

PARTIES AND INTERPRETATION

1 These Conditions set out the basis on which DX Network Services Limited (company number 05026914) whose registered office is at Ditton Park, Riding Court Road, Datchet, SL3 9GL (“DX”) transports goods collected by DX (a “Consignment”) for delivery to a single address under a single reference number to be delivered to a recipient or any other person at the delivery address (“Recipient”). The Customer should note the limitations and exclusions of DX’s liability and arrange insurance as necessary. In these Conditions the words “including”, “in particular” and similar shall be construed as illustrative and not exhaustive.

2 DX is not and does not contract as a common carrier.

3 The contract between the Customer and DX comprises the Service Agreement, 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 and shall come into force on the start date identified in the Service Agreement. Any conflicts shall be resolved in the order of the Service Agreement and any other document referred to and finally these Conditions. DX accepts Consignments for this SameDay Service only on the terms of the Contract to the exclusion of any terms issued by the Customer or any trade body or association, course of dealing or any other contracts the Customer may have entered into with DX at any time.

SAMEDAY SERVICE

4 The SameDay Service shall consist of a collection from and a delivery to the address designated by the Customer of a Consignment (“the Service”). The booking request system is available from 6am to 6pm Monday to Friday for a Customer to book the Service with DX. The Customer can choose a collection time of either within 60 minutes of a successful booking request for the Service being received by DX or at a scheduled time. Any bookings made by the Customer after 5pm on the booking day may result in physical delivery the following day based on travel distances. Where the Consignment requires a specific vehicle, such as an HGV for the Service or contains Dangerous Goods (as defined by law), where DX agrees to transport the Consignment, DX shall agree in writing the Delivery time and the Charges in respect of the same.

5 DX SameDay shall only collect Consignments from and deliver Consignments to addresses in England, Wales and Scotland. Any bookings made by the Customer for deliveries to Northern Ireland or the Republic of Ireland shall be subject to DX’s Brexit Annex terms published from time to time on DX’s website at www.dxdelivery.com and are incorporated by reference into these Conditions.

6 DX shall use reasonable endeavours to provide the Service in accordance with the Contract, but any such timescales shall be estimates only and time shall not be of the essence.

7 DX shall use reasonable endeavours to make the DX SameDay booking system available to the Customer but shall have no liability should the DX SameDay booking system not be available for any reason.

8 The Customer must ensure that DX or its subcontractor has access to any agreed delivery point immediately on arrival of the delivery vehicle at the delivery address to avoid waiting charges as detailed in the Service Agreement.

9 Should DX or its subcontractor be delayed at the collection address due to the Consignment not being available at the time that DX or the subcontractor arrives, DX reserves the right to levy a waiting charge after a waiting period of 29 minutes after the agreed collection time, as set out on the Service Agreement and the Customer agrees to pay such waiting charge in addition to the SameDay Service charges set out in the Service Agreement.

10 On delivery of the Consignment, the Recipient or other person who accepts the delivery shall be required to provide an electronic signature, or a photograph evidencing that delivery has been completed to the delivery address and either shall be taken as proof of delivery. Delivery shall be deemed to have been completed when a Consignment is accepted at the delivery address, first presented to the delivery address but delivery has failed for any reason, or the delivery is accepted at an alternative delivery address where DX has received such instructions from the Customer.

11 In the event that the Recipient of the Consignment is not available at the time DX or its subcontractor arrives to deliver it, the Customer shall not be entitled to a refund of any Charges.

12 Delivery of the Consignment shall be deemed complete upon passing of control of the Consignment to the Recipient at the delivery address. Where agreed with the Customer, deliveries to a residential address shall also be deemed complete if delivered to neighbouring premises.

13 DX may in its sole discretion refuse to accept for collection and delivery any Consignments, including any that are not securely or adequately packaged. DX may open, inspect, and/or refuse to carry any item that it believes may comprise non approved Excluded Goods as defined on DX’s website from time to time. If such items: (i) comprise Excluded Goods the Customer shall collect them from DX within a reasonable time; or (ii) do not comprise those Excluded Goods, DX shall repack them and deliver the same at the earliest available opportunity. Additional charges may apply. DX shall not be responsible for any delay arising as a result of the provisions set out in this clause.

14 Risk in each Consignment shall rest with DX from collection by DX or by its subcontractor signing a manifest relating to that Consignment, in either case until completion of delivery pursuant to clause 12.

15 Unless otherwise specified in the Contract, delivery days refer to working days and excludes weekends, public and local holidays.

