



# DX Express Conditions of Carriage - October 2021

## 1. PARTIES AND INTERPRETATION

These Conditions set out the basis on which DX Network Services Limited (company number 05026914) trading as "DX Express" or "DXE" whose registered office is at Ditton Park, Riding Court Road, Datchet, SL3 9GL ("DX") transports goods collected by DX or dropped to any DX Depot (a "Package") for delivery to a single address to be delivered to a recipient or any other person at the delivery address ("Recipient"). The Customer as defined in the Service Agreement ("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. FORMATION OF CONTRACT

The contract between the Customer and DX comprises the service agreement setting out the commercial terms ("Service Agreement"), the relevant service guide made available to the Customer in the download area on DX's website or the DX Despatch system from time to time ("Service Guide"), these Conditions, the Annexures, 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, the Service Guide, the Annexures and any other document referred to and finally these Conditions. DX accepts Packages only on the terms of the Contract to the exclusion of any terms issued by the Customer or any trade body or association.

## 3. CUSTOMER'S OBLIGATIONS

The Customer must ensure that: (i) the Packages comply with the requirements and traffic profile set out in the Service Agreement and the Service Guide; (ii) no Package contains excluded goods as defined in the Service Guide from time to time, ("Excluded Goods") except as expressly agreed by DX; (iii) all items are packaged and labelled in accordance with DX's packaging requirements set out in the Service Guide; (iv) each Package has a complete, accurate address, and tracking reference; (v) accurate weights are entered on to the applicable system for each Package; (vi) the Customer's obligations in respect of any minimum age requirements under applicable laws are met; (vii) all Packages are ready for collection by DX at the applicable collection time and loaded by any applicable vehicle departure time; (viii) it owns each Package or is authorised by its owner to send it in accordance with the Contract; and (ix) it cancels any orders created in error or no longer required by 11.59 pm on the day of despatch. Any orders which are not so cancelled will be charged in accordance with the prices set out in the Service Agreement.

## 4. THE SERVICES

4.1 DX shall use reasonable endeavours to provide the services described in the Service Agreement ("Services") in accordance with the Contract, including in relation to delivery timescales. DX shall use reasonable endeavours to make the DX Despatch system available to the Customer but shall have no liability should the DX Despatch system not be available for any reason.

4.2 DX may in its discretion refuse to accept any Packages 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. If such items: (i) comprise those Excluded Goods, then the Customer shall collect them from DX within a reasonable time; or (ii) do not comprise those Excluded Goods, DX shall repackage 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.

4.3 Risk in each Package shall rest with DX from its barcode first being scanned by DX or an authorised DX representative signing a manifest relating to that Package, in either case until completion of delivery pursuant to clause 4.4 DX shall not be required to check the contents of any sacks, crates or cages containing Packages at the time of collection.

4.4 Subject to clause 5.1, the Service Guide sets out when delivery shall be deemed to be complete.

4.5 Time shall not be of the essence of any aspect of DX's performance. Unless otherwise specified in the Contract, delivery days refer to working days and excludes weekends, public and local holidays.

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

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

## 5. UNDELIVERED PACKAGES

5.1 If DX has failed to deliver a Package 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.

5.2 DX shall attempt redelivery of any undelivered Packages in accordance with the Service Guide, and

if not possible, may dispose of the Package in accordance with the Service Guide.

## 6. CHARGES & PAYMENT

6.1 The charges payable by the Customer for the Services shall be based on the prices set out in the Service Agreement. The price is based on the traffic profile including projected use set out in the Service Agreement. All charges and surcharges are subject to VAT where applicable.

6.2 DX may vary the price by written notice at any time for any reason with retrospective and prospective effect, including: if the Customer's use of the Services differs from the traffic profile; and/or if DX's costs of providing the Services have increased.

6.3 DX will charge surcharges as described in the Service Guide/or Service Agreement including a fuel surcharge in accordance with the fuel index published from time to time.

