

DX Document Exchange - Rules of Membership (Ireland)

DEFINITIONS

In these rules the following words shall have the meanings ascribed to them:

- 1.1 **"Application Form"** shall mean the form completed and signed by the Member when the Member applies for membership pursuant to Rule 2.1;
- "Designated Area"** shall mean the area in an Exchange designated by DX for the collection and delivery of Items;
- "Directory"** shall mean the DX Directory Online or the membership directory issued by DX to new members of the DX Service and to existing members from time to time;
- "DX"** shall mean 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;
- "DX Number"** shall mean the number allocated to a Member by DX;
- "DX Service"** shall mean the Document Exchange service operated by DX and shall not include any other service provided by DX;
- "Exchange"** shall mean a place at which a Document Exchange is operated by or on behalf of DX;
- "Force Majeure"** shall mean act of God, severe weather, war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, revolution, rebellion, insurrection, military or usurped power, seizure or forfeiture under legal process, epidemic, order of any government public local or other authority, industrial action, general or partial stoppage or restraint of labour from whatever cause, explosion, fire or any other event beyond the reasonable control of DX;
- "Item"** shall mean any package that does not exceed 43 cms in length, 32 cms in depth and 12.5 cms in height (being the dimensions of a standard large archive box), does not weigh more than 25 kilograms and does not contain a Prohibited Article;
- "Member"** shall mean any person, firm, body corporate, association or, within these, any discrete department, discrete unit or other discrete sender and recipient of mail, who or which has been accepted as a Member of the DX Service;
- "Member's Box"** shall mean the box allocated to a Member in an Exchange for the receipt of Items sent to the Member by other Members;
- "Onwards Box"** shall mean the box provided by DX at Exchanges into which Members place Items to be sent to a Member in another Exchange;
- "Prohibited Article"** shall mean any article listed on the DX website: www.thedx.ie under each DX services page.
- "Rules"** shall mean these Rules of Membership;
- "Working Day"** shall mean any day from Monday to Friday inclusive between the hours of 09.00 and 17.00 excluding statutory bank and public holidays.

2. ACCEPTANCE

- 2.1 Upon acceptance by DX of an application for membership duly completed, an applicant will become a Member at the Exchange stated on the Application Form and shall be bound by the Rules until such time as its membership is terminated pursuant to Rule 8.
- 2.2 Upon acceptance of the application pursuant to Rule 2.1 DX shall allocate to the Member a DX Number, a Member's Box in the relevant Exchange and supply the Member with a box key.
- 2.3 The Member shall within 4 weeks of acceptance by DX of its application for membership display on its letterhead its DX Number and Exchange name.
- 2.4 DX may in its absolute discretion and without giving any reason for so doing refuse any application for membership of the DX Service.

3. DESPATCH OF ITEMS

- 3.1 The Member shall stamp or print its own name, DX Number and Exchange name on all Items despatched by it in the following style: "DX IRELAND, DX1, DUBLIN" or as the case may be, so that it is displayed prominently on the front of the Item and is clearly distinguishable from the addressee's name, DX number & Exchange name. By Rule 7.3, DX reserves the right to charge the Member for non-compliance with this Rule or to open the item, for the purposes of determining the name and details of the sending member.
- 3.2 All Items shall be clearly marked in the centre of the Item with the name, DX Number and Exchange name of the Member to whom they are addressed. The Member shall be responsible for the delivery of Items and shall not leave Items anywhere in an Exchange other than in the appropriate Member's Box, Onwards Box or Designated Area.
- 3.3 Staff and independent contractors engaged by DX are not permitted to and shall not be required to or deemed to receive any Items on behalf of any Member.
- 3.4 The Member shall not send any Prohibited Article by the DX Service without the prior written agreement of DX. DX reserves the right to open and retain for further examination any Item which DX believes may contain a Prohibited Article. If DX believes that the sending of any Item or its contents amounts to or may amount to a criminal offence it may pass such Item and/or its contents to the relevant authorities. DX also reserves the right to open for examination any Item that is not correctly addressed pursuant to the requirements of Rules 3.1 and 3.2 above.

4. RECEIPT OF ITEMS

- 4.1 The Member shall clear the Member's Box and collect all Items addressed to the Member left in the Designated Area at the Member's Exchange as soon as reasonably practicable after the Exchange opens and in any event not less than once each Working Day.
- 4.2 The Member shall not refuse to accept delivery of an Item properly addressed to it pursuant to the Rules and placed in the Member's Box or left in the Designated Area at the Member's Exchange.
- 4.3 When an Item is sent by the Member to a Member in another Exchange then provided that delivery is made by depositing the Item in the appropriate Onwards Box in the despatching Member's Exchange before 17.00 hrs on a Working Day delivery thereof shall be deemed to have been made to the receiving Member the following Working Day.
- 4.4 Upon delivery of an Item into the Member's Box at the Member's Exchange the Member shall be deemed to be in possession of such Item and shall be bound to accept proof of such delivery as proof of service.
- 4.5 If the Member receives an Item which is not addressed to the Member, the Member shall forthwith cause that Item to be placed unopened in the correct Member's Box, Onwards Box or Designated Area, as appropriate.

