



W A RAINBOW & SONS LIMITED GROUP OF COMPANIES

A FRANCHISEE OF DX NETWORK SERVICES LIMITED

CONDITIONS OF CARRIAGE

All goods are accepted subject to these terms and conditions (**which include a limitation of our liability**) unless the agreement is varied in writing by our director. Save as expressly provided this contract is not intended to confer any benefit on any third party.

1. DEFINITIONS

The following words shall have the meanings set out below.

“**Consignment**” means goods carried by us for you under this agreement from a single despatch address to a single delivery address.

“**Cost Price**” means the actual cost to you of the consignment excluding any element of profit.

“**We**” are the franchisee of DX Network Services Ltd which has agreed with you to carry your consignment and “us” and “our” where used in these conditions shall be read in a manner consistent with this definition. Where the question of limitation of liability is concerned, such terms include our employees, agents, officers and contractors.

“**Working Day**” excludes Saturdays, Sundays and statutory public holidays in the United Kingdom or such country as a consignment is to be delivered to.

“**You**” means the person, company or firm which has requested us to carry a consignment either itself or through its servants or agents.

2. FORMATION OF CONTRACT

The contract between the Customer and DX comprises the Contract rate Proposal setting out the commercial terms (“**Service Agreement**”), the relevant service guide published on DX’s website from time to time (“**Service Guide**”), these Conditions and any other documents referred to in any of them (the “**Contract**”). The Contract is formed when the Service Agreement is signed by both parties’ authorised representatives and shall come into force on the start date identified in the Service Agreement. DX is not a common carrier and accepts Consignments only on the terms of the Contract to the exclusion of any terms issued by the Customer.

3. PARTIES AND SUBCONTRACTING

We undertake to use our reasonable endeavours to ensure the safe and prompt delivery of your consignment for which purpose we may employ a subcontractor. Any subcontractor and our servants and our agents are entitled to the protection of the terms of this contract including limitations on liability.

4. PACKAGING AND LABELLING

You warrant that your consignment will be properly described, marked, addressed, labelled and packaged to withstand the normal rigours of transport and we agree to carry it with proper skill and care.

When goods are delivered it is the receiver’s duty to check them. In the absence of any written notification of damage or loss being entered onto the consignment note or hand-held device at the time of delivery it will be presumed that the consignment has been delivered intact.

5. CARRIAGE

Our responsibility for your consignment continues from the time the consignment is loaded on our vehicle until we tender the consignment (not unloaded) at the place you

have requested us to deliver between the hours of 7am and 6pm on any working day.

When deliveries take place at a residential address you agree that we may leave the consignment at a neighbouring address and undertake to obtain a signature from a person present at that address acknowledging receipt of the goods.

6. CHARGES

When not paid in advance our charges in relation to any consignment shall be payable to us on collection or receipt of each and any consignment and you shall remain primarily liable for those charges without prejudice.

We shall be entitled to payment of our charges without withholding of payment or set-off in relation to any claim or counterclaim you may have in relation to the carriage of the consignment.

We shall be entitled to charge interest at 4% above the variable base lending rate of Barclays Bank PLC on any sums invoiced but unpaid within 14 days.

Our charges are based on the gross weight of each consignment and, if such weight is greater than that declared by you on the consignment note, we shall be entitled to charge by reference to the actual gross weight of the consignment.

Where the volume of any consignment exceeds 5 cubic metres per metric tonne our charge shall be computed by applying the tonnage rate to each measurement of 5 cubic metres or part thereof.

Deliveries to docks, wharves and container bases will be accepted at our discretion and will be subject to an additional surcharge.

A surcharge will be incurred for delivery to any consignee who requires prior booking in of deliveries. Our charges are payable at the service level applicable to the time of the delivery slot available at the consignee’s premises. Where a lower service level has been requested we reserve the right to apply the charge appropriate to the service level at the time of delivery.

