

SERVICE AGREEMENT and TERMS & CONDITIONS

1. DEFINITIONS

Capitalised terms used in these Standard Terms and Conditions shall have the following meanings:

Agreement means the agreement for the provision of the Services to the Customer subject to this Service Agreement and Standard Terms & Conditions;

Consignment means any item or items contained in one parcel, package or container, as the case may be, or any number of separate parcels, packages or containers sent at one time in one load by or for the Customer for delivery to the same address;

Customer means any person, firm, body corporate, association or organisation to whom the Services are provided by DX Ireland;

Force Majeure means any event beyond the reasonable control of DX Ireland, including without limitation act of God, severe weather, war invasion, civil commotion, embargo, hostilities (whether war be declared or not) seizure or forfeiture under legal process, epidemic, act or order of any government public local or other authority, labour disputes of whatever nature, explosion or fire, or any other occurrence or event which would not reasonably have been anticipated by DX Ireland;

DX Ireland means DX Network Services Ireland Limited, whose registered office is situated at 36-37 North Park, North Road, Finglas, Dublin 11 and its successors and assigns;

Prohibited Article means

- (i) any Consignment that is not packed in compliance with, or otherwise does not fully comply with, the Regulations or the provisions of the Agreement or that contains any substance or matter prohibited by the Regulations; or
- (ii) any item which might or does cause any personal injury or physical damage to any person or property, or might otherwise be considered dangerous or hazardous; or
- (iii) any of the following: antiques; asbestos; bank notes or any other financial instrument capable of conversion into cash by anyone other than the payee;; bullion; cash; chemicals; cigarette lighters;; compressed gases and aerosols; credit company sales vouchers; firearms; flammable items; human remains (in any form);; lewd, obscene or pornographic items; liquids; living creatures; matches;; organic peroxide; oxidising materials; paints, varnishes, enamels and similar substances; poisons; processed tobacco or tobacco products; unused units in franking machines;; works of art; wines or spirits.

The Regulations means the Safety, Health and Welfare at Work Act 1989, Health and Safety Regulations and Statutory Instruments issued thereunder and any international, European or other national laws or regulations or protocols which apply to the packaging, handling and carriage of goods including (but not limited to) applicable regulations made by the Universal Postal Union, the International Civil Aviation Organisation and the International Air Transport Association;

The Services means the service or services to be provided by DX Ireland to the Customer subject to the provisions of this Agreement;

Standard Service Agreement and Terms & Conditions means these standard terms and conditions as supplemented or amended pursuant to Condition 11 or as otherwise agreed in writing between the parties. Customers will be deemed to have accepted to be bound by the Terms and Conditions of the Service set out in this Agreement by use of the Service.

Any additional services provided by DX Ireland to the Customer shall be provided by DX Ireland on the terms of this Agreement except as otherwise agreed in writing by both parties.

2. DURATION, RENEWAL AND TERMINATION

- 2.1 The Agreement shall continue unless and until:
 - 2.1.1 the Customer gives notice in writing of termination to DX Ireland (i) at least 30 days prior to termination (ii) within 7 days of receipt by the Customer of notification from DX Ireland of changes to the Charges pursuant to clause 4.4; or
 - 2.1.2 the Agreement is terminated in accordance with any other

provisions for early termination incorporated in the Agreement.

- 2.2 DX Ireland shall have the right at its absolute discretion and without giving any reason therefore to terminate the Agreement or withdraw the Services on no less than 30 days prior written notice to the Customer.

3. DESPATCH AND DELIVERY

- 3.1 DX Ireland reserves the right to arrange for the carriage of the Consignment by any route, and using any handling, storage and transportation methods whatsoever.
- 3.2 If for any reason the Consignment cannot be delivered to the delivery address marked on the Consignment, or where the Consignment is held for collection and is not collected within five Working Days, DX Ireland shall be under no liability for loss or damage to the Customer however caused.
- 3.3 If the Customer receives any item or items delivered by DX Ireland in error, the Customer shall return such items as soon as possible to DX Ireland.
- 3.4 Unless otherwise agreed in advance, no item within a Consignment shall exceed the following limits:
Weight: Max weight per crate = 20kg
If these limits are exceeded the Consignment will either be returned to the Customer or delivered to the consignee and the Customer will pay DX Ireland the full cost thereof plus any additional cost incurred by DX Ireland.