16 If required by law, DX may pass any Consignment to the relevant authorities without notice.

17 DX may provide property to the Customer for use in connection with the Service. Title to any such property shall unless otherwise agreed in writing remain with DX at all times. The Customer shall keep it in good condition and return it to DX on request.

18 DX assumes that the Customer’s data transfer is a true record of despatches and as such will invoice the Consignment. If the Consignment is then physically despatched to DX at a later date on the same consignment number, DX may then invoice the Consignment again to reflect where its delivery resource has been incurred twice.

UNCOLLECTED CONSIGNMENTS

19 If DX or its subcontractor is unable to make a collection of a Consignment through no fault of its own, the Customer shall pay the Charges for the Service as set out in the Service Agreement.

UNDELIVERED CONSIGNMENTS

20 If DX or its subcontractor has failed to deliver a Consignment due to any act or omission of the Customer or Recipient or due to any Force Majeure Event, then DX shall be deemed to have completed delivery for the purposes of reporting delivery metrics and shall be entitled to its Charges as set out in the Service Agreement.

21 Where agreed with the Customer in writing, DX shall attempt redelivery of any undelivered Consignment, in default of which the Customer shall collect the Consignment at its own cost. DX reserves the right to charge for the undelivered Consignment.

22 If DX has been unable to deliver a Consignment and has been unable to agree a reasonable course of action with the Customer, DX shall hold the Consignment at the Customer’s risk and cost for collection by the Customer. If such a Consignment is held by DX and is not claimed by the Customer within a reasonable time, being no longer than 7 days, DX shall be entitled to deal with it as it considers fit including its disposal and shall have no liability to the Customer in respect of the same.

23 Subject to clauses 20 and 22, if DX fails to complete delivery in the timescale agreed with the Customer, then provided the Customer notifies DX of any such failure and requests a remedy within 24 hours of the Delivery, DX shall, at its option apply a 10% reduction, and this shall be the Customer’s exclusive remedy for any such failure.

CUSTOMER’S OBLIGATIONS

24 The Customer must ensure that:

(i) the Consignments comply with the requirements and traffic profile set out in the Service Agreement and no Consignment contains Excluded Goods as defined on DX’s website from time to time (“Excluded Goods”) unless expressly agreed in writing by DX;

(ii) where Consignments contains dangerous goods (defined by law and by being allocated a UN number) the correct notification and handling instructions must be provided upon booking;

(iii) all items are packaged and labelled appropriately for transport in accordance with DX Packaging and Labelling Guidelines available on the DX website. Where Dangerous Goods are approved by DX for collection and delivery, the Customer is responsible for ensuring the appropriate packaging and labelling are in place in accordance with applicable law;

(iv) each Consignment has a complete, accurate address, and tracking reference;

(v) accurate weights and dimensions are entered on to the applicable system for each Consignment;

(vi) the Customer’s obligations in respect of any minimum age requirements under applicable laws are met;

(vii) all Consignments are ready for collection by DX at the applicable collection time and loaded by any applicable vehicle departure time. The Customer must ensure that DX or its subcontractor has access to any agreed delivery point immediately on arrival of the delivery vehicle at the delivery address (or at its return address). Delivery to an agreed address does not include delivery to a specific person unless specified upon booking.

(viii) it owns each Consignment or is authorised by its owner to send it in accordance with the Contract;

(ix) it ensures the proper loading of each Consignment at the collection address immediately upon the arrival of the collection vehicle, using its own plant and equipment and in accordance with applicable law;

(x) all Consignments are adequately insured by the Customer taking into consideration the limitation of liability of DX as provided for under this Contract. The Customer agrees to irrevocably waive its rights and its insurer’s rights of subrogation under this Agreement.

CHARGES & PAYMENT

25 The Charges payable by the Customer for the Services shall be based on the prices set out in the Service Agreement which forms part of this Contract and the account profile. All charges and surcharges are subject to VAT where applicable.

26 DX may vary the Charges by written notice at any time for any reason with retrospective and prospective effect, if DX’s costs of providing the Service have increased.

27 DX shall charge surcharges including any toll charges where applicable as set out in the Service Agreement. DX reserves the right to charge any additional surcharges as a result of any changes in the law.

28 DX may recover from the Customer any sums or costs paid out or incurred by DX including but not limited to customs charges, duty or tax relating to any Consignment.

29 DX shall review the Charges and issue an updated Service Agreement at appropriate intervals.

30 DX shall invoice the Customer weekly in arrears for the Charges.

31 The Customer shall make all payments due to DX in pounds sterling by the method and days outlined in the Service Agreement.