5. ADMITTANCE TO EXCHANGE

Any person having a Member's Box key or other form of authority issued by DX in his possession will be admitted to the Exchange and the possession of the key or other form of authority issued by DX shall be sufficient evidence so far as DX is concerned that such person is a Member or is the authorised representative of a Member and DX shall be under no obligation to make further enquiries. DX, whether by itself or by its employees, representatives or agents, reserves the right to prohibit entry to any person not producing the correct key or other form of authority issued by DX on request. It is the responsibility of the Member to ensure that its Member's Box key does not come into the possession of unauthorised third parties. The Member shall notify DX forthwith if its Member's Box key is lost or stolen.

6. TITLE

Title to the Member's Box, key, and any other property issued to the Member by DX shall remain with DX.

7. CHARGES

- 7.1 The fee charged for the Member's first year's subscription shall be the amount set out in the Application Form completed by the Member and accepted by DX pursuant to Rule 2.1, subject to adjustment as specified in this application form.
- 7.2 DX reserves the right to levy additional charge or charges if the actual usage or prior usage exceeds the projected usage whether or not the Member's current subscription has been paid.
- 7.3 If any Item is sent by the Member by the DX Service which does not comply with Rule 3.1 the Member shall pay to DX an additional charge of €0.06 per item or the actual cost incurred by DX thereby, whichever is the greater.
- 7.4 The fee charged for each subsequent year's subscription shall be fixed in advance by DX at its absolute discretion but can be adjusted in accordance with Rules 7.2 and 7.3 DX will calculate the subscription based on the projected usage of the Member as calculated by DX and shall notify the Member in writing of its next year's subscription. If the Member considers that the next year's subscription is unacceptable, the Member shall notify DX in writing within 7 days of receipt of such notification giving reasons why it considers the subscription to be unacceptable. DX will carefully consider the member's representations, if appropriate in discussion with the Member, and shall notify the Member of its decision. If the Member does not then exercise its right to terminate its membership pursuant to Rule 8.4 the Member's membership shall be renewed for a further year and DX will invoice the Member in advance for the next year's subscription fees, which the Member shall pay in accordance with Rule 7.5.
- 7.5 All invoices rendered by DX to the Member shall be paid within 14 days of the date of the invoice. If the Member fails to make payment within such time DX shall be entitled to charge the Member interest (both before and after any judgement) on the amount unpaid at the rate of 3% per annum above Allied Irish Banks plc base rate applicable from time to time until payment in full is made.

8. TERMINATION

- 8.1 DX shall have the right at its absolute discretion and without giving any reason therefor to terminate the Member's membership at any time without notice but if it does so it shall refund to the Member pro-rata any subscription paid by the Member in advance, after deducting any monies (together with any interest thereon pursuant to Rule 7.5) due to DX.
- 8.2 If the Member defaults in payment of its fees DX shall have the right to terminate that Member's membership on the expiry of 14 days written notice given to the Member by DX in which case the Member shall not receive any refund pursuant to Rule 8.1.
- 8.3 If DX closes an Exchange or an Exchange shall cease to operate for whatever reason DX will as soon as reasonably practicable provide a suitable alternative Exchange; for the purposes of this Rule a suitable alternative Exchange shall mean an Exchange located within a radius of 2 miles from the original Exchange. If DX fails to so provide such an alternative DX shall refund to the Member pro-rata any subscription paid by the Member in advance, after deducting any monies (together with any interest thereon pursuant to Rule 7.5) due to DX.
- 8.4 The Member may terminate its membership by giving DX notice in writing of its intention so to do within 14 days after receipt of notification in writing of its next year's subscription or within 14 days of notification of DX's decision pursuant to Rule 7.4. In the event of termination by the Member under this Rule 8.4 it shall not be entitled to any refund in respect of any subscription paid in advance and will not be released from any obligation to pay any fees due.