4. CHARGES

- 4.1 Subject to the provisions of this Clause 4, the Customer shall pay DX Ireland the Charges for the Service(s) or such other sums as are agreed for any additional services agreed to be provided.
- 4.2 DX Ireland reserves the right to increase the Charges at any time to reflect any additional costs to DX Ireland if:-
 - (a) the Customer alters the delivery and collection locations identified in the Service Schedule(s);
 - (b) at any time prior to the conveyance of a Consignment the cost to DX Ireland of taxing, maintaining and fuelling its delivery vehicles or those of its subcontractors increases (or increases further) above such cost to DX Ireland as at the Commencement Date.The provisions of this clause may be exercised on more than one occasion.
- 4.3 Where the price charged, or to be charged, to the Customer has been calculated by reference to information provided by the Customer, to DX Ireland, about the volume or weight of the Consignments sent, or to be sent, using the Services and it transpires that the volume and/or weight has been understated, DX Ireland reserves the right to vary the charges to take account of any understatement and charge the Customer retrospectively, for up to 6 months prior to the date when the difference was discovered, for the difference between the amount invoiced to the Customer and the amount that should have been, or should be, paid by the Customer had the information been accurate.

- 4.4 In addition to the provisions of Clauses 4.2 and 4.3 a full price review will take place annually. The review will be based upon changes in weight and volume, the number of the Customer's collection and delivery locations, movements in the retail price index and other general cost changes experienced by DX Ireland including (but not limited to) increases in the cost of fuel.
- 4.5 In addition, the Customer will pay to DX Ireland any duties, levies, taxes, deposits or outlays or penalties imposed upon DX Ireland in respect of the carriage of the Consignment.

5. TERMS OF PAYMENT

- 5.1 The Customer shall pay the Charges together with any other sums payable by the Customer to DX Ireland under the Agreement (which are subject to VAT at the prevailing rate) within 30 days of date of invoice unless the contrary has been expressly agreed in writing by DX Ireland. DX Ireland shall be

- entitled to charge the Customer interest (both before and after any judgment) on all overdue accounts at the rate of 3% above AIB's base rate applicable from time to time until payment is made in full.
- 5.2 The Customer agrees to pay the Charges and any other amounts due hereunder without set-off, deduction or counterclaim.
- 5.3 The Charges shall remain due and payable notwithstanding that delivery of the Consignment may not yet have taken place.
- 5.4 If the Customer fails to make any payment due to DX Ireland for any Services provided to the Customer by DX Ireland by the due date then, without prejudice to any other right or remedy available to DX Ireland, DX Ireland shall be entitled to cancel the Agreement or suspend any further collections and/or deliveries for the Customer.
- 5.5 DX Ireland shall have a particular and general right of lien on any Consignment in its possession for all sums due at any time from the Customer, the Consignee or the owner of the Consignment whether under or in connection with the Agreement or any other contract between the Customer and DX Ireland. In the event of non-payment of the Charges within 21 days after the due date DX Ireland shall be entitled to sell or otherwise dispose of the Consignment and apply the proceeds towards the payment of such sums.

6. PROHIBITIONS

- 6.1 DX Ireland reserves the right to open for examination any Consignment that is not correctly addressed.
- 6.2 The Customer shall ensure that no Prohibited Article is sent by the Services and that all Consignments and their contents are labelled and packed in accordance with the terms of the Agreement and otherwise comply with the Regulations, for which purposes the Customer is deemed to have full knowledge of the requirements of the Regulations. If DX Ireland believes that any Consignment or any item forming part of a Consignment either (a) may comprise or contain a Prohibited Article or (b) has not been labelled and/or packaged in accordance with the Regulations or the Agreement or (c) otherwise does not comply with the Regulations or the Agreement, DX Ireland reserves the right to:
- (i) refuse to handle; and/or
 - (ii) open and/or retain for further examination; and/or
 - (iii) accept such Consignment or item for carriage on the basis that DX Ireland shall not be responsible in any way for any loss or damage howsoever caused either to the Consignment or item (as the case may be) or to any person or property as a result of that Consignment or item. If DX Ireland believes that the sending of any Consignment or its contents amounts to or may amount to a criminal offence it may pass such Consignment and/or its contents to the relevant authorities.

7. TITLE

Title to any property issued to the Customer by DX Ireland for the purpose of the provision of the Services by DX Ireland shall remain with DX Ireland. The Customer shall be responsible for such property whilst in its care or control and return such property to DX Ireland immediately upon demand and shall indemnify DX Ireland for all loss caused by damage thereto whilst in its care or control.

8. EXCLUSION AND LIMITATION OF LIABILITY

- 8.1 The Customer acknowledges that the value and contents of any Consignment and the amount of loss which may be suffered by the Customer are only known to the Customer. In view of this, DX Ireland requires and the Customer shall maintain adequate insurance on an "all risks" basis in respect of any Consignment for its full value to the Customer. The Customer further acknowledges that the charges for the Services reflect the exclusions and limitations in the Agreement and that under the circumstances such exclusions and limitations are reasonable.
- 8.2 DX Ireland shall not be liable to the Customer or any other person in connection with or arising out of the Agreement or the performance or non-performance of the Services except to the extent that the loss or damage suffered by the Customer results solely from the negligence of, or breach of this

Agreement by DX Ireland, its agents or sub-contractors in which case such liability shall be subject to the exclusions and limitations set out in these Conditions.

