

deliver2home (D2H) Conditions of Carriage

These Conditions set out the basis on which Nightfreight will transport Goods through its deliver2home (D2H) network.

Nightfreight is not a common carrier and accepts goods for carriage on that condition and the Conditions set out below. Nightfreight reserves the right at all times to refuse carriage for any item tendered for transportation.

1. DEFINITIONS AND INTERPRETATION

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

"Appointed Hours" means either a morning (07:00 - 13:00) or afternoon (13:00 - 21:00) delivery slot arranged with the Consignee prior to the delivery date;

"Appropriately Packaged and Labeled" 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 Nightfreight 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 Nightfreight 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 unavailability on the scheduled delivery date; (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 Nightfreight 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 Customer 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 Nightfreight 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 Nightfreight 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 Nightfreight, 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 Nightfreight 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 Nightfreight; 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 Nightfreight 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 Point" means a location at the Delivery Address as specified in the Customer Service Agreement

"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;

"deliver2Home", "D2H" means the Nightfreight 2 man home delivery service

"Director" means a statutory director of Nightfreight;

"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 ineffective, 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 taint or damage other Goods carried by Nightfreight. Such list may be amended from time to time at the sole discretion of Nightfreight;

"Force Majeure" means any circumstance beyond the control of Nightfreight 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 Labeled;

"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;

"Nightfreight" means Nightfreight GB Limited 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, Dopcak, 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 Nightfreight;

"Volumetric Weight" is determined by multiplying the dimensions of a Package in centimetres (height x length x width) and dividing the result by 4245;

"Working Day" means any day from Monday to Friday (inclusive) between 07:00 and 21:00 hours that is not Christmas Day, Good Friday, statutory holiday or any other day deemed by Nightfreight 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 Nightfreight prior to the Goods being submitted for carriage by the Customer.

3. CARRIAGE

3.1 Nightfreight 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 Nightfreight to carry such Excluded or Dangerous Goods.

3.3 In respect of each Consignment, the Customer shall provide to Nightfreight 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 Nightfreight an accurate weight in respect of each Consignment.

3.5 Nightfreight 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.

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

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

3.8 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.

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

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

3.11 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.

3.12 Nightfreight 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 Nightfreight arrange for alternative transport to recover such Dangerous or Excluded Goods from Nightfreight within a reasonable time failing which, Nightfreight shall have the right to dispose of such Excluded or Dangerous Goods as appropriate and the Customer shall indemnify Nightfreight for any costs incurred to effect disposal and Nightfreight 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, Nightfreight shall provide adequate packing, shall repack the Goods and deliver the same at the earliest available opportunity.

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

3.15 Nightfreight 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 Nightfreight 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 Nightfreight is responsible for unloading each Consignment at the Delivery Address (or where the Consignment is undelivered, the Customer at the Collection Address) and Nightfreight will provide handling equipment or machinery for the purpose of unloading and delivery to a Delivery Point at the Delivery Address. The Consignee must ensure that Nightfreight shall have access to the Delivery Point immediately on arrival of the Nightfreight delivery vehicle at the Delivery Address (or where the Consignment is undelivered, the Customer at the Collection Address).

4.3 Nightfreight may at the specific written request of the Customer provide assistance in making delivery to any other point at the Delivery Address provided always that this can be done without risk to the health or safety of the Nightfreight employee at the sole risk of the Customer and the Customer shall indemnify Nightfreight its servants and agents against any claim for damage, loss or negligence howsoever caused in respect of such activity

4.4 Subject to clause 4.7 risk in each Consignment shall pass to Nightfreight 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, Nightfreight 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 Nightfreight from the time at which Nightfreight 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 Nightfreight'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 Nightfreight 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 Nightfreight has Attempted Delivery, but the Consignee refuses delivery or if for any other reason Nightfreight has been unable to deliver a Consignment to a Delivery Address notified to it, Nightfreight shall notify the Customer of the same.

6.2 Following receipt of such notice, in accordance with clause 6.1, the Customer must notify Nightfreight within 2 Working Days of an Alternative Delivery Address or request the return of the Consignment Nightfreight 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 Nightfreight depot the Customer shall not be entitled to any warranty as set out in clause 9.3 and Nightfreight shall have no liability whatsoever.

