



## Fulfillment Partner Participation Agreement

- 1. Introduction.** Welcome to the Kibo Network of websites and the Kibo Order Management Platform. Any person (or legal business entity) who wants to access the Network and use the Platform to sell product inventory must accept the terms and conditions of this Fulfillment Partner Participation Agreement without change. By registering for and using the Network, you agree to be bound by all the terms and conditions of this Fulfillment Partner Participation Agreement.

Kibo reserves the right to change, at any time and at its sole discretion, any of the terms and conditions contained in this Fulfillment Partner Participation Agreement or any policies or guidelines governing the Network or Platform. Any changes will be effective upon posting of the revisions on the Network or our Fulfillment Support Center. You should refer regularly to the Fulfillment Support Center to understand the current procedures and guidelines for participation and to be sure that the order(s) you fulfill from the Platform are provided to the Consumer correctly. Kibo may elect to notify you of changes with an email; however, an email is not required for changes to take effect.

All notices of change to this Fulfillment Partner Participation Agreement will be posted on the Network or the Fulfillment Support Center for thirty (30) days. You are responsible for reviewing all notices and any applicable changes. Your use of the Network to sell products or fulfill orders on the Platform, following Kibo's posting of any change, will constitute your acceptance of such change or modification.

- 2. Eligibility.** Use of the Network and Platform is limited to parties that lawfully can enter into and form contracts under applicable law. You represent and warrant that: (a) you are a business in good standing under the laws of the country in which your business is registered and that you are registering for the Platform within such country; and (b) you have all requisite right, power and authority to enter into this Fulfillment Partner Participation Agreement and perform your obligations hereunder; and (c) if you are located in Europe, you must be VAT registered and must provide a valid VAT-ID at enrollment.
- 3. Your Role.** Merchant brands that contribute orders to the Kibo Network for fulfillment can select one of two approaches in how they affect their contract-of-sale with Consumers:
  - a.** Merchants can elect to use an "order reassignment" process that retains the right to transfer the Consumers purchase contract to you when you are assigned the

order. Kibo will create a contract-of-sale between you and the Consumer in the same way as if you sold the product directly to a Consumer. You will be responsible for after-sale service and returns in the usual way; or

- b.** Merchants can elect to contract directly with the Consumer for their purchase. In this instance, when you fulfill orders on the Merchant's behalf, you will be acting as a fulfillment agent for the Merchant. The Merchant will re-purchase stock that you have on-hand and ask you to ship it on their behalf to a Consumer. They may also ask you to fulfill their obligations for any after-sale service or returns relating to the order.

By requesting an order for fulfillment you agree to abide by the contract approach selected by the Merchant that originated the order.

There may be small differences in the layout and construction of the financial statements Kibo provides based on the contract model selected by the Merchant. These are detailed in the Fulfillment Support Center.

- 4. Kibo's Role.** Kibo provides a platform for Merchants and Fulfillment Partners to complete transactions and fulfill orders and/or services for Consumers. Kibo is not a party to the contract-of sale. Kibo is not an agent and has no authority to act as an agent for Consumers, Fulfillment Partners and Merchants.

As a Fulfillment Partner, you may request any Standard order for which you are an eligible fulfiller. A Merchant may choose to enable additional order types for fulfillment. Please refer to Fulfillment Support Center for more information about order types. As a Fulfillment Partner, you use the Network and services at your own risk.

- 5. Fulfillment Partner Fees and Payment Terms.** Please review the Order Management Fees and Payment Terms contained in the Fulfillment Support Center. The Order Management Fees and Payment Terms may vary in the future. The Order Management Fees and Payment Terms in effect on the date of shipment of the item(s) shall govern the transaction. Kibo automatically deducts fees for the orders you fulfill on the Platform. Kibo does reserve the right to withhold funds from pending payments or place a debit on your account to credit Kibo when fees are owed to Kibo.
- 6. Your Transactions.** By requesting an order for fulfillment, you represent and warrant to Kibo that you have the ability to fulfill the order in accordance with the Kibo policies and

guidelines for that particular order. If an order that you have requested is assigned to you, you are obligated to fulfill the order in accordance with those Kibo policies and guidelines.

