

## **TERMS AND CONDITIONS OF CARRIAGE XDP LIMITED**

XDP Limited (hereinafter referred to as 'The Carrier') is not a common Carrier and accepts goods for carriage only on that condition and the conditions set out below.

No servant or agent of the Carrier is permitted to alter or vary these conditions in any way unless expressly authorised to do so by the signature of 2 Directors of the Carrier.

### **1. Definitions**

In these Conditions:

'Trader' means the customer who contracts for the services of the Carrier.

'Contract' means the contract between the Trader and the Carrier.

'Consignment' means pallet, parcel container, length or drum or any number of items or packages or containers sent at one time in one load by or for the Trader from one address to another address.

'Consignee' is the entity who is financially responsible for the receipt of a shipment (Delivery)

'Dangerous Goods' means:

(a) Goods which are specified in the special classification of dangerous goods issued by the EEC Committee on inland transport ADR document

(b) Goods which although not included in (a) above are of a similar kind.

'Excluded Goods' means:

(a) Glass/Ceramics/Liquids/Antiques/Wines/Spirits/Tobacco/Perishable Goods/Car Body Parts

(b) Any other goods made of a substance of similar properties to glass.

### **2. Parties and Sub-Contracting**

(1) The Trader warrants that he is either the owner of the goods in any Consignment or is authorised by such owner to accept these conditions on such owner's behalf.

(2) The Carrier and any other Carrier employed by the Carrier may employ the services of any other further Carrier for the purpose of fulfilling the Contract in whole or in part and the name of every such other Carrier shall be provided to the Trader on request.

(3) The Carrier contracts for itself and as agent of any trustee for its servants and agents and all other Carriers referred to in (2) above and such other Carriers servants every reference in conditions 3-18 inclusive hereof to 'The Carrier' shall be deemed to include every such other Carrier, servant and agent with the intention that they shall have the benefit of the Contract and collectively and together with the Carrier be under no greater liability to the Trader or any other party than is the Carrier hereunder.

### **3. Dangerous Goods**

If the Carrier agrees to accept dangerous goods in limited quantities for carriage such goods must be accompanied by a full declaration of their nature and contents and be properly and safely packed and labelled in accordance with any statutory regulations for the time being in force for carriage by road, air and sea including UN numbers. The Carrier does not accept any dangerous goods that specify any legal requirement for training by drivers, servants or agents.

### **4. Excluded Goods**

(1) The Trader may tender for delivery and the Carrier shall not be bound to deliver excluded goods.

(2) If the Carrier agrees to deliver any excluded goods or if undisclosed excluded goods are tendered to the Carrier for delivery the Trader shall be responsible for all loss or damage whether physical, economic or consequential caused to or by the excluded goods while in the possession of the Carrier and any fines or penalties which may be incurred.

### **5. Loading and Unloading**

The Trader must have adequate facilities to load the Carriers vehicle in a safe manner. It is the Trader's responsibility to ensure the Consignee has suitable access for the Carriers vehicle. Any damage caused by the Carriers vehicle due to unsuitable access will be the Traders responsibility. The Carrier is able to use his discretion to leave goods unsigned for at a Consignee's address (not to be left at a business address), unless the Consignment is specifically marked signature required. Any specific delivery equipment required by the Carrier to effect safe delivery must be agreed before despatch and charged for.

### **6. Collection and Conditions**

The Carriers driver is unable to determine the conditions of goods collected for carriage. All goods should be packed well enough to travel through a manual sortation system. The Carriers driver is able to give a guide to the amount of goods he collects, however, only when goods are scanned into the Carriers warehouse can the Carrier confirm receipt.

## **7. Transit**

Transit commences when the Carrier takes possession of the Traders goods. Transit shall end when the Carrier delivers the goods to the Consignee's address. Or in the case of domestic deliveries, the goods are left with a neighbour or at the delivery address in a place the driver considers suitable. Where the Carrier obtains a signature, this will be retained for a minimum of 3 months. After 3 months a charge will be levied for POD's. When the Carrier is unable to effect delivery for reasons beyond his control, the goods will be returned to the Trader at the Traders expense.