6.4 Without prejudice to Clause 12, if the Customer does not notify Nightfreight within 2 Working Days of an Alternate Delivery Address, Nightfreight 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, Nightfreight shall be discharged from any and all liability in respect of such Consignment and the Carriage Services upon payment by the Customer of the proceeds of such sale less Nightfreight's reasonable costs and expenses associated with such sale.

6.5 If for any reason Nightfreight is unable to identify the consignor and consignee of any Goods the Goods will be treated as unidentified freight and held by Nightfreight for a period of 42 days unless the Goods concerned are deemed by Nightfreight to be perishable or hazardous. After 42 days (or such shorter period as Nightfreight may determine in the case of perishable, Excluded Goods or Dangerous Goods) Nightfreight 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, Nightfreight shall review the Tariff annually on 1 March of each year and shall have the right to increase the Tariff (the percentage increase in the RPI (Retail Price Index) over the preceding 12 months).

7.3 Nightfreight 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 Nightfreight 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 Nightfreight;

7.3.8 if the Nightfreight delivery vehicle is delayed due to the acts or omissions of a Consignee, including the Consignee's inability to accept a Consignment;

7.3.9 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;

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

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

7.3.12 if Nightfreight repack any item that has been inadequately packed;

7.3.13 if Nightfreight return any item to the Customer as a result of a Consignment being a Dangerous Good or Excluded Good;

7.3.14 if Nightfreight provide any equipment to or for the use of the Customer;

7.3.15 if Nightfreight provide Data Entry Services for or on behalf of the Customer.

7.4 Nightfreight shall be entitled to charge the Customer a reasonable charge for any amendment made by Nightfreight to the Consignment as a result of any error, omission or misrepresentation by the Customer.

7.5 Without prejudice to clause 16.2, Nightfreight may vary the Charges at any time by giving prior written notice, which may include such notice being endorsed on Nightfreight's invoices, where:

