

Conditions of Carriage

These Conditions set out the basis on which DX Freight will transport Goods.

DX Freight is not a common carrier and accepts goods for carriage on that condition and the Conditions set out below. DX Freight reserves the right at all times to refuse carriage.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:

“Appropriately Packaged and Labelled” means properly described, marked, accurately addressed including a complete postcode, labelled (in a clear and unambiguous manner) and packaged to withstand the rigours of transport and in particular having regard to the fact that DX Freight carries items of irregular dimensions and weight such that it is adequately protected from damage by other items or is rendered safe from damaging other items;

“Attempted Delivery” means in respect of a Consignment, that DX Freight have attempted to deliver such Consignment and have succeeded in delivering and unloading the Consignment or failed to deliver and unload such Consignment due to: (i) the Consignee's refusal or failure to take delivery of a Consignment; (ii) the Consignee's refusal or failure to unload a Consignment; (iii) failure by the Customer to provide an accurate address and postcode; or (iv) an event of Force Majeure having occurred;

“Base Price” means (i) in respect of Goods which the Customer sells as brand new, the lower of the actual cost (excluding VAT) to the Customer of the physical materials which constitute the Goods contained in any Consignment, excluding any element of profit or licence costs (if any); or the cost of repair or replacement of the Goods excluding VAT contained in the Consignment; and (ii) in respect of Goods which are not sold as brand new, and at the sole option of DX Freight either the cost of repair or the cost of replacement of the Goods with an equivalent item and in an equivalent condition to take into account depreciation for wear and tear;

“Carriage Services” means the process of collection of Goods from a Collection Address at the Collection Time and transporting and delivering those Goods to a Delivery Address in accordance with the Delivery Timescales and these Conditions;

“Charges” means the sums to be paid by the Customer in respect of and for the Carriage Services;

“Collection Address” means a collection address for a Consignment set out in the Service Agreement, or such other address as may be agreed between the parties from time to time;

“Collection Time” means the date and time at which DX Freight will make collections of Consignments in respect of each Collection Address;

“Conditions” means these Conditions of Carriage;

“Consignee” means the person, organisation or company to whom the Goods are to be delivered, their servants or agents or any other person appearing to have authority to receive the Goods at the Delivery Address or, in the event of the Delivery Address being a Domestic Dwelling, at a neighbouring premises;

“Consignment” means Goods collected by DX Freight from a single Collection Address under a single consignment reference number for carriage and delivery to a single Delivery Address;

“Contract” means the agreement entered into by the Customer with DX Freight, comprising these Conditions, the Customer Service Agreement, and the Tariff copies of which the Customer acknowledges as having been received and such other documents as both the Customer and DX Freight agree to in writing;

“Customer” means a person, organisation or company, by itself or by its servant or agent that entered into the Contract with DX Freight; and as specified in the Service Agreement;

“Customer Information” means information (which may include personal information) which we obtain: (i) when the Customer enters into the Agreement; (ii) from the Customer during the provision of the Carriage Services; and/or (iii) from third parties, such as credit reference agencies (who may search the Electoral Register) or other fraud prevention agencies;

“Customer Service Agreement” means the document signed by the Customer that sets out the Customer details, the Traffic Profile upon which the Tariff has been agreed and confirmation of acceptance of these Conditions;

“Dangerous Goods” means all goods contained in the Approved Carriage List as issued by the Health & Safety Commission, all explosives and all radioactive or corrosive substances;

“Data Entry Services” means the manual entry of Consignment data onto any DX Freight system on behalf of the Customer on a regular basis;

“Delivery Address” means any address served by a central Post Office delivery and collection area as indicated by a valid postcode;

“Delivery Timescales” means the delivery timescales set out in the Customer Service Agreement in respect of the service options, service guarantees, zoning and exclusions as may be amended from time to time by notice in writing to the Customer;

“Director” means a statutory director of DX Freight;

“Domestic Dwelling”, “Residential Address” or **“Private Address”** means any address where the primary purpose of the premises is domestic accommodation;

“Excluded Goods” means any goods that are infective, infested, verminous, condemned unstable or includes hazardous material, and Goods of the following types: bullion, money, securities, stamps, furs, jewellery, precious metals, precious stones, porcelain, ceramics, glass, china, perspex, acrylics, fibre glass, objet d'art, antiques, wines, spirits, tobacco, cigarettes, watches, living fauna and flora, perishable goods/goods liable to spoil (including food stuffs), tickets or vouchers exchangeable for goods or services, oil-filled products or equipment, metal products where the packaging does not fully protect the item from damage or from damaging other freight, pornographic or obscene material, firearms, any goods that require specialist storage conditions during carriage including temperature, humidity or other controlled environment, secondhand goods, liquids including but not limited to paint, oils and chemicals; any other item that might endanger human or animal life or otherwise tint or damage other Goods carried by DX Freight. Such list may be amended from time to time at the sole discretion of DX Freight;