6.4 Without limiting clause 6.3, DX shall conduct a review of the prices detailed within the Service Agreement.

6.5 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 Package. The DXE Brexit Annex available on DX's website shall apply to this Contract.

6.6 Unless otherwise provided in the Service Agreement, DX will invoice the Customer weekly in arrears and will charge a minimum weekly invoice value of £100.

6.7 The Customer shall make all payments due to DX in pounds sterling by Direct Debit to the nominated DX bank account within fourteen (14) days after the date of invoice, or if different then the number of days as set out in the Service Agreement.

6.8 Any query relating to any invoice must be notified to the DX Credit Control Department within seven (7) days of the date of invoice.

6.9 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.

6.10 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 Services until it is paid; and (iii) DX may exercise a general right of lien and hold any Packages 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 Packages 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.

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

## 7. CLAIMS AND CLAIMS PROCEDURE

DX shall not be liable for any loss of or damage to any Package unless the Customer follows the claims procedure referred to in the Service Guide.

## 8. LIMITATIONS OF LIABILITY

8.1 Without limiting clause 8 or the rest of this clause 8, DX's liability arising in connection with any damage to or loss of any Package shall not exceed the lower of: (i) the applicable per-Package compensation limit described in the Service Agreement; (ii) the manufacturing costs; or (iii) the costs of reasonable replacement or repair. In the absence of evidence, DX may estimate costs by deducting forty per cent (40%) from the sales value. DX will not be liable for the first £25 of any claim for loss or damage to any Package.

8.2 DX shall not be liable for any non-performance, or for loss or damage to any Package, 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 Package; (iii) arising during loading, or unloading or moving other than at the agreed delivery point; (iv) the Package contains non-approved Excluded Goods; (v) a handheld device shows evidence that delivery has been completed as set out in the Service Guide; (vi) the Package is correctly delivered to the delivery address and a person misrepresents their authority to receive it; (vii) a delivery note has been signed for by a

neighbour as specified in the DX Express Service Guide (viii) the Package is lost but is subsequently found and returned; or (ix) the damage to outer packaging is not visible to the naked eye.

8.3 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 Package 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.

8.4 DX shall not be liable for any: (i) loss, damage, costs or expenses incurred by the Customer as a result of third party claims; (ii) data loss or corruption; (iii) loss of profits, income or business opportunity; (iv) loss of anticipated savings; (v) injury to reputation or goodwill; (vi) loss of production; or (vii) indirect or consequential loss, damage, costs or expenses.

8.5 DX's total aggregate liability during any period of twelve (12) months beginning on the start date or anniversary of the Contract shall not exceed the lower of: (i) thirty thousand pounds (£30,000); or (ii) ten per cent (10%) of annual charges.

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

8.7 References to DX's liability are to liability under or in connection with the Contract, whether in contract, tort (including negligence or breach of statutory duty) or otherwise.

## 9. INDEMNITIES

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 Package by any third party; (iii) in relation to any breach of applicable laws or (iv) any acts or omissions of the Customer.

## 10. TERMINATION

10.1 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 12.8.

10.2 DX may terminate the Contract by three (3) months' written notice, provided that such notice may not be effective any earlier than the end of the minimum term specified in the Service Agreement. During such notice period, the Customer shall maintain projected volumes.

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

## 11. DATA PROTECTION

The Data Protection Annex (DXE) 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.

## 12. GENERAL

12.1 DX may sub-contract the whole of, or part of its performance of the Services.

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

12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 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.

12.8 Except as otherwise provided in the Contract, DX may vary the Contract from time to time in writing (including by email). DX may vary these Conditions unilaterally by one (1) month's written notice, and the revised Conditions shall take effect from the next calendar month following the date of notification to the Customer. No variation shall be effective if the Customer notifies DX within the one (1) month notice period that it does not accept it.

12.9 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.

12.10 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 TUPE 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.

12.11 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.

12.12 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.

12.13 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.

12.14 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.

12.15 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.