- 8.3 Subject to Condition 8.2 DX Ireland's liability for any loss or damage arising out of or in connection with the Agreement or performance or non-performance of the Services, howsoever caused or arising, shall:
- 8.3.1 in the case of loss or damage to any Consignment be limited to the lesser of (i) €100 (or such greater amount if agreed by the parties in the Service Schedule(s)) per Consignment affected, (ii) the amount of loss or damage actually sustained and (iii) the cost of replacement or repair of the relevant Consignment or its resale or fair market value without reference to the commercial utility or special value to the Customer or any other person, less the value of the Consignment after the loss or damage sustained;
 - 8.3.2 in the case of loss of or damage to any tangible physical property of the Customer (other than any Consignment the liability for which is dealt with by Condition 8.3.1 above) caused by the negligence of DX Ireland or any of its employees be limited to €1 million in respect of any one claim or series of claims arising out of one cause subject to an overall maximum aggregate liability of €1 million in any one contract year; and
 - 8.3.3 in all other cases, the aggregate liability of DX Ireland in any contract year shall not exceed the total Charges (excluding VAT) payable by the Customer for the Services in respect of that contract year, or if this Agreement has terminated, the contract year during which the event giving rise to the claim arose.
- 8.4 Notwithstanding Condition 8.3 DX Ireland shall not be liable to the Customer or any person for:
- 8.4.1 any loss of or damage to profits, revenue, savings, data, use, contract, goodwill or business or for any indirect or consequential loss or damage, in each case howsoever caused or arising;
 - 8.4.2 any loss or damage caused by delay in the collection or delivery of any Consignment due to mis-delivery;
 - 8.4.3 any loss or damage caused by an event of Force Majeure (including, without limitation, any loss or damage caused by any temporary interruption of Services resulting from an event of Force Majeure);
 - 8.4.4 any loss of or damage to a Consignment which cannot be shown to have occurred whilst such Consignment was within the care, custody and control of DX Ireland or its employees, agents or sub-contractors;
 - 8.4.5 damage to a Consignment unless such damage is evidenced by crushing, piercing, water damage, or other damage to, or deterioration of, the outer packaging thereof which is apparent to the naked eye;
 - 8.4.6 any loss or damage caused to or by, or otherwise in respect of (i) a Prohibited Article, or (ii) arising from or caused by the failure of the Customer to fully comply with the Regulations or the provisions of the Agreement;
 - 8.4.7 any claim unless notified in writing to DX Ireland, within 30 days of the date of dispatch of the Consignment to which the claim relates.
- 8.5 The term "howsoever caused or arising" when used in this Condition 8 shall be construed widely to cover all causes and actions giving rise to liability, including but not limited to (i) whether arising by reason of any misrepresentation (whether made prior to and/or in this Agreement), negligence, breach of statutory duty, other tort, breach of contract, restitution or otherwise and (ii) whether arising under any indemnity and (iii) whether caused by any total or partial failure or delay in supply of the Services.
- 8.6 Notwithstanding any other provision of this Agreement, all the exclusions and limitations of liability contained in this Agreement shall apply regardless of whether the Customer notifies DX Ireland of the possibility of any greater loss or damage and all such exclusions shall only apply so far as permitted by law and in particular nothing in the Agreement shall limit or exclude liability for fraud or for death or personal injury caused by negligence.
- 8.7 The Customer hereby agrees with regard to the state and condition of a Consignment that the signature by or on behalf of the Customer or the consignee of a proof of delivery form shall be prima facie evidence of the good condition of the relevant Consignment when delivered.
- 8.8 All employees, agents and subcontractors of DX Ireland (each being a Third Party) shall each be entitled, to enforce every defence and limitation available to DX Ireland under this Agreement (in particular the provisions of this Condition 8) to