7.5.1	the agreed Traffic Profile varies from that on which the existing Charges were based;	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;	Customer any Consignment in the possession of Nightfreight 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.	10.10 the costs of an inspection by Nightfreight of alleged damage to a Consignment or any part thereof, where Nightfreight 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;	arrangement within the meaning of Part I of the Insolvency Act 1986.
7.5.2	Nightfreight's costs have increased by reason of taxation, duty, ferry/toll charges, other operating charges or subcontractor's charges.	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;	9.6 In respect of any claim which the Customer makes against Nightfreight alleging damage to a Consignment or any part thereof, the Customer shall, at the sole discretion of Nightfreight, make such damaged Consignment available for inspection by Nightfreight or its agents, on reasonable notice within 5 Working Days of first written request.	14.3 On termination of the Contract, any indebtedness of the Customer to Nightfreight shall become immediately due and payable and Nightfreight shall be released from any further obligation to perform the Carriage Services under the Contract.	
7.5.3	Nightfreight's costs have increased by reason of an increase in the wholesale cost, duty or taxation of fuel, Nightfreight shall have the right to apply a fuel surcharge in accordance with its fuel price escalator published from time to time on the Nightfreight website - nightfreight.co.uk	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 Nightfreight of the same in advance and Nightfreight have agreed in writing to provide Carriage Services in respect of the same;	9.7 Subject to Nightfreight's liabilities under clauses 9.4 and 9.8, Nightfreight 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: 9.7.1 loss, costs, damage, costs or expenses incurred by the Customer as a result of third party claims; 9.7.2 loss of actual or anticipated profits; 9.7.3 loss of business opportunity; 9.7.4 loss of anticipated savings; 9.7.5 loss of goodwill; 9.7.6 injury to reputation; 9.7.7 loss of production; 9.7.8 loss of contribution to overheads; or 9.7.9 any indirect, special or consequential loss or damage howsoever caused.	10.11 all claims and/or demands made against Nightfreight in respect of any Consignment in excess of the liability limitations contained in these Conditions;	
7.6	All charges are subject to VAT at the prevailing rate.	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 moving a Consignment at the Delivery Address from the delivery point to which it is not as a result of Nightfreight or any sub-contractors providing assistance in respect of the loading or moving a Consignment at the Customer's request 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 within a reasonable time after such Consignment has been tendered;	9.8 Without prejudice to clauses 9.4 and 9.7 Nightfreight'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: 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 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 Nightfreight, adequate proof of the calculation of the Base Price. In the absence of such proof, Nightfreight may estimate the Base Price by deducting an appropriate percentage of the sales value of the Consignment or part thereof lost or damaged.	10.12 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	15 CUSTOMER INFORMATION
7.7	In the event that Nightfreight 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 Nightfreight reserves the right to exercise its lien under Clause 12 until such payment is made.	9.3.7 any inherent wastage or defect, vice or natural deterioration of the Consignment or any part thereof;	9.9 Nothing in the Contract shall operate to exclude or restrict Nightfreight's liability for: 9.10.1 death or personal injury resulting from negligence; or 9.10.2 fraud or deceit.	10.13 loss or damage to any equipment loaned or hired by Nightfreight to the Customer;	15.1 Nightfreight may process and store the Customer Information on its computers and in any other way.
7.8	Nightfreight 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 Nightfreight reserve 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.	9.3.8 any loss or damage to Goods contained within a Trailer until the time at which Nightfreight remove the Trailer from the Collection Address;	9.10 The Customer acknowledges that a non-recoverable excess of £25 shall be deducted from each and every claim and that Nightfreight 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.	10.14 whether or not such loss, liability and cost results from the negligence of Nightfreight.	15.2 Nightfreight 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 Nightfreight's interests.
8 PAYMENT		9.3.9 non-performance or part performance or any loss or damage to a Consignment unless the Customer comply with the Nightfreight claims procedure referred to in Clause 11;	10 INDEMNITIES The Customer shall indemnify Nightfreight 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 Nightfreight incur arising from: 10.1 the Customer's breach of the Contract, misrepresentation and/or fraud; 10.2 the acts or omissions of any Consignee; 10.3 any Consignment not being Appropriately Packaged and Labelled; 10.4 any Consignment containing any good(s) which it is unlawful for Nightfreight to transport; 10.5 any Consignment containing Excluded Goods unless the Customer has notified Nightfreight of the same and Nightfreight has agreed in writing to provide the Carriage Services in respect of such goods; 10.6 any Consignment containing Dangerous Goods unless the Customer has notified Nightfreight of the same and Nightfreight has agreed in writing to provide the Carriage Services in respect of such goods; 10.7 loading and/or moving a Consignment from the Delivery Point whether or not as a result of Nightfreight or any sub-contractors providing assistance in respect of the loading or moving a Consignment at the request of the Customer 10.8 the Goods not matching the Goods Description; 10.9 parking a Trailer at a Collection Address, including theft and damage of such Trailer;	10.15 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	15.3 Nightfreight 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).
8.1	On receipt of Nightfreight's invoice the Customer shall make all payments due to Nightfreight: (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, Bilston WV14 0BF.	9.3.10 any loss or damage to a Consignment which Nightfreight have requested the right to inspect in accordance with clause 9.6, but such right is not afforded to Nightfreight in accordance with such condition;	9.11 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 9.12 the Base Price of the Consignment or part thereof lost or damaged provided that the Customer shall provide, at the request of Nightfreight, adequate proof of the calculation of the Base Price. In the absence of such proof, Nightfreight may estimate the Base Price by deducting an appropriate percentage of the sales value of the Consignment or part thereof lost or damaged.	10.16 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	15.4 Nightfreight may process and store the Customer Information on its computers and in any other way.
8.2	Any query relating to a charge made by Nightfreight must be notified to Nightfreight in writing and addressed to the Credit Control Manager within 7 days of the date of invoice.	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;	11 CLAIMS PROCEDURE 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 Nightfreight 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 Nightfreight. 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 the item if requested by Nightfreight to support the claim and justify the value of the loss claimed.	10.17 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	15.4.1 persons who provide a service to Nightfreight or are acting as our agents, on the understanding that they will keep the Customer Information confidential;
8.3	Time of payment is of the essence and Nightfreight 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.	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.	12 LIEN Nightfreight 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 Nightfreight under the Contract and may deal with it as it sees fit. Nightfreight 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 Nightfreight's reasonable costs shall be repayable to the Customer on demand.	10.18 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	15.4.2 anyone to whom Nightfreight transfers or may transfer its rights and duties under the Contract;
