keep all such Confidential Information strictly confidential and to abide by the terms of this Agreement. Both the Recipient and its Representatives and Affiliates shall exercise the same degree of care in safeguarding the Confidential Information against any and all loss or other inadvertent disclosure as the Recipient uses for its own confidential information of like importance, which in all cases shall be at least reasonable care. The Recipient shall take all steps necessary to keep confidential any Highly Sensitive Information and shall take all steps necessary to assure observation of this Agreement by its Representatives and Affiliates.
   3. Neither party shall make, publish or otherwise disseminate in any manner any public statement or description of the Transactions, the existence of the Confidential Information or the negotiations which are the subject of this Agreement. Neither party shall use or display, or permit the use or display of the other party's Marks except as authorized by the other party in writing.
   4. In the event that Recipient or any of its Representatives or Affiliates is requested or required (by oral question, interrogatories, requests for information or documents, subpoenas, civil investigation or similar process) to disclose any of the Confidential Information, Recipient will provide, unless prohibited by applicable law, Disclosing Party with prompt notice of such requests so that Disclosing Party may seek an appropriate protective order, or if appropriate, waive compliance with the obligations of this provision. Recipient will use reasonable efforts to obtain or assist Disclosing Party in obtaining such a protective order. In the event that such protective order or other remedy is not obtained, the Recipient shall furnish only that portion of the Confidential Information which is legally required to provide.
3. Ownership of the Confidential Information.
   1. The Disclosing Party shall retain all right, title and interest to the Confidential Information it delivers to the Recipient and all copies thereof in whatever form. The Recipient shall hold all the Confidential Information in trust for the benefit of the Disclosing Party subject to the terms of this Agreement. No franchise rights or licenses are granted to the Recipient by the Disclosing Party under any proprietary, copyright, patent, trade secret or any other intellectual property rights. No franchise rights or licenses are granted to any party to use the other party's Marks or to otherwise benefit therefrom.
   2. The Recipient shall not remove any proprietary, copyright, trade secret or other legend from any Confidential Information. The Recipient will add to any Confidential Information any proprietary, copyright, trade secret or other legend reasonably requested in writing by the Disclosing Party to protect its intellectual property rights in the Confidential Information.
   3. The Recipient or the Disclosing Party may terminate this Agreement and the Recipient's review of the Confidential Information at any time upon thirty (30) days advance written notice to the other party. At the time of such termination or the conclusion of the discussions between the parties relating to the Transactions, the Recipient shall immediately cease the further use of any Confidential Information and return it to the Disclosing Party at Recipient's expense or, at Disclosing Party's option, destroy all the Confidential Information and provide the Disclosing Party with an affidavit or certification affirming that all the Confidential Information has been completely and permanently destroyed. The foregoing notwithstanding, the Recipient may retain one copy of the Confidential Information other than Highly Sensitive Information to be used solely for archival records or as may be required by applicable law or regulation. No termination or return or destruction of the Confidential Information will affect any of Recipient's obligations under this Agreement.
4. Information Security.
   1. The Recipient shall implement and maintain commercially reasonable security measures to protect against unauthorized access to or use of the Disclosing Party's Confidential Information.
   2. Without limiting the generality of the preceding subsection, if Recipient receives, transmits or stores Highly Sensitive Information:
      1. Recipient shall implement and maintain administrative, technical and physical Recipient designed to ensure the security of Highly Sensitive Information, including but not limited to the applicable measures set forth in the Interagency Guidelines. Recipient shall promptly notify the Disclosing Party of any breach of security resulting in unauthorized access to Highly Sensitive Information. The parties understand and agree that the information security standards of the Interagency Guidelines shall apply to all Highly Sensitive Information.
      2. Before entering into the Transactions, upon reasonable advance notice and during normal business hours the Disclosing Party may perform information security reviews on any systems, applications, networks, or sites, used or to be used by Recipient or its Representatives or Affiliates to provide Services to the Disclosing Party hereunder (each, a "Review"). Subject to applicable laws or contractual confidentiality obligations of Recipient with third parties, and provided the Review does not disrupt ordinary business operations of Recipient, the Reviews shall include, but not be limited to, physical inspection, external scan, internal scan, code review, vulnerability testing, process reviews and reviews of system configurations. The Disclosing Party may update its Review annually. In addition, if Recipient significantly enhances or upgrades its system or issues a new release or update of software, Recipient shall notify the Disclosing Party prior to implementation so that the Disclosing Party may update its Review.