9. EXCLUSION AND LIMITATION OF LIABILITY

- 9.1 Save as set out in this Rule, DX shall not be under any liability whatever for any loss suffered by the Member or any other person in respect of any Item, however caused (including without limitation by the breach of contract or negligence of DX or any of its employees, agents, representatives or sub-contractors). DX excludes and limits its liability in accordance with this Rule 9 because the delivery to and collection of Items by the Member is the responsibility of the Member and DX does not know when an Item has been sent or received by the Member. Furthermore, DX does not know or limit the value of any Item. As the Member does or should have knowledge of such matters, **IT IS THE MEMBER'S RESPONSIBILITY TO INSURE ITEMS AGAINST ALL RISKS TO THEIR FULL INSURABLE VALUE.**
- 9.2 Subject to these Rules, DX shall be liable to the Member for the loss of or damage to any Item which is caused solely and directly by the negligence of DX.
- 9.3 The aggregate liability of DX in respect of any one Item shall be limited to the least of (i) €13; (ii) the amount of loss or damage actually sustained; and (iii) the actual value of the Item as determined by its cost of preparation or replacement or reconstruction value; cost of repair; resale or fair market value without reference to the commercial utility or special value to the Member or any other person, less the value of the item after the loss or damage sustained.
- 9.4 DX shall not be under any liability to the Member or any other person for any loss or damage whatsoever caused by delay in the collection or delivery of any Item, by mis-delivery or by an event of Force Majeure.
- 9.5 DX shall not be liable for any loss of or damage to any Item unless a claim is made in writing to DX within 14 days of the event giving rise to the claim: Provided that if the Member proves that it was not reasonably possible for the Member to make a claim in writing within 14 days, and that such claim was made within a reasonable time, DX shall not have the benefit of the exclusion of liability afforded by this Rule 9.5.
- 9.6 DX shall in no event be under any liability to the Member or any person for any indirect or consequential loss or damage (including without limitation loss of profit, use, contract, goodwill or market) whatsoever and howsoever caused including without limitation by breach of contract or negligence.
- 9.7 DX shall not be under any liability whatsoever and howsoever arising (including without limitation by breach of contract or negligence) to the Member or any other person in respect of a Prohibited Article. DX will so far as is reasonably practicable ensure that the Member's details shown in the Directory are correct but does not give any warranty to that effect.
- 9.8 Nothing in these Rules shall limit or exclude liability for personal injury or death caused by negligence.

10. MEMBER'S INDEMNITY AND WARRANTY

- 10.1 The Member shall indemnify and hold DX harmless in respect of any breach by the Member of its obligations under these Rules, in particular but without limitation Rules 3.4, 4.5 and 5.
- 10.2 The Member shall indemnify and hold DX harmless in respect of all third party claims arising directly or indirectly from the Member's use of the DX Service.
- 10.3 The Member shall notify DX in writing of any merger or amalgamation with another Member within 7 days of the occurrence thereof.

11. ALTERATION TO RULES

The Rules may be added to or amended by DX at the absolute discretion of DX provided that any changes are notified to the Member in writing not less than 3 months before the changes are to take effect in which case the Member shall be bound by these Rules as so added to or amended. For the purpose of this Rule such notification shall be deemed to occur when DX sends details of the changes and/or the amended rules to the Member at the DX Number and Exchange allotted to the Member pursuant to Rules 2.1 and 2.2. Equally for the purpose of this Rule, notification shall be deemed to occur when DX sends details of the changes to the last known email address of the Member concerned.

12. MEMBERS ONLY

The Member shall not use the DX Service on behalf of any party who is not a Member and shall not invite or authorise any non-Member to use the DX Service. The Member may use the DX Service only for the Member's own business.

13. APPLICABLE LAWS

These Rules shall be construed in accordance with the laws of the Republic Of Ireland.

14. SEVERABILITY

Each of the provisions of these Rules is severable. If any such provision is held to be or becomes illegal, invalid or unenforceable, it shall be given no effect and shall be deemed not to be included in these Rules and shall not affect or impair the legality, validity or enforceability of these Rules

15. WAIVER

Any failure or delay by DX to take any action to enforce any part of these Rules in consequence of a breach by the Member 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

16. TRACKED MAIL SERVICE

- 16.1 The Tracked Mail service from DX is an additional service only for DX Members. The current DX Rules of Membership and the definitions contained therein apply to this service subject to these Additional Rules which apply only to Items sent by the DX Service to which Tracked Mail labels have been attached.
- 16.2 Use of the Tracked Mail service from DX provides the Member on request with proof of delivery to the recipient Member's Exchange. To use the Tracked Mail service the Member must purchase non-refundable pre-paid labels supplied by DX at the current tariff price and use them in accordance with the instructions supplied.
- 16.3 Items sent by the Tracked Mail service will be subject to the same exclusion and limitation of liability Rules (set out in Rule 9 of the current DX Rules of Membership) save that (1) Rule 9.3 shall be varied only by replacing the limit of "€13" in line 1 with "€40"; and (2) DX shall not be liable to a Member for the loss of or damage to any Item that is collected from an Exchange by a third party (which for the avoidance of doubt shall include, but not be limited to, a courier engaged by Member for such purpose).

I have read and accepted the DX Rules of Membership

Signature

Name (In Caps)

Position

Date

DX