## **8. Carriers Charges**

- (1) All invoices raised by the Carrier are subject to settlement in full by direct debit within 14 days unless a monthly account has been agreed and in that instance accounts are subject to settlement in full on or by the 30th day of the month following the date of invoice. Where payment is not received by that date the Carrier reserves the right to impose a surcharge on all outstanding balances at the rate of 2.5% per month or £10.00 per month, whichever is the greater. The surcharge shall be payable in respect of a period of less than one month as if such period were in fact one month.
- (2) When the contract is terminated by either party for any reason whatsoever, then all monies become due and payable within 14 days of said termination.
- (3) All sums shall be paid to the Carrier immediately when due without deduction and payment shall not be withheld or deferred on account of any claim, counterclaim or set-off. Credits cannot be raised against errors made by the Trader, whether by incorrect details input on carriers system or inaccurate file sent by Trader, this includes weight, postcode and service error.
- (4) The Carrier's charges shall be payable by the Trader without prejudice to the Carrier's rights against the Consignee or any other person.
- (5) Except where a quotation states otherwise, all quotations based on tonnage rate shall apply to the gross weight unless:
  - (a) The goods exceed 6 cubic metres in measurement per tonne, in which case the tonnage rate shall be of 6 cubic metres per tonne or any part thereof, for shipments to the UK mainland. For shipments offshore the tonnage rate shall be 3 cubic metres per tonne or any part thereof.
  - (b) The size or shape of a Consignment necessitates the use of a vehicle of greater carrying capacity than the weight of the Consignment would otherwise require, in which case the tonnage rate shall be computed upon and apply to the carrying capacity of such vehicle as is reasonably required.
- (6) Charges shall be payable on the expiry of any time limit previously stipulated and the Carrier shall be entitled to interest at the rate of 2.5% per month or £10 per month whichever is greater.
- (7) No COD (cash or cheque on delivery) facility is available.
- (8) The Carrier retains the right to introduce any new surcharges or alter any existing surcharges, even when a client has a written quote / agreement that has not expired.
- (8a) Where the Carrier has entered into a contract for a minimum of 12 months or longer, with a noted minimum spend, should the client fail to give the prescribed notice period, the Carrier will have the right to invoice in full the minimum spend amount for notice not given. Where a client gives the appropriate notice, the minimum spend must be maintained, any shortfall during this period will be invoiced to the client from the carrier.

## **9. Liability for Loss and Damage**

- (1) The Trader shall be deemed to have elected to accept the terms set out in (2) of this condition.
- (2) Subject to these conditions the Carrier shall not be liable for:
  - (I) Loss or mis-delivery of livestock, bullion, money, securities, stamps, precious metals or precious stones only if:
    - (a) The Carrier has specifically agreed in writing to carry any such items, and
    - (b) The Trader has agreed in writing to reimburse the Carrier in respect of all additional costs which result from the carrying of the said items and
  - (ii) Any loss or mis-delivery of or damage to any other goods occasioned during transit.
  - (iii) The Carrier cannot accept liability for the following:
    - (a) An act of God;
    - (b) Any consequences of war, invasion, act of foreign enemy, hostilities (whether war or not), civil war, rebellion, insurrection, military or usurped power or confiscation requisition, or destruction of or damage to property by or under the order of any government or public or local authority.
    - (c) Seizure, or forfeiture under legal process;
    - (d) Error, act, omission, misstatement or misrepresentation by the trader or other owner of the goods or by the servants or agents of either of them;