“Force Majeure” means any circumstance beyond the control of DX Freight including acts of God, fire, explosion, adverse weather conditions, flood, earthquake, terrorism, riot, civil commotion, war, rebellion, insurrection, military or usurped power or confiscation, requisition or destruction of or damage to property by or under any order of government or public authority, hostilities, strikes, work stoppages, slow-downs or other industrial disputes, accidents, cancelled sailings or flights, delays in customs clearance, exercise by any person of a lien over the relevant Consignment, our vehicle or any other goods contained in it, seizure or forfeiture under legal process, failure of power supply, delays by suppliers, materials shortages, obstruction of public or private highway, mechanical breakdown or traffic congestion;

“Goods” means any Items tendered for delivery that comply with the Goods Description as set out in the Customer Service Agreement, are not Excluded or Dangerous Goods and are Appropriately Packaged and Labelled;

“Goods Description” means the description set out in the Customer Service Agreement as may be amended from time to time by agreement of the parties in writing;

“DX Freight” means DX Freight Ltd whose registered office is at Crestwood House, Birches Rise, Willenhall, West Midlands WV13 2DB its sub-contractors, Independent Service Providers (ISPs) agents, and servants;

“Package” means any single item tendered by the Customer for carriage irrespective of whether it constitutes a complete consignment including but not limited to parcel, carton, pallet, Nightpak, Doocpak, length up to and over 3 metres and items of irregular dimension and weight (IDW);

“Tariff” means the rate at which the Customer will be charged for any Consignment tendered for Delivery on the basis of the rates set out in the Customer Service Agreement;

“Traffic Profile” means the traffic profile set out in the Customer Service Agreement as may be amended from time to time in writing by agreement of the parties;

“Trailer” means a stand-on trailer owned, leased or hired to DX Freight;

“Volumetric Weight” is determined by multiplying the dimensions of a Package in centimetres (height x length x width) and dividing the result by 5000;

“Working Day” means any day from Monday to Friday (inclusive) between 07:00 and 18:00 hours that is not Christmas Day, Good Friday, statutory holiday or any other day deemed by DX Freight not to be a working day having previously advised the Customer.

1.2 In these Conditions (unless the context otherwise requires): (i) construction of these Conditions shall ignore the headings (all of which are for reference only); (ii) any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision; and (iii) the words “including” and “include” and words of similar effect shall not be deemed to limit the general effect of the words which precede them.

1.3 In these Conditions any reference to the singular shall include the plural and any reference to the masculine shall also include the feminine.

2. APPLICATION

2.1 The Contract shall govern the provision of the Carriage Services in respect of each Consignment and shall prevail over any terms or conditions (whether or not inconsistent with these Conditions)

contained or referred to in any correspondence or other documentation submitted by the Customer or elsewhere or implied by custom, practice or course of dealing.

2.2 These Conditions shall not be varied unless such variation has been agreed in writing by a Director of DX Freight prior to the Goods being submitted for carriage by the Customer.

3. CARRIAGE

3.1 DX Freight shall use its reasonable endeavours to discharge the Carriage Services.

3.2 No Consignment shall contain Excluded or Dangerous Goods unless the Customer has obtained the express consent in writing of DX Freight to carry such Excluded or Dangerous Goods.

3.3 In respect of each Consignment, the Customer shall provide to DX Freight the appropriate complete and accurate postal address (including full and accurate postcode) for delivery.

3.4 In respect of each Consignment, the Customer shall provide to DX Freight an accurate weight in respect of each Consignment.

3.5 Where the Delivery Address is a Domestic Dwelling, the Customer agrees that DX Freight may, where the Customer has provided prior written consent, deliver the Consignment to a neighbouring address provided that DX Freight obtains a signature from a person present at that neighbouring address acknowledging receipt of the Consignment.

3.6 DX Freight will not deliver Goods to an airport, dock, wharf, military establishment or container base other than by special agreement in writing prior to formation of the Contract.

3.7 The Customer acknowledges that delivery to the Delivery Address does not include delivery to a specific person.

3.8 If DX Freight consider that the Goods are not securely or adequately packaged for carriage, DX Freight reserve the right to refuse to accept the Goods for carriage, or suspend their carriage at any time, and at DX Freight's sole discretion it may repack the Goods and the Customer agrees to indemnify DX Freight for all costs so incurred as a result.