7. **Applicable Fulfillment Policies and Procedures.** You agree to abide by the 1TEAM Fulfillment Policies and Procedures contained in the Fulfillment Support Center - for fulfilling orders in the Network provided to you on the Platform, which are incorporated by reference into, and made part of, this Fulfillment Partner Participation Agreement.
8. **The Kibo Payment Service.** In order to fulfill orders produced by the Network, you must be an approved user with Kibo, be registered to fulfill orders and use the Kibo Payment Service. The Kibo Payment Service terms and conditions can be referenced in the Fulfillment Support Center.
9. **Kibo Reservation of Rights.** Kibo may restrict your account, reassign orders, and stop, delay or suspend fulfillment of any or all orders at its sole discretion. You will stop fulfillment of orders if we ask you to do so. If you have transferred your products to a carrier or shipper, you will use commercially reasonable efforts to stop and/or cancel delivery by such carrier or shipper.
10. **Your Obligation.** By entering into this Fulfillment Partner Participation Agreement and requesting orders for fulfillment, you agree to complete the transaction as specified in this Fulfillment Partner Participation Agreement and/or in the Fulfillment Support Center. You acknowledge that by not fulfilling these obligations, your action or inaction may be legally actionable.
11. **Sales Taxes and Value Added Taxes (VAT).** Fulfillment Partners are responsible for keeping their sales tax and/or VAT information up-to-date in Kibo. The tools for maintaining this information are accessible in the Fulfillment Partner's Account.

Kibo collects a sales tax or VAT good faith estimate for each order, when appropriate. However, it is the Fulfillment Partner's sole responsibility to calculate and remit applicable taxes to the appropriate taxing authority.

Please note: Kibo maintains current VAT rates in the system. Kibo also maintains current Canadian general and provincial sales tax rates. Fulfillment Partners do not need to provide those rates, but are responsible for providing and keeping current information on taxable locations and tax exceptions. US Fulfillment Partners are responsible for providing current tax rates as well as taxable locations.

12. **Returns and Refunds.** For all orders fulfilled by you, you are obligated to accept and process returns according to the return and refund policies displayed in the Fulfillment Support Center. Refunds and adjustments relating to your orders, in accordance with this Fulfillment Partner Participation Agreement and the posted policies at the time of the applicable order, can be found in the Fulfillment Support Center.

13. **Password Security.** You are solely responsible for maintaining the security of your password. You are solely responsible for any use of or action taken under your password on this Network. If your password is compromised, you must change your password.

14. **No Warranties.** The Network and Platform are provided on an "As-Is" basis. Kibo makes no other representations or warranties of any kind.

15. **Indemnification.** As a Fulfillment Partner you agree to indemnify, defend, and hold harmless Kibo, and their respective officers, directors, attorneys, employees, and agents from and against any and all third-party claims, losses, damages, expenses, costs, judgments, or other liabilities (including without limitation reasonable attorneys' fees, costs, and expenses) arising out of your acts or omissions under this agreement, including without limitation relating to any products delivered or intended to be delivered to Consumers by you. By making use of this website, or by accepting any benefit from use of the Kibo Network and Platform as a Fulfillment Partner, you acknowledge that you have read and agree to this contract, and that you have the power to make binding legal decisions for your company. Aspects of the Kibo system are either patented, patents pending, or patent-applied-for. Kibo is a trademark of Kibo Software, Inc.

16. **Limitation of Liability.** EXCEPT AS PROHIBITED BY LAW, KIBO AND ITS SUPPLIERS SHALL NOT IN ANY CASE BE LIABLE TO CLIENT, AUTHORIZED USERS OR ANY THIRD PARTY FOR ANY DAMAGES OF ANY KIND WHETHER DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES OR LIABILITIES FOR ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ALL ORDER FORMS, ADDENDA OR AMENDMENTS THERETO, WHETHER IN CONTRACT OR TORT OR BY WAY OF INDEMNITY OR OTHERWISE, INCLUDING A BREACH THEREOF OR INCLUDING WITHOUT LIMITATION, DAMAGES OR LIABILITIES FOR LOST PROFIT, LOST REVENUE, LOSS OF USE, LOSS OF DATA, COSTS OF RECREATING LOST DATA, THE COST OF ANY SUBSTITUTE EQUIPMENT, PROGRAM, OR DATA, OR CLAIMS BY ANY THIRD PARTY REGARDLESS OF WHETHER SUCH DAMAGES OR LIABILITIES HAVE BEEN COMMUNICATED TO KIBO AND REGARDLESS OF WHETHER KIBO HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES OR LIABILITIES.