- (e) Inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the goods;
  - (f) Insufficient or improper packing / goods being clearly signed for in good condition, goods being signed for as unchecked;
  - (g) Insufficient or improper labelling or addressing or incorrect postcode or no postcode;
  - (h) Riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;
  - (i) Consignee not taking or accepting delivery within a reasonable time after the consignment has been tendered.
  - (j) Damage caused to property by any Agent/ Subcontractor/Franchisee whilst attempting delivery is the sole responsibility of the Delivery Partner/Subcontractor/Franchisee.
- (3) The Carrier shall not in any circumstances be liable for the loss of or damage to goods after transit of such goods is deemed to have ended within the meaning of condition 7 hereof, whether or not caused or contributed to directly or indirectly by act, omission, neglect, default or otherwise wrong doing on the part of the Carrier.
- (4) Where service or weight is under declared XDP has the right to amend the consignment and charge accordingly. Where this is a reoccurring issue XDP will notify the sender via the online system and letter on 3 occasions, on the third occasion a £50 surcharge will be added to the latest invoice, and on every occasion this occurs thereafter. Should this continue to happen it will be at the discretion of XDP to close the account.

## 10. Fraud

The Carrier shall not in any circumstances be liable in respect of a consignment where there has been fraud on the part of the Trader or the owner of the goods or the servants or agents of either in respect of that consignment, unless the fraud has been contributed by the complicity of the Carrier or of any servant of the Carrier acting in the course of his employment.

## 11. Limitation of Liability

- (1) Except as otherwise provided in these conditions the liability of the Carrier in respect of loss or mis-delivery or damage to goods for delivery to destinations outside the United Kingdom shall in all circumstances be limited to £10 per kilogram, with a maximum liability of £100.
- (2) Except as otherwise provided in these conditions the liability of the Carrier in respect of loss or mis-delivery or damage to goods for delivery within the United Kingdom shall in all circumstances be limited as follows:
- (a) Where loss, mis-delivery or damage, however sustained, is in respect of the whole of the consignment, to a sum calculated as follows:
    - (i) For Consignments despatched on an overnight service for delivery in mainland UK liability is calculated at a rate of £10 per kilo up to a maximum of £1,500 per Consignment based on either proven cost of goods or tonnage calculation whichever is the lowest. Subject to an excess of £25 per claim.
    - (ii) For Consignments despatched on all other services liability is calculated at a rate of £5 per kilo with a maximum of £750 per Consignment based on either proven cost of goods or tonnage calculation whichever is the lowest. Subject to an excess of £25 per claim.
    - (iii) The Trader, where goods are being delivered in mainland UK and on an overnight service will have the option to select additional insurance at a cost of £5 per £1,000 insured up to a maximum of £5,000 providing the trader enters this on the Carriers despatch system or gets a confirmed email from the Carrier at least 12 hours before despatch.
  - (b) Where a claim relates only to part of a Consignment, then the lower of the actual weight and the average weight of the goods in the Consignment (calculated as total weight of Consignment divided by number of pieces in the Consignment and divide cost by number of pieces) is used to calculate the liability in accordance with 2(a) of this Condition.
- Provided that:
- (i) Nothing in this condition shall limit the liability of the Carrier to less than the sum of £10.
  - (ii) The Carrier shall be entitled to require proof of the cost of the whole of the Consignment and of any other part thereof lost, mis-delivered or damaged.
  - (3) XDP will not be liable whether by way of indemnity or for breach of contract or in tort (including but not limited to negligence) for loss of contracts, loss of use, loss of profits, or for any other economic loss".
  - (4) In the event the Carrier is late with a **timed** delivery by more than 30 minutes in delivering a Consignment, the Trader will be credited with an amount equal to the difference between the service requested and the service actually provided. The Customer must go online and submit the claim for late delivery within 7 days of invoice date. A maximum credit for late deliveries will be 50% of carriage charge. XDP cannot guarantee overnight deliveries during peak periods (Easter week, the week following New Year's Day, and any other week following a Bank Holiday, and will not credit late deliveries during these peak time periods. Domestic deliveries are not guaranteed for next working day **and will not be credited**.
  - (a) Reverse or 3rd party collections (collections not from the usual trading address) have no guaranteed transit time.