3.9 Subject to clause 3.2 the Customer shall ensure that each Package containing Excluded or Dangerous Goods is labelled and packaged in accordance with any legislation governing the carriage of such Dangerous Goods.

3.10 Unless specified in the Customer Service Agreement any Excluded Goods or Dangerous Goods shall, if submitted by the Customer for carriage and agreed by DX Freight in accordance with clause 3.2, be carried at the Customer's own risk and the Customer accepts that DX Freight shall not be liable to pay any compensation whatsoever or howsoever caused, in the case of loss of or damage to the Goods.

3.11 Unless previously agreed in writing DX Freight shall have no responsibility for the disposal of packaging and the Customer shall ensure and indemnify DX Freight that the Consignee disposes of such packaging in accordance with all current legislation.

3.12 The Collection Time is indicative only and time shall not be of the essence and shall not be made so by the service of any notice.

3.13 DX Freight reserve the right to open, inspect, and refuse to carry any item that it has reason to believe may constitute a Dangerous Good or Excluded Good but has not been so declared to it by the Customer. In this event all service guarantees within the Delivery Timescales are suspended. The Customer shall at the request of DX Freight arrange for alternative transport to recover such Dangerous or Excluded Goods from DX Freight within a reasonable time failing which, DX Freight shall have the right to dispose of such Excluded or Dangerous Goods as appropriate and the Customer shall indemnify DX Freight for any costs incurred to effect disposal and DX Freight shall have no liability to the Customer for the Excluded or Dangerous Goods. In the event that the Consignment opened and inspected is not inaccurately described, DX Freight shall provide adequate packing, shall repack the Goods and deliver the same at the earliest available opportunity.

3.14 DX Freight may at its sole discretion subcontract all or any part of the carriage of a Consignment.

3.15 DX Freight may at its sole discretion transport any Consignment by any means of transport or route.

4. LOADING AND UNLOADING

4.1 The Customer is solely responsible for loading each Consignment at the Collection Address and DX Freight are under no obligation to provide any plant or machinery for the purposes of loading. The Customer shall ensure that each Consignment is loaded immediately upon the arrival of the collection vehicle at the Collection Address. The Customer must ensure that loading is carried out in accordance with current health and safety legislation.

4.2 The consignee is solely responsible for unloading each Consignment at the Delivery Address (or where the Consignment is undelivered, the Customer at the Collection Address) and DX Freight are under no obligation to provide any plant or machinery for the purpose of unloading. The Consignee must ensure that each Consignment is unloaded immediately on arrival of the DX Freight delivery vehicle at the Delivery Address (or where the Consignment is undelivered, the Customer at the Collection Address). The Customer must ensure that the Consignee is adequately equipped and trained to ensure the safe unloading of the Goods in accordance with current health and safety legislation.

4.3 DX Freight may at the request of the Customer (or the request of the relevant Consignee) provide assistance in respect of the loading or unloading of a Consignment at the sole risk of the Customer and the Customer shall indemnify DX Freight its servants and agents against any claim for damage, loss or negligence howsoever caused in respect of such loading or unloading activity.

4.4 Subject to clause 4.7 risk in each Consignment shall pass to DX Freight immediately after it has been loaded on to the collection vehicle until it is tendered to be unloaded at the Delivery Address (or where the Consignment is undelivered, at the Collection Address).

4.5 From time to time, DX Freight may agree to provide the Customer with a Trailer at the Customer's risk at a Collection Address in advance of the Collection Time. Following delivery of the Trailer, the Customer shall load Consignments at the sole risk of the Customer.

4.6 The Customer must ensure that the Trailer is securely loaded and ready to depart the Collection Address on or before the Collection Time.

4.7 The Customer must ensure that the Trailer is loaded in such manner that the Consignment is safe in transit and that the loading is adequate to ensure that any Goods will not cause damage to any other goods loaded on that Trailer.

4.8 Risk in each Consignment loaded on the Trailer shall pass to DX Freight from the time at which DX Freight remove the Trailer from the Collection Address. It is the Customer's responsibility to satisfy itself as to the identity of the collecting representative and the Customer shall have the right to make appropriate security checks prior to releasing the Consignments to such representative.

4.9 The Customer shall insure any such Trailer for its full value with a reputable insurer for the period it is located on the Customer's premises and, at DX Freight's request, ensure that the Trailer is noted on the insurance policy.