17. **Applicable Law.** Who you are contracting with under this Agreement, who you should direct notices to under this Agreement, what region's law will apply in any lawsuit arising from this Agreement, and which courts have jurisdiction, depend on where you are located:

Your Location	Who you are contracting with	Notices should be sent to	Governing law	The courts having exclusive jurisdiction are
United States of America	Kibo Software, Inc., a Delaware Corporation	717 N. Harwood St. Suite 1900 Dallas, TX 75201 Fax: 469 466 5600	Texas and controlling United States federal law	Dallas, Texas, U.S.A.
Canada	Kibo Software, Inc., a Delaware Corporation	717 N. Harwood St. Suite 1900 Dallas, TX 75201 Fax: 469 466 5600	Texas and controlling United States federal law	Dallas, Texas, U.S.A.
Europe	Kibo Commerce, Ltd.	19-21 Newport Street, Swindon, SN1 3DX United Kingdom. Fax: +44 (0)1793 474652	England	England, U.K.

You irrevocably consent to personal jurisdiction of the courts set forth above and waive all objections thereto. The governing law set forth above shall be applied without respect to conflict of law principles and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act (UCITA).

**18. Disputes.** Kibo urges you to cooperate and resolve all order disputes with Consumers. Kibo may become involved when arbitration between you and Consumer is warranted and necessary. Kibo will look to resolve the dispute quickly and efficiently.

**19. Termination.** Kibo, at its sole discretion, may terminate this Fulfillment Partner Participation Agreement, access to the Network or Services, or any current assigned orders immediately without notice for any reason. Kibo, at its sole discretion, may also prohibit you from fulfilling any assigned order.

**20. General Provisions**

**a. Entire Agreement.** This Fulfillment Partner Participation Agreement, including any terms and conditions incorporated herein by reference, supersedes

and cancels all prior and contemporaneous agreements, claims, representations, and understandings of the parties in connection with the subject matter hereof.

**b. No Agency; Third-Party Beneficiary.** Kibo is not the agent, fiduciary, trustee, or other representative of you. Nothing expressed or mentioned in or implied from this Fulfillment Partner Participation Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy, or claim under or in respect to this Fulfillment Partner Participation Agreement.

**c. Severability.** If any provision of this Fulfillment Partner Participation Agreement shall be deemed unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from these terms and conditions and shall not affect the validity and enforceability of any remaining provisions.

**d. No Waiver.** Kibo will not be considered to have waived any of our rights or remedies described in this Fulfillment Partner Participation Agreement unless the waiver is in writing and signed by us.

## Definitions

**"1TEAM Fulfillment Policies and Procedures"** – The set of Kibo policies and procedures for shipping or fulfilling orders within the Network. These policies are outlined in the Fulfillment Support Center.

**"Account"** – The Kibo account for the Fulfillment Partner is where all business data is stored and where orders can be processed.

**"Consumer"** – An end-consumer who purchases products through a Merchant website on the Kibo Network.

**"Fulfillment Partner"** – A retailer, distributor, contract partner or lawful business partner who has enrolled and been approved to fulfill orders on the Kibo Network.

**"Fulfillment Support Center"** – An Internet website providing policies and procedures for participating in and fulfilling orders as a Fulfillment Partner in the Kibo Network. The website is publicly accessible at <http://support.Kibo.com>.

**"Merchant"** – Branded Manufacturers, Distributors, Multi-Door Retailers and/or any other business enrolled to sell products on the Kibo Network.

**"Network"** – Kibo refers to its website distributed order management system as a Network.

**"Order Management Fees"** – The transaction fees applied to fulfilled orders within the Kibo Network.

**"Payment Terms"** – The methods and frequency for paying Fulfillment Partners for fulfilled orders. This is represented in the article entitled "Getting paid by Kibo" in the Fulfillment Support Center.

**"Platform"** – The common account area for all Fulfillment Partners to request and process orders as they come available from Merchant websites.

**"Kibo"** – Kibo Software, Inc. is a Delaware corporation.