      3. Should any response to a request for information or the results of any Review reveal or lead to the identification of security risks to the systems, applications, networks, or sites used by Recipient to provide Services to the Disclosing Party hereunder, the Disclosing Party shall notify Recipient of such risks. Recipient shall respond to the Disclosing Party in writing within ten (10) days with Recipient's plan to take reasonable measures to promptly correct, repair, or modify the applicable system, application, network, or site to effectively eliminate the risks at no cost to the Disclosing Party. Should Recipient fail to so respond and/or fail to remedy the identified risks to the reasonable satisfaction of the Disclosing Party within a time frame deemed to be reasonable by the Disclosing Party, the Disclosing Party may terminate all negotiations and pending Transactions with no cost or penalty.
5. Remedies. The Recipient shall be responsible for any breach of this Agreement by the Recipient and its Representatives. The Recipient acknowledges and agrees that any disclosure of the Confidential Information except as provided in this Agreement may cause serious and irreparable damage to the Disclosing Party for which there may be no adequate remedy at law. Without limiting the Disclosing Party's rights and remedies which are otherwise available, the Disclosing Party shall be entitled to seek equitable relief including, without limitation, an injunction, restraining order or specific performance for any breach of this Agreement by the Recipient. In addition, each party shall indemnify, defend and hold the other party harmless from and against any and all claims, losses, defenses, actions, causes of action, damages, costs or expenses (including reasonable attorney fees and any other costs) both direct and indirect, asserted, claimed or caused if and to the extent the same arises in whole or in part, directly or indirectly, from any breach of this Agreement by that party.
6. No Obligation or Partnership. Each party agrees that neither the holding of discussions between the parties nor the exchange of Confidential Information under this Agreement shall be construed as an obligation of either party to enter into any other business arrangement or agreement, or impose any obligation on either party to purchase, transfer or otherwise dispose of any technology, services or products, until such time that a separate definitive written agreement has been executed by duly authorized representatives of the parties. This Agreement does not create any agency, partnership or joint venture relationship between the parties. No party shall incur any debts or make any commitments for the other under this Agreement.
7. Warranty. The Disclosing Party warrants that it has the right to make the disclosures under this Agreement. No other warranties are made by either party under this Agreement, including warranties of merchantability, fitness for a particular purpose or noninfringement. Any information exchanged under this agreement is provided "AS IS."
8. Additional Agreements.
   1. This Agreement will be governed by and construed in accordance with the laws of Illinois without regard to conflict of law principles. Both parties agree to comply with all laws and regulations pertaining to the subject matter of this Agreement. The Parties consent to the jurisdiction thereof.
   2. If any part of this Agreement is held invalid, void or unenforceable under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision and the remainder of this Agreement will remain in full force and shall not be affected.
   3. The Term of this Agreement shall be for a period of one (1) year. Recipient's obligations hereunder with respect to Highly Sensitive Information and its obligation to maintain the confidentiality of any copy of Confidential Information retained for archival purposes shall survive the termination or expiration of this Agreement. All other terms and conditions of this Agreement shall continue during the period of negotiations regarding the Transactions and for a period of two (2) years thereafter.
   4. Each party shall comply with all Illinois and foreign export control laws or jurisdictional regulations applicable to its performance under this Agreement and with respect to the Confidential Information.
   5. This Agreement contains the entire agreement between the parties and all prior agreements between the parties pertaining to the subject matter of this Agreement, whether written or oral, are void. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original and a single document. This Agreement may not be modified by any party without the prior written agreement signed by an authorized representative of the other party.
   6. The waiver by a party of a breach of any provision of this Agreement by the party will not operate or be interpreted as a waiver of any other or subsequent breach. All waivers must be in writing and signed by the waiving party.
   7. The parties intend to be legally bound by this Agreement and it will be binding upon and inure to the benefit of the parties and their respective successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party, with the exception of an assignment carried out as part of a merger, restructuring, or reorganization, or as a sale or transfer of all or substantially all of a party’s assets.
   8. The undersigned parties have the right to perform the obligations contemplated by this Agreement and all such obligations have been duly authorized.

This Agreement is solely between the undersigned parties and will not confer any rights or remedies upon any third party, including any third-party beneficiaries. The undersigned parties are acting on their own behalf and not as an agent or broker.

SEKO Worldwide, LLC

|  |  |  |
| --- | --- | --- |
| By: |  |  |
| Title: |  |  |

[Insert Company Name]

|  |  |  |
| --- | --- | --- |
| By: |  |  |
| Title: | [Company Signatory] |  |