5. DELIVERY

5.1 Delivery of the Consignment shall be deemed to have taken place upon unloading at the Delivery Address.

5.2 The Customer acknowledges that in respect of each Consignment which has been loaded onto a DX Freight collection vehicle which the Customer has requested to be delivered to a Delivery Address the Delivery Timescale is approximate only and shall not be of the essence and shall not be made so by the service of any notice.

6. UNDELIVERED AND UNCLAIMED CONSIGNMENTS

6.1 If DX Freight has Attempted Delivery, but the Consignee refuses delivery or fails to unload a Consignment, or if for any other reason DX Freight has been unable to deliver a Consignment to a Delivery Address notified to it, DX Freight shall notify the Customer of the same.

6.2 Following receipt of such notice, in accordance with clause 6.1, the Customer must notify DX Freight within 5 Working Days of an Alternative Delivery Address or request the return of the Consignment DX Freight will make an additional charge for delivery to an Alternate Delivery Address.

6.3 Any Consignment not delivered to a

Consignee as a result of an event under clause 6.1 shall be deemed to be a completed delivery on return to the DX Freight depot the Customer shall not be entitled to any warranty as set out in clause 9.3 and DX Freight shall have no liability whatsoever.

6.4 Without prejudice to Clause 12, if the Customer does not notify DX Freight within 5 Working Days of an Alternate Delivery Address, DX Freight shall be entitled to either i) return the Goods to the Customer at the Customer's expense or ii) sell the Consignment using reasonable endeavours to obtain a reasonable price. Thereafter, DX Freight shall be discharged from any and all liability in respect of such Consignment and the Carriage Services upon payment to the Customer of the proceeds of such sale less DX Freight's reasonable costs and expenses associated with such sale.

6.5 If for any reason DX Freight is unable to identify the consignor and consignee of any Goods the Goods will be treated as unidentified freight and held by DX Freight for a period of 42 days unless the Goods concerned are deemed by DX Freight to be perishable or hazardous. After 42 days (or such shorter period as DX Freight may determine in the case of perishable, Excluded Goods or Dangerous Goods) DX Freight shall at its sole discretion be entitled to dispose of the Consignment as it sees fit.

7. CHARGES

7.1 The Charges to be paid by the Customer in respect of the Carriage Services shall be determined in accordance with the agreed Tariff set out in the Customer Service Agreement current at the time of despatch of the Goods. Charges shall become due in respect of each delivered Consignment or for each Attempted Delivery. The Customer acknowledges that the agreed Tariff was determined on the basis that the Traffic Profile as set out in the Customer Service Agreement is unchanged.

7.2 Without prejudice to clauses 7.3, 7.4 and 7.5, DX Freight shall review the Tariff annually on 1 March of each year and shall have the right to increase the Tariff by the percentage increase in the RPI (Retail Price Index) over the preceding 12 months.

7.3 DX Freight retains the right to increase, or vary the charges in the following circumstances:

7.3.1 if loading and/or unloading exceeds 15 minutes;

7.3.2 if delivery fails for reasons outside the control of DX Freight and re-delivery is attempted;

7.3.3 if a Consignment includes Excluded Goods and/or Dangerous Goods;

7.3.4 if the gross weight is greater than that declared by the Customer on the relevant Consignment note;

7.3.5 if the Volumetric Weight of any Consignment exceeds the actual weight the Charges will be determined by applying the Tariff to the Volumetric Weight;

7.3.6 if the Package for the Consignment is incorrectly described by the Customer on the relevant consignment note;

7.3.7 if the Delivery Address is an airport, dock, wharf, military establishment or container base subject always to the prior written agreement of DX Freight;

7.3.8 if the Consignee has in place specific processes for the delivery and unloading of Consignments, which require deliveries to be booked in to a specific delivery slot;

7.3.9 if the DX Freight delivery vehicle is delayed due to the acts or omissions of a Consignee, including the Consignee's inability to accept and unload a Consignment;

7.3.10 if the Consignment is carried by rail, sea, inland waterway or air and third party costs are incurred, these costs shall be passed to the Customer;

7.3.11 if the delivery is requested on any day that is not a Working Day and DX Freight at its sole discretion has undertaken to deliver on a day that is not a Working Day;

7.3.12 if an Attempted Delivery fails for any reason and DX Freight are required to store the Consignment until the Customer provides an Alternate Delivery Address;

7.3.13 if DX Freight repack any item that has been inadequately packed;

7.3.14 if DX Freight return any item to the Customer as a result of a Consignment being a Dangerous Good or Excluded Good;