- the extent determined by DX Ireland in its absolute discretion from time to time, as if such defences and limitations were expressed to be for the benefit of the relevant Third Party. The parties to this Agreement shall not be required to notify or obtain the consent of any Third Party in order to rescind or vary this Agreement or any provision of it (for the avoidance of doubt, including, without limitation, this Condition 8). The aggregate liability of all Third Parties and DX Ireland collectively shall be no greater than the liability of DX Ireland alone, as set out in this Agreement. Save as referred to in this Condition 8.8, no provision of this Agreement shall be enforceable by any person who is not a party to it. No Third Party may assign or otherwise transfer any of its rights referred to in this Condition 8.8.
- 8.9 The Customer agrees to indemnify DX Ireland against all losses, liabilities, claims, demands, costs and expenses in excess of the liability expressly accepted by DX Ireland hereunder.
- 9. CUSTOMER'S WARRANTY AND INDEMNITY**
- 9.1 The Customer warrants that:
- where the Customer is not the owner of the Consignment, it has the authority of all parties owning or having any legal interest in the same to use the Services for the despatch thereof;
 - the nature or contents of the Consignment will not cause DX Ireland to break any laws or statutory regulations;
 - the Consignment is adequately prepared, addressed, labelled and packaged for safe despatch through the Services (including, where appropriate, transport by air) and for safe handling, whether by manual or mechanical means by DX Ireland staff and its sub-contractors; and
 - the Consignment has been labelled and packaged in full compliance with the Regulations.
- 9.2 Without prejudice to any other provisions of the Agreement, the Customer shall indemnify and hold DX Ireland harmless against all losses, liabilities, claims, demands, costs and expenses that may result from:
- any latent or inherent defect or natural deterioration of the Consignment and/or any Consignment that is inherently dangerous, unstable or liable to cause any loss or damage of whatever kind;
 - any other damage caused by the substance, composition or nature of the Consignment or the method of packaging employed;
 - any breach by the Customer of the warranties in Condition 9.1;
 - any third party claim arising directly or indirectly from the Customer's use of the Services save for claims for loss or damage for which DX Ireland is expressly liable hereunder; and
 - the neglect or default of the Customer or any breach of its obligations under the Agreement.
- 10. COMMON CARRIER**
- DX Ireland is not a common carrier and accepts items for carriage only in accordance with the provisions of, and subject to, the Agreement. DX Ireland reserves the right to refuse at any time to carry any Consignment at its absolute discretion.
- 11 ALTERATION TO TERMS**
- The provisions of these Standard Terms and Conditions may be supplemented or amended by DX Ireland at the absolute discretion of DX Ireland provided that any changes are notified to the Customer in writing not less than 1 month before the changes are to take effect in which case the Customer shall be bound by the Agreement as so supplemented or amended.
- 12 GENERAL**
- 12.1 DX Ireland agrees to take all reasonable steps to prevent any disclosure by it to any third party, other agent or representative of the Customer authorised in accordance with this Agreement of any secret or confidential information belonging to the Customer which comes to DX Ireland's possession through the performance of this Agreement, provided that this obligation of confidence will not apply in respect of any disclosure required by law or by any regulatory authority nor in respect of any information which is or becomes to be in the public domain
- other than as a result of DX Ireland's breach of this Agreement.
- 12.2 If any provision of the Agreement shall be declared to be invalid or ineffective in any respect, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby.
- 12.3 Any failure in or delay by DX Ireland to take any action to enforce any part of the Agreement shall not operate as a waiver of that breach or any other breach, and no waiver of any breach shall operate as a waiver of any subsequent breach.
- 12.4 References to any statute or statutory provisions include references to that statute or statutory provision as from time to time amended, extended or re-enacted and include any statutory instrument, rules, regulations or other subordinate legislation made from time to time thereunder.
- 12.5 The Agreement constitutes the entire agreement and understanding between the Customer and DX Ireland as to the matters to which they relate and supersedes all prior oral or written agreements, understandings or arrangements relating to the provision of the Services. Save for any amendment made to these Standard Terms and Conditions pursuant to Condition 11 no variation to the Agreement shall be effective unless made in writing and signed by an authorised representative of both the Customer and DX Ireland.
- 12.6 The Customer shall notify DX Ireland in writing of any merger or amalgamation with another Customer, or any other corporate entity and of any change to the address or addresses to which invoices should be sent by DX Ireland within 7 days of the occurrence thereof. All notices shall be sent to the following address (unless otherwise notified by DX Ireland): Customer Service, DX Ireland, 36-37 North Park, North Road, Finglas, Dublin 11.
- 12.7 The Agreement may be assigned or transferred (in whole or in part) to any member of the DX Group by DX Ireland without the consent of the Customer. The Customer shall not be entitled to assign or transfer the benefit of the Agreement save with the prior written consent of DX Ireland which shall not be unreasonably withheld.
- 12.8 DX Ireland shall be entitled to delegate or sub-contract out the Services (or any part thereof) provided that DX Ireland shall remain liable in accordance with the terms set out herein.
- 12.9 Any notice required or permitted to be given by either party pursuant to the Agreement shall be in writing addressed to that other party and sent to the other party, in the case of the Customer to its registered office or principal place of business and in the case of DX Ireland to the address set out in Condition 12.6.
- 12.10 The Agreement shall be governed by and construed in accordance with the laws of Ireland. DX Ireland and the Customer irrevocably submit to the non exclusive jurisdiction of the Irish Courts.
- 12.11 The Customer shall warrant by acceptance of these terms and conditions that they have and shall maintain in place adequate policies and procedures in accordance with the obligations imposed under anti-corruption and bribery laws, statutes, and regulations in place.