32 Any query relating to any invoice must be notified to the DX Credit Control Department within seven (7) days of the date of invoice after which time the Customer is deemed to agree that the invoice is valid and payable in full.

33 The Customer may not withhold payment of any amount due to DX by way of set-off or counterclaim. DX may set-off any amount owing to it from the Customer against any amount owed by DX to the Customer.

34 If the Customer fails to pay any amount due to DX by the due date, then without limiting DX’s other rights and

remedies: (i) DX may claim interest and costs under the Late Payment of Commercial Debts (Interest) Act 1998; (ii) DX may suspend performance of the Service until it is paid; and (iii) DX may exercise a general right of lien and hold any Consignment until all outstanding sums are paid. If any sums are not paid within fourteen (14) days after their due date, then DX may without further notice to the Customer sell any Consignment under its control and apply the proceeds in full or partial satisfaction of the sums due. Any surplus remaining after satisfaction of all sums and DX’s reasonable costs shall be repayable to the Customer on demand.

35 DX may at any time by written notice withdraw or alter any credit allowed to the Customer without providing a reason.

CLAIMS AND CLAIMS PROCEDURE

36 DX shall not be liable for any loss of or damage to any Consignment unless the Customer notifies DX within 24 hours of the agreed delivery time of any damage, partial loss or total loss of a Consignment.

LIMITATIONS OF LIABILITY

37 DX shall not be liable for damage to any Consignment which is delivered to a residential address.

38 DX shall not be liable for the first £50 of any claim for loss of or damage to any Consignment.

39 DX’s liability in connection with any damage to or loss of any Consignment or part thereof shall not exceed the lower of: (i) the costs of repair; (ii) the manufacturing cost; or (iii) a sum based on the lower of actual or declared unpacked weight of the Consignment or pro rata for partial loss or damage of £10 per kilo up to the cost value of the Consignment. The Customer shall provide proof of costs at DX’s request. In the absence of proof, DX may determine costs by deducting forty per cent (40%) from the sales value. In the event that DX accepts a claim for damage to a Consignment, DX shall be entitled to retain the Consignment and dispose of it as it chooses, and DX shall have no liability in respect of the same. The maximum value of any claim is limited to £500.

40 DX shall not be liable for any non-performance, or for loss of or damage to a Consignment, if:

(i) arising wholly or partly from any breach of the Contract, act or omission of the Customer or Recipient;

(ii) caused by inherent wastage or defects, or natural deterioration in the Consignment;

(iii) the Consignment contains non-approved Excluded Goods/Dangerous Goods;

(iv) a handheld device shows that a delivery note has been completed by the Recipient;

(v) the Recipient fails to accept delivery;

(vi) the Consignment is correctly delivered to the delivery address and a person misrepresents their authority to receive it; or

(vii) the Consignment is lost but is subsequently found and returned.

41 DX 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 adverse weather conditions, crisis, pandemic, epidemic, acts of Government, changes in the law or changes to regulations, 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. The Customer acknowledges that at times of emergency or Force Majeure DX may be prevented from operating normal practices such as requiring signatures. DX shall not be liable for any delay, loss or damage caused by any change in process required to operate safely in such circumstances.

42 DX shall not be liable to the Customer for any:

(i) loss, damage, costs or expenses incurred by the Customer as a result of third party claims;

(ii) loss of or corruption to data;

(iii) loss of profits, income or business opportunity;

(iv) loss of anticipated savings;

(v) injury to reputation or loss of goodwill;

(vi) loss of production; or

(vii) indirect or consequential loss, damage, costs or expenses.

43 DX’s total aggregate liability during any period of twelve (12) months beginning on the start date or an anniversary of the Contract shall be limited to the lesser of £10,000 or the total Charges (excluding VAT) paid by the Customer in respect of that Contract year.

44 Nothing in the Contract shall operate to limit or exclude DX’s liability any matter for which liability cannot lawfully be limited or excluded.

45 References to DX’s liability in this clause means liability under or in connection with the Contract, whether in contract, tort (including negligence or breach of statutory duty) or otherwise.

INDEMNITIES

46 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 Recipient;

(ii) claims made against DX in relation to any Consignment by any third party;

(iii) in relation to any breach of applicable laws or

(iv) any acts or omissions of the Customer.