<p>7.3.15 if DX Freight provide any equipment to or for the use of the Customer;</p> <p>7.3.16 if DX Freight provide Data Entry Services for or on behalf of the Customer.</p> <p>7.4 DX Freight shall be entitled to charge the Customer a reasonable charge for any amendment made by DX Freight to the Consignment as a result of any error, omission or misrepresentation by the Customer.</p> <p>7.5 Without prejudice to clause 16.2, DX Freight may vary the Charges at any time by giving prior written notice, which may include such notice being indorsed on DX Freight's invoices, where:</p> <p>7.5.1 the agreed Traffic Profile varies from that on which the existing Charges were based;</p> <p>7.5.2 DX Freight's costs have increased by reason of taxation, duty, ferry/toll charges, other operating charges or subcontractor's charges;</p> <p>7.5.3 DX Freight's costs have increased by reason of an increase in the wholesale cost, duty or taxation of fuel, DX Freight shall have the right to apply a fuel surcharge in accordance with its fuel price escalator published from time to time on the DX Freight website - www.dxfreight.co.uk.</p> <p>7.6 All charges are subject to VAT at the prevailing rate.</p> <p>7.7 In the event that DX Freight pays or agrees to pay any third party tax, duty or levy in respect of the Customer's Goods it does so on the basis that it is acting as fully authorised agent for the Customer, which the Customer hereby acknowledges. The Customer agrees that any such tax duty or levy is payable immediately by CHAPS transfer on demand. In the event that payment is not made on demand DX Freight reserves the right to exercise its lien under Clause 12 until such payment is made.</p> <p>7.8 DX Freight will use reasonable endeavours to provide proof of delivery on request from the Customer. If the proof of delivery request is received more than 30 days from the date of despatch DX Freight reserves the right to levy a reasonable charge for provision of a proof of delivery. Proof of delivery shall be available for a period of up to 6 months from the date of despatch. Documentary proof of delivery may be held in electronic format and include the electronic image of any signature.</p> <p>8. PAYMENT</p> <p>8.1 On receipt of DX Freight's invoice the Customer shall make all payments due to DX Freight: (i) in pounds sterling; (ii) in accordance with the payment method set out in the Customer Service Agreement; and (iii) in accordance with the payment schedule set out in the Customer Service Agreement. Where the Customer has agreed to make payments by BACS or CHAPS, such payments shall be into account number 70017409, sort code 60-02-46, at Natwest, 65 Church Street, Blonk WV14 0BF.</p> <p>8.2 Any query relating to a charge made by DX Freight must be notified to DX Freight in writing and addressed to the Credit Control Manager within 7 days of the date of invoice.</p> <p>8.3 Time of payment is of the essence and DX Freight reserves the right to suspend the provision of the Carriage Services and exercise its right of lien where any amounts are overdue under the Contract until all such amounts have been paid.</p> <p>8.4 The Customer is not entitled to withhold payment of any amount due to DX Freight by way of any set-off, abatement or counterclaim.</p> <p>8.5 If the Customer fails to pay any amount due to DX Freight under the Contract on the due date, interest shall be added to such amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 for the period from and including the date of receipt (whether before or after judgment).</p> <p>8.6 If the Customer fails to pay any amount due to DX Freight under the terms of the Contract by the due date the entire account shall become due and payable and will be subject to interest under the terms of Clause 8.5.</p> <p>8.7 DX Freight reserve the right to alter or withdraw at any time any credit allowed to the Customer.</p> <p>8.8 DX Freight may set-off any amount owing to it from the Customer against any amount owed by DX Freight to the Customer.</p> <p>9. WARRANTY AND LIABILITY</p> <p>9.1 Except as set out in these Conditions, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non-supply or delay in supplying the Carriage Services are excluded to the extent permitted by law.</p>	<p>9.2 The Customer warrants that it has title in the Goods in any Consignment tendered for delivery or that the beneficial owner with title in the Goods has duly authorised the Customer to accept these Conditions on behalf of the beneficial owner and in the event of a dispute over that authority the Customer shall indemnify DX Freight against any claim made on it.