Where delay is caused because a consignee is unable to accept delivery or because you fail to facilitate collection at a pre-booked time we reserve the right to impose a reasonable surcharge in respect of the delay to our vehicle.

We reserve the right to charge any auxiliary charges which may be applicable to deliveries or collections such as (by way of example and not limitation) agents’ costs.

We reserve the right to charge re delivery charges in the event the consignment cannot be delivered at the first attempt for reasons outside our control.

7. SERVICE GUARANTEE

We guarantee to deliver any consignment to destination throughout the UK mainland, with the exception of those postcodes listed in our service guide as non-guaranteed delivery service areas. If we fail in this, you will be entitled to a refund of our charges in respect of the delivery of the consignment or part thereof which was not delivered within the agreed period, limited to the difference between the selected tariff and the tariff appropriate to the period in which delivery was actually achieved.

This refund of carriage charge is not applicable and will not be payable:

where the consignment is to be delivered to a residential address;

where you have failed to provide a full and accurate address including postcode;

where a failure to deliver timeously is caused by a factor beyond our control including but not limited to adverse weather conditions, industrial dispute, cancelled sailings or flights, civil or military disorder, delays in customs clearance or the exercise by any person of a lien over the consignment or carrying vehicle.

8. LIMITATIONS OF LIABILITY

In respect of any consignment, a delivery receipt signed by, or on behalf of the consignee shall be conclusive evidence of delivery of the consignment in good order and condition, save to the extent that any damage or discrepancy is noted on the receipt and accordingly no claims shall be brought in respect of the consignment for loss or damage not noted.

Unless we have specifically agreed to carry such consignment in writing, we shall not be liable for loss or damage howsoever caused and whether or not caused by our negligence to a consignment comprised of or including bullion, money, securities, stamps, furs, jewellery, precious metals, precious stones, glass, china and ceramics, objet d’art, antiques, wines, spirits, tobacco, cigarettes, watches, living creatures, perishable goods, liquids and paints. We may require you to agree to an additional charge in respect of the carriage of any such items.

We shall have no liability for loss or damage however arising and whether or not caused by our negligence to any consignment whatsoever we agree to carry on the services designated in our service guide (available on request) as ‘Carriage Forwards’, ‘Carriage Inwards’ and ‘Carriage Transfer’ or for any consignment whatsoever stated elsewhere in these conditions to be carried at owners risk.

We shall not be liable to the Customer if DX is prevented or delayed from performing the Services by a circumstance beyond DX’s control (a “**Force Majeure Event**”), including industrial disputes, accidents, obstruction of highways, mechanical breakdown or traffic congestion. If a Force Majeure Event occurs DX may: (i) suspend performance of the Services for its duration; and/or (ii) return to the Customer any Consignment in the possession of DX without limiting the Customer’s obligation to make payment of any charges.

Subject to these conditions our financial liability in respect of any one consignment shall, in respect of our negligence or howsoever established, be limited to a sum we calculate by multiplying each kilo of the consignment lost or damaged by £10 subject to a maximum limit of £2,500 or, where a consignment is to be consigned in a Docpak satchel, our financial liability will not be weight related but is limited to a maximum of £150 per consignment. In the event of loss or damage to part of a consignment the calculation shall be based upon the weight of the part of the consignment lost or damaged whether or not the loss or damage to that part affects the value of the other part of the

- consignment.
- 8.6 In all cases our liability shall carry an excess of £25 in respect of any one claim and by accepting these conditions you agree that that sum will not be recoverable.
- 8.7 In any event our liability shall not exceed the lower of: cost price of the consignment, the cost of repair or where part of a consignment is lost or damaged the cost price of that part of it which is lost or damaged whether or not the loss or damage to that part affects the value of the other part of the consignment. For the avoidance of doubt cost price excludes a profit element in the price and/or consequential loss including loss of profit. We shall be entitled to require proof of the cost price of any consignment or part thereof damaged. In the absence of proof, we may determine costs by deducting forty per cent (40%) from the sales invoice value.
- 8.8 We shall have no liability for loss or damage arising, whether or not caused by our negligence, in respect of: any indirect or consequential loss, loss of profit, market or reputation.
- 8.9 In respect of any loss, direct or indirect as a consequence of delay, compensation shall not exceed the amount of the carriage charges in respect of the consignment or your proved loss whichever is the smaller.