TERMINATION

47 Either party may terminate the Contract and/or suspend performance of the whole or any part of the Services if the other party:

(i) is in material breach of any obligation under the Contract and such breach shall have continued for thirty (30) days after receiving written notice from the other party of the

breach, such written notice to be sent within fourteen (14) days of the date of such breach; or

(ii) becomes insolvent, resolves to wind up, makes an arrangement with its creditors, goes into administration or receivership or suffers or takes any similar occurrence or action, or is subject to any petition, application or order for any such occurrence or action; or

(iii) does not accept any variations proposed under clause 58.

48 DX may terminate the Contract by (7) days written notice. During such notice period, the Customer shall maintain projected volumes in accordance with the account profile.

49 After termination, DX may within twelve (12) months invoice any charges and surcharges not previously invoiced, and any sums invoiced shall become immediately due.

DATA PROTECTION

50 The Data Protection Annex available on DX’s website from time to time shall apply to this Contract. DX shall be a Data Processor, and the Customer shall be a Data Controller. The parties agree to enter into further data protection agreement(s) required as a result of any change in law or regulation.

GENERAL

51 DX may sub-contract the whole of, or part of its performance of the Services and such sub-contractors will be entitled to the protection of all the terms in this Contract which exclude or limit our liability.

52 The Customer may not assign any part of the Contract without DX’s prior written consent.

53 A notice under the Contract shall be in writing. A notice shall be deemed given:

(i) if sent to DX by email upon receipt at legalandregulatory@dxdelivery.com; or

(ii) if sent to DX by post when delivered to DX’s registered office; or

(iii) if given by DX to the Customer, at the postal and/or email address set out in the service agreement or any substitute email or postal address notified in writing in advance to DX in accordance with these Conditions.

54 If any provision or part-provision of the Contract is invalid, illegal or unenforceable, it shall be severed and the other provisions and part-provisions shall remain in effect.

55 Each member of the DX Group and its contractors shall have the benefit of and may enforce the limitations and exclusions of liability in these Conditions. Otherwise, no third party may enforce any term of the Contract.

56 The Contract is the entire agreement between the parties and supersedes all previous agreements. In entering into the Contract, the Customer does not rely on any representations not set out in the Contract.

57 A waiver of any right or remedy under the Contract is only effective if in writing and shall not affect any other right or remedy.

58 Except as otherwise provided in the Contract, DX may vary the Contract from time to time in writing (including by email) and the revised Conditions shall take effect from the next calendar month following notification to the Customer.

59 The parties shall treat as strictly confidential and not disclose nor use any information received or obtained in connection with the Contract. Notwithstanding the foregoing, disclosure or use of information is permitted if and to the extent: (i) it is required by law, provided the other party is given notice prior to any disclosure (to the extent practicable); (ii) the information becomes publicly available other than as a result of a breach of this Contract; (iii) the information is already in the possession of, or is independently developed by, the recipient; or (iv) the recipient has given prior written approval.

60 If, contrary to the intention of the parties, it is found or alleged at any time that any individual has become an employee of or has rights against DX by virtue of the Regulations or otherwise, the Customer shall indemnify DX for any liabilities arising from or in connection with: (i) the employment or termination of employment of such an individual; or (ii) any actual or alleged breach of any employment laws by either party; should in either case any individual transfer to DX as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (Regulations), as amended from time to time, or claim that they have so transferred.

61 Whilst on a party’s premises, the other party’s personnel shall use reasonable endeavours to comply with the first party’s health, safety, and security policies in force from time to time, which the first party shall make available in advance.

62 Each party shall continue to own its pre-existing intellectual property (“IP”). All IP developed pursuant to the Contract shall be owned by the party creating the same. At either party’s request, the other party shall do any act or execute any document required to ensure such ownership. Neither party shall gain any right, title or interest in the other party’s IP. The Customer hereby, without cost to DX, grants to DX a licence to use any IP in order for Customer to receive and DX to provide the Services. Neither party may use the name or trademark of the other party without that party’s prior written consent.

63 Any rights of audit agreed between the Customer and DX shall be exercised not more than annually, upon not less than 14 days written notice, at the requesting party’s cost and subject to all information security and confidentiality obligations in relation to the relevant data.

64 The parties represent and warrant to each other that they shall throughout the term of the Contract comply with all applicable laws, rules, and regulations. The parties shall comply with all applicable anti-bribery and corruption and anti-money laundering laws, rules, regulations or equivalent and acknowledge that they have a zero-tolerance policy towards bribery and corruption including towards facilitation payments.

65 The Contract and any dispute arising in connection with it shall be governed by and construed in accordance with the law of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.