</p> <p>9.3 DX Freight shall not be liable for:</p> <p>9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4;</p> <p>9.3.2 non-performance or part performance, or any loss or damage to a Consignment which DX Freight has delivered to a Delivery Address in respect of which a delivery note which has been signed for by or on behalf of the Consignee unless such signed delivery note details damage and/or discrepancy to such Consignment;</p> <p>9.3.3 non-performance or part performance or any loss or damage to a Consignment which arises wholly or partially from any act or omission, misstatement or misrepresentation by the Customer or the Consignee;</p> <p>9.3.4 non-performance or part performance or any loss or damage to a Consignment which arises wholly or partially as a result of the Goods contained within such Consignment: (i) not matching the Goods Description; (ii) not being Appropriately Packaged and Labelled; (iii) containing Excluded Goods unless the Customer notified DX Freight of the same in advance and DX Freight have agreed in writing to provide Carriage Services in respect of the same; and/or (iv) containing Dangerous Goods unless the Customer has notified DX Freight of the same in advance and DX Freight have agreed in writing to provide Carriage Services in respect of the same;</p> <p>9.3.5 non-performance or part performance or any loss or damage to a Consignment which arises wholly or partially as a result of loading at the Collection Address and/or unloading of a Consignment at the Delivery Address whether or not as a result of DX Freight or any sub-contractors providing assistance in respect of the loading or unloading of a Consignment at the Customer's request (or the request of a Consignee at the Delivery Address);</p> <p>9.3.6 non-performance or part performance or any loss or damage to a Consignment which arises wholly or partially as a result of any Consignee failing to accept delivery and/or unloading any Consignment within a reasonable time after such Consignment has been tendered;</p> <p>9.3.7 any inherent wastage or defect, vice or natural deterioration of the Consignment or any part thereof;</p> <p>9.3.8 any loss or damage to Goods contained within a Trailer until the time at which DX Freight remove the Trailer from the Collection Address;</p> <p>9.3.9 non-performance or part performance or any loss or damage to a Consignment unless the Customer comply with the DX Freight claims procedure referred to in Clause 11;</p> <p>9.3.10 any loss or damage to a Consignment which DX Freight have requested the right to inspect in accordance with clause 9.6, but such right is not afforded to DX Freight in accordance with such condition;</p> <p>9.3.11 any loss or damage caused to Goods as a result of the Consignment being inadequately packaged or incorrectly addressed or where documentation relating to the Consignment was incomplete;</p> <p>9.3.12 any loss or damage where the Consignment is correctly delivered to the Delivery Address but where any person misrepresents their authority to receive the Consignment on behalf of the Consignee.</p> <p>9.4 If DX Freight have not Attempted Delivery of an Appropriately Packaged and Labelled Consignment which was loaded onto DX Freight's collection vehicle and which the Customer had requested be delivered to a Delivery Address in accordance with the Delivery Timescale as set out in the Customer Service Agreement, DX Freight's liability shall be limited to a refund of the Charges relating to such Consignment or part thereof, limited to the difference between the selected tariff and the tariff appropriate to the period in which Attempted Delivery was actually achieved provided that such request is received within 7 calendar days of the collection date. In respect of a Consignment due to be delivered on any service before noon the Consignee must be available to receive deliveries from 07:00. If the Consignee is</p>	<p>not available to accept a Consignment tendered after these times the Consignment shall be delivered as close as possible to the Delivery Time but any service guarantee as set out in the Delivery Timescales will be suspended and no refund made.</p> <p>9.5 If DX Freight is prevented, hindered or delayed from or in performing any part of the Carriage Services under the Contract by an event of Force Majeure it may, at its sole discretion, and without being liable for any loss, damage, costs or expenses suffered by the Customer as a result: (i) suspend performance of the Carriage Services while the event of Force Majeure continues; (ii) return to the Customer any Consignment in the possession of DX Freight without prejudice to the Customer's obligation to make payment of the Charges; and/or (iii) terminate the Contract forthwith by giving notice to that effect to the Customer.</p> <p>9.6 In respect of any claim which the Customer makes against DX Freight alleging damage to a Consignment or any part thereof, the Customer shall, at the sole discretion of DX Freight, make such damaged Consignment available for inspection by DX Freight or its agents, on reasonable notice within 5 Working Days of first written request.</p> <p>9.7 Subject to DX Freight's liabilities under clauses 9.4 and 9.8, DX Freight shall not be liable to the Customer in contract, common law or otherwise for any of the following losses or damages, arising out of, or in connection with, the supply, non supply or delay in supplying the Carriage Services or otherwise in connection with the Contract:</p> <p>9.7.1 loss, costs, damage, costs or expenses incurred by the Customer as a result of third party claims;</p> <p>9.7.2 loss of actual or anticipated profits;</p> <p>9.7.3 loss of business opportunity;</p> <p>9.7.4 loss of anticipated savings;</p> <p>9.7.5 loss of goodwill;</p> <p>9.7.6 injury to reputation;</p> <p>9.7.7 loss of production;</p> <p>9.7.8 loss of contribution to overheads; or</p> <p>9.7.9 any indirect, special or consequential loss or damage howsoever caused.