(5) For goods collected from any other address than the Traders usual place of business, insurance cover will be a maximum of £25.00, claims for damages from any address other than the Traders usual place of business, will not be accepted.

(6) Any claims for damaged or part delivered goods can only be entertained if the delivery note is marked accordingly at the time of delivery. Where POD has been signed damaged and claim logged, we will request photos of damage with labels clearly showing.

(7) Any claim paid for damaged goods results in the said goods becoming the property of the Carrier.

(8) The Trader can elect to either have his carriage charge returned or make an insurance claim - he is unable to claim both.

(9) Where a Consignment is undeclared in weight or an incorrect service is selected and a loss or damage claim is submitted, the Carrier has the right to credit at their discretion.

(10) Where we deem that any 1 item is unsuitable to travel through the 1Man parcel service (due to size or weight), we have the right to upgrade to the 2man service and charge accordingly.

(11) All appeals for claims will only be investigated if received in letter form – we will not accept emails.

(12) Door to door delivery on overnight service means delivery only to the front door. 2man delivery is to room of choice up one flight of stairs only unless there is a lift.

## **12. Indemnity to the Carrier**

The Trader shall indemnify the Carrier against:

(1) All consequences suffered by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, costs, expenses and loss of or damage to the carrying vehicle and to other goods carried). Of any error, omission, misstatement or misrepresentation by the Trader or other owner of the goods or fraud as in condition 10.

(2) All claims and demands whatever by whoever made in excess of the liability of the Carrier under these conditions:

(3) All losses suffered from any claims made against the Carrier in consequence of loss or damage to property caused by or arising out of the carriage by the Carrier of dangerous goods whether or not declared by the Trader as such:

(4) All claims made upon the Carrier by HM Revenue & Customs in respect of dutiable goods consigned in bond, whether or not transit has ended or been suspended.

(5) All claims or demands for any damage to property or personal injury as a result of the carrier being requested to enter the consignees' property, must be dealt with by the trader.

## **13. Time Limits for Claims**

The Carrier shall not be liable for:

(1) Loss from a parcel, package or container or from an unpacked Consignment or for damage to a Consignment unless he is advised thereof in writing other than upon a Consignment note or delivery document within three days, and the claim is made via the online system within 33 days after date of despatch

(2) Loss, mis-delivery or non-delivery of the whole of a Consignment or of any separate parcel, package or container forming part of a Consignment unless he is advised of the loss, mis-delivery or non-delivery in writing via the online system within 33 days after the commencement of transit. If a claim has not been resolved within 12 months, the Carrier will strike the claim out.

## **14. General Lien**

The Carrier shall have a general lien against the owner of the goods for monies due from the Trader or such other owner to the Carrier. If any such lien is not satisfied within a reasonable time the Carrier may at his absolute discretion sell the goods, or part thereof, as agent for the owner and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of the goods and shall, upon accounting to the Trader for any balance remaining, be discharged from all liability whatever, in respect of the goods.

## **15. Unreasonable Detention**

The Trader shall be liable for the cost of unreasonable detention of any vehicle, trailer or container but the rights of the Carrier against any other person in respect thereof shall remain unaffected.

## **16. Computation of Time**

In the computation of time where any period provided by these conditions is seven days or less, Saturdays, Sundays and all statutory public holidays shall be excluded.

## **17. Impossibility of Performance**

The Carrier shall be relieved of its obligation to perform the contract to the extent that the performance thereof is prevented by failure of the Trader, fire, weather conditions, industrial dispute, labour disturbance, major road closures or causes beyond the reasonable control of the Carrier.

**18. Occasional Variations to Terms and Conditions**

Should an occasional variation in Terms and Conditions occur, any such occasional variance is not to be regarded a permanent agreed variation in Terms and Conditions.

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Terms & Conditions 19/02/2018