9 CLAIMS AND CLAIMS PROCEDURE

- We shall not be liable for any loss, damage or delay caused (whether or not by our negligence) to any consignment in the following circumstances:
- 9.1 Where any loss, damage, misdelivery or delay to a consignment or part of a consignment has not been the subject of both of the following:
- 9.1.1 A written advice to us in the form of a consignment investigation request which we will provide in response to being notified of alleged loss or damage but which must be completed by you and which we must receive within twenty-one days of the commencement of carriage;
- 9.1.2 A completed Goods in Transit claim form received by us (including all of the information and documentation referred to at Clause 9.3 of these conditions) within twenty-one days of its issue to you.
- 9.2 In the absence of a claim being made within six months after the commencement of carriage the consignment shall be conclusively presumed to have been properly delivered and we may destroy the consignment note and other delivery documentation.
- 9.3 For the purposes of clauses 9.1 and 9.2 of these conditions a claim shall not be paid unless and until we receive full supporting documentation comprising at least a completed claim on our standard form, a commercial invoice in respect of the consignment and proof of the cost price and/or the cost of repair of the consignment.
- 9.5 The Customer shall in the case of damage claims make the damaged Consignment available for inspection by DX within seven (7) days after DX's request.
- 9.6 If in connection with any claim for damage to a Consignment DX makes any payment or credit to the Customer, DX may dispose of the relevant Consignment as DX sees fit.
- 9.7 DX's total aggregate liability during any period of twelve (12) months beginning on the start date or an anniversary of the Contract shall not exceed the sums paid to DX during that period.

10 INDEMNITY TO US

The Customer shall indemnify DX against any and all loss, damages, costs, and expenses which DX incurs arising from: (i) the breach, negligence or wrongful acts or omissions of any Consignee; and (ii) claims made against DX in relation to any Consignment by any third party.

11 DATA PROTECTION

- 11.1 The Customer provides Personal Data (as defined in the Data Protection Act 1998, as amended or replaced by General Data Protection Regulation 2016 and the Data Protection Act 2018 ("Data Protection Law")) of Consignees and other individuals to the DX in order for DX to provide the Services. For the purpose of this clause "Data Processor", "Data Controller" and "Personal Data" shall have the same meaning as defined in Annex 1 – Data Protection which forms part of this Contract and can be accessed on our website at: www.dxdelivery.com/legal. DX shall be a Data Processor and the Customer shall be a Data Controller. Each party shall agree to a further data protection agreement if required.
- 11.2 In relation to any Personal Data provided by the Customer to DX: (i) The Customer agrees to comply with its obligations as a Data Controller under Data Protection Law; (ii) The Customer has obtained any necessary consents from the receiver of the goods as required under the Data Protection Law for use of that Personal Data by DX to provide the Services; and (iii) The Customer has made the Consignee aware that such details may be used by DX to enhance the delivery process for the Consignee and DX will use notifications for that purpose.
- 11.3 DX may share the personal data with its third party sub-processors for the purpose of providing or improving the Services in accordance with Annex 1 – Data Protection.
- 11.4 DX shall not be considered a Data Controller or Data Processor for any personal and/or sensitive data that is contained within a delivery Item.

12 GENERAL LIEN

We have a general lien against all and any consignments, including without limitation consignments owned by you or by any person who is authorising you to agree these conditions for any and all monies whatever due to us from you. Consignments subject to such lien shall be subject to our powers of sale.

13 GOVERNING LAW

These conditions and each and every contract made under these conditions shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the English courts.

W A Rainbow & Sons Limited
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