</p> <p>9.8 Without prejudice to clauses 9.4 and 9.7 DX Freight's entire liability arising out of or in connection with the supply, non supply or delay in supplying the Carriage Services, or otherwise in connection with this Contract, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, is limited in respect of a Consignment to the lower of:</p> <p>9.8.1 a sum calculated by multiplying the lower of the declared or actual unpacked weight of each kilo of the relevant Consignment or part thereof lost or damaged by £10, subject to a maximum limit for a Consignment of £10,000 (ex VAT); and</p> <p>9.8.2 the Base Price of the Consignment or part thereof lost or damaged provided that the Customer shall provide, at the request of DX Freight, adequate proof of the calculation of the Base Price. In the absence of such proof, DX Freight may estimate the Base Price by deducting an appropriate percentage of the sales value of the Consignment or part thereof lost or damaged.</p> <p>The Customer acknowledges that a non-recoverable excess of £25 shall be deducted from each and every claim and that DX Freight shall pay no compensation whatsoever and howsoever caused, as a result of the loss of or damage to a Consignment, where the liability as calculated in Clause 9.8, is less than £25.</p> <p>9.9 Nothing in the Contract shall operate to exclude or restrict DX Freight's liability for:</p> <p>9.9.1 death or personal injury resulting from negligence; or</p> <p>9.9.2 fraud or deceit.</p> <p>10. INDEMNITIES</p> <p>The Customer shall indemnify DX Freight and keep it indemnified from and against any and all liability, loss, damages, proceedings, legal costs, fines, penalties, professional and other expenses of any nature whatsoever which DX Freight incur arising from:</p> <p>10.1 the Customer's breach of the Contract, misrepresentation and/or fraud;</p> <p>10.2 the acts or omissions of any Consignee;</p> <p>10.3 any Consignment not being Appropriately Packaged and Labelled;</p> <p>10.4 any Consignment containing any good(s) which it is unlawful for DX Freight to transport;</p> <p>10.5 any Consignment containing Excluded Goods unless the Customer has notified DX Freight of the same and DX Freight has agreed in writing to provide the Carriage Services in respect of such goods;</p> <p>10.6 any Consignment containing Dangerous Goods unless the Customer has notified DX Freight of the same and DX Freight has agreed in writing to provide the Carriage Services in respect of such goods;</p> <p>10.7 loading and/or unloading of a Consignment</p>	<p>whether or not as a result of DX Freight or any sub-contractors providing assistance in respect of the loading or unloading of a Consignment at the request of the Customer (or the request of a Consignee at the Delivery Address);</p> <p>10.8 the Goods not matching the Goods Description;</p> <p>10.9 parking a Trailer at a Collection Address, including theft and damage of such Trailer;</p> <p>10.10 the costs of an inspection by DX Freight of alleged damage to a Consignment or any part thereof, where DX Freight or its agents determine (acting reasonably) that damage has either not occurred or is unlikely to have resulted from the performance of the Carriage Services;</p> <p>10.11 all claims and/or demands made against DX Freight in respect of any Consignment in excess of the liability limitations contained in these Conditions;</p> <p>10.12 any and all claims made upon DX Freight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;</p> <p>10.13 loss or damage to any equipment loaned or hired by DX Freight to the Customer;</p> <p>10.14 whether or not such loss, liability and cost results from the negligence of DX Freight.</p> <p>11. CLAIMS PROCEDURE</p> <p>Where the Customer intends to make a claim in respect of loss, damage and/or delay in respect of a Consignment, the Customer must notify DX Freight as soon as the loss, damage or delay is identified but, in the case of loss, such notification to be received no later than 21 calendar days from the date of collection by DX Freight. In the case of damage such notification to be received no later than 7 calendar days from the date of or expected date of delivery. Thereafter the detailed claim must be notified in the format that will be advised to the Customer on registration of the claim within a further 17 days together with any relevant supporting documentation including where requested a photograph of any item if justified by DX Freight to support the claim and request the value of the loss claimed.</p> <p>12. LIEN</p> <p>DX Freight have a general lien on all Consignments including those which contain Goods owned by the Customer or by any third party who is authorising the Customer to agree to these Conditions in satisfaction of any amount owed by the Customer to DX Freight under the Contract and may deal with it as it sees fit. DX Freight reserves the right to hold Goods, Excluded Goods and Dangerous Goods until all outstanding amounts are paid in full or to sell such Goods, Excluded Goods and Dangerous Goods and use the proceeds to satisfy the debt. Any remaining unpaid debt will remain payable. Any surplus remaining as a result of the exercise of a lien after repaying any outstanding debt and DX Freight's reasonable costs shall be repayable to the Customer on demand.</p> <p>13. UNREASONABLE DETENTION</p> <p>The Customer shall be liable for the cost of unreasonable detention of any vehicle, trailer, pallet, cage, stilage or any other property belonging to DX Freight, but the rights of DX Freight against any other person in respect thereof shall remain unaffected.