8.4	The Customer is not entitled to withhold payment of any amount due to Nightfreight by way of any set-off, abatement or counterclaim.	9.3.13 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;	13 UNREASONABLE DETENTION The Customer shall be liable for the cost of unreasonable detention of any vehicle, Trailer, pallet, cage, stillage or any other property belonging to Nightfreight, but the rights of Nightfreight against any other person in respect thereof shall remain unaffected.	10.19 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	15.4.3 credit reference agencies which will keep a record of Nightfreight's enquiries and may record, use and give out the Customer Information which Nightfreight gives to them to other organisations;
8.5	If the Customer fails to pay any amount due to Nightfreight 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).	9.3.14 If Nightfreight have not Attempted Delivery of an Appropriately Packaged and Labelled Consignment which was loaded onto Nightfreight'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, Nightfreight'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 an agreed date the Consignee must be available to receive deliveries on that date during the Appointed Hours. If the Consignee is not available to accept a Consignment tendered during the Appointed Hours the Consignment shall be delivered on the next available date by mutual agreement but any service guarantee as set out in the Delivery Timescales will be suspended and no refund made.	14 TERMINATION 14.1 On or at any time after the occurrence of any of the events in condition 14.2 Nightfreight 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. 14.2 The events referred to in clause 14.1 are: 14.2.1 the Customer being in breach of any obligation under the Contract; or 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 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 14.2.4 an incumbent taking possession, or a receiver or manager or administrative receiver being appointed, of the whole or any part of the Customer's assets; or 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 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 affairs including a voluntary	10.20 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	15.4.4 a third party in another country, provided that where such information constitutes personal information under the Data Protection Act 1998, Nightfreight will make sure that such third party agrees to apply the same levels of protection as Nightfreight are required to apply to information held in the UK and to use the information only for the purpose of providing the service to Nightfreight.
8.6	If the Customer fails to pay any amount due to Nightfreight 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.	9.3.15 If Nightfreight 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	15 CUSTOMER INFORMATION By signing the Customer Service Agreement the Customer agrees to allow Nightfreight to use any and all Customer Information provided to it or in the public knowledge in any or all of the following ways: 15.1 Nightfreight may process and store the Customer Information on its computers and in any other way. 15.2 Nightfreight 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 Nightfreight's interests. 15.3 Nightfreight 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). 15.4 Nightfreight may pass the Customer Information to: 15.4.1 persons who provide a service to Nightfreight or are acting as our agents, on the understanding that they will keep the Customer Information confidential; 15.4.2 anyone to whom Nightfreight transfers or may transfer its rights and duties under the Contract; 15.4.3 credit reference agencies which will keep a record of Nightfreight's enquiries and may record, use and give out the Customer Information which Nightfreight gives to them to other organisations; 15.4.4 a third party in another country, provided that where such information constitutes personal information under the Data Protection Act 1998, Nightfreight will make sure that such third party agrees to apply the same levels of protection as Nightfreight are required to apply to information held in the UK and to use the information only for the purpose of providing the service to Nightfreight.	10.21 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	15.4.5 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.
8.7	Nightfreight reserve the right to alter or withdraw at any time any credit allowed to the Customer.	9.3.16 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	16 GENERAL 16.1 The Customer may not assign all or any part of its benefit under the Contract without the prior written consent of Nightfreight. Nightfreight shall be entitled at any time to assign or deal with the benefit of the Contract (see 3.12). 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. 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. 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. 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. 16.6 Any failure by Nightfreight 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. 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 Nightfreight prior to the Goods being tendered for carriage by the Customer. 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.	10.22 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	16.9 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.
8.8	Nightfreight may set-off any amount owing to it from the Customer against any amount owed by Nightfreight to the Customer.	9.3.17 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	17 WARRANTY AND LIABILITY 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. 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 Nightfreight against any claim made on it. 9.3 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	10.23 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	16.10 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.
9	WARRANTY AND LIABILITY	9.3.18 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	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. 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 Nightfreight against any claim made on it. 9.3 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	10.24 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	16.11 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.
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.	9.3.19 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	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. 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 Nightfreight against any claim made on it. 9.3 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	10.25 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	16.12 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.
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9.3.1	failure to perform on or by a particular date or dates, save as set out in Condition 9.4;	9.3.22 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	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. 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 Nightfreight against any claim made on it. 9.3 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	10.28 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	16.15 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.
9.3.2	non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	9.3.23 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	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. 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 Nightfreight against any claim made on it. 9.3 Nightfreight shall not be liable for: 9.3.1 failure to perform on or by a particular date or dates, save as set out in Condition 9.4; 9.3.2 non-performance or part performance, or any loss or damage to a Consignment which Nightfreight has delivered to a	10.29 any and all claims made upon Nightfreight by HM Revenue and Customs including any duty and or tax relating to a Consignment or part thereof;	16.16 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.