</p> <p>14. TERMINATION</p> <p>14.1 On or at any time after the occurrence of any of the events in condition 14.2 DX Freight may: (i) cease to make any further collections of Consignments; (ii) cease to provide the Carriage Services and/or cease any Attempted Delivery of any Consignment already collected and/ or (iii) terminate the Contract forthwith by giving notice in writing to that effect.</p> <p>14.2 The events referred to in clause 14.1 are:</p> <p>14.2.1 the Customer being in breach of any obligation under the Contract; or</p> <p>14.2.2 a meeting being convened, a petition presented, an order made, an effective resolution passed, or notice given for the winding up or dissolution of the Customer (other than for the sole purpose of amalgamation and reconstruction); or</p> <p>14.2.3 an application being made, or resolved to be made by any meeting of the Customer's directors or members, for an administration order in relation to it or if any party gives or files notice of intention to appoint an administrator of it or such an administrator being appointed; or</p> <p>14.2.4 an incumbrancer taking possession, or a receiver or manager or administrative receiver being appointed, of the whole or any part of the Customer's assets; or</p> <p>14.2.5 the Customer ceasing or suspending payment of any of its debts or being unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or</p> <p>14.2.6 a proposal being made for a composition in satisfaction of the Customer's debts or a scheme or arrangement of the Customer's</p>	<p>affairs including a voluntary arrangement within the meaning of Part I of the Insolvency Act 1986.</p> <p>14.3 On termination of the Contract, any indebtedness of the Customer to DX Freight shall become immediately due and payable and DX Freight shall be released from any further obligation to perform the Carriage Services under the Contract.</p> <p>15. CUSTOMER INFORMATION</p> <p>By signing the Customer Service Agreement the Customer agrees to allow DX Freight to use any and all Customer Information provided to it or in the public knowledge in any or all of the following ways:</p> <p>15.1 DX Freight may process and store the Customer Information on its computers and in any other way.</p> <p>15.2 DX Freight may use the Customer Information to provide the Carriage Services, for assessment and analysis (including market and product analysis), and to develop and improve its services to the Customer and other customers and protect DX Freight's interests.</p> <p>15.3 DX Freight may use the Customer Information to inform the Customer by letter, telephone (including automated dialling, digital television and sending text messages), fax, email or invoice messaging concerning products and services (including those of others).</p> <p>15.4 DX Freight may pass the Customer Information to:</p> <p>15.4.1 persons who provide a service to DX Freight or are acting as our agents, on the understanding that they will keep the Customer Information confidential;</p> <p>15.4.2 anyone to whom DX Freight transfers or may transfer its rights and duties under the Contract;</p> <p>15.4.3 credit reference agencies who will keep a record of DX Freight's enquiries and may record, use and give out the Customer Information which DX Freight gives to them to other organisations;</p> <p>15.4.4 a third party in another country, provided that where such information constitutes personal information under the Data Protection Act 1998, DX Freight will make sure that such third party agrees to apply the same levels of protection as DX Freight are required to apply to information held in the UK and to use the information only for the purpose of providing the service to DX Freight.</p> <p>16. GENERAL</p> <p>16.1 The Customer may not assign all or any part of its benefit under the Contract without the prior written consent of DX Freight. DX Freight shall be entitled at any time to assign or deal with the benefit of the Contract (see 3.13).</p> <p>16.2 Any notice given by either party to the other in connection with the Contract must be in writing and delivered either personally or by pre-paid first class post and in the case of post will be deemed to have been given two Working Days after the date of posting. Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with the Contract.</p> <p>16.3 If any of these Conditions are found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other conditions, which shall remain in full force and effect.</p> <p>16.4 If any of these Conditions are so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.</p> <p>16.5 A person who is not party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.</p> <p>16.6 Any failure by DX Freight to exercise, or any delay in exercising, a right or remedy shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of the Contract or of a default under the Contract shall not constitute a waiver of any other breach or default and shall not affect the other terms of the Contract.</p> <p>16.7 No variation or alteration of any of the provisions of the Contract shall be effective unless it is in writing and signed by a Director or the Company Secretary of DX Freight prior to the Goods being tendered for carriage by the Customer.</p> <p>16.8 The Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with English law and each party irrevocably agrees to submit to the exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with the Contract.</p>
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