

STANDARD TERMS OF CARRIAGE OF DRIVE DIRECT COMMERCIAL LOGISTICS LIMITED

(1st January 2012)

Drive Direct Commercial Logistics Limited (company number: 06417520). Registered Office: 1st Floor, 153a Northenden Road, Sale Moor, Manchester M33 2HS.

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1 DEFINITIONS

The Glossary definitions at the end of these Terms apply to them (and any and all Contracts incorporating these Terms).

2 APPLICATION OF TERMS

2.1 These Terms are incorporated into any communication between Drive Direct and You, and each Contract (irrespective of how it is formed).

2.2 The parties may expressly agree in writing to disapply or vary any part of these Terms from time to time permanently or temporarily in respect of any Contract. Only a formally appointed and registered director of Drive Direct is authorised to do so (and/or to provide consent) for Drive Direct, and You will verify such status of such director before relying upon any disapplication or variation.

2.3 Subject to clauses 2.1, 2.2 and 11.1, the express written contents of these Terms will prevail over any inconsistent verbal, written or other express or implied statements, representations, warranties and other terms whatsoever to the fullest extent permitted by the law.

2.4 Any descriptions, specifications, drawings or performance figures supplied to You or published by Drive Direct are approximates only.

2.5 If Drive Direct supplies Services to You in instalments, these Terms will apply to each instalment as if there was a separate Contract for each instalment.

3 ORDERS & CONTRACT FORMATION

3.1 You warrant and represent that: (1) You have all the necessary consents, authority and capacity to order the Services from Drive Direct (and enter into and perform each Contract) under these Terms; and (2) each Consignment Item is fit to be (and is permitted to be) transported and/or moved by or on behalf of Drive Direct as part of the Services.

3.2 Any verbal or written or other confirmation or indication from You that a Quote is accepted will be treated as an offer from You for Drive Direct to supply the ordered Services based on that Quote and these Terms. Drive Direct intends (and You accept) that, subject to clause 2, a Contract will only form once Drive Direct has received from You a duly completed signed and dated Account Application and has verbally, in writing or otherwise communicated its acceptance of Your said offer.

3.3 You will promptly confirm verbal orders in writing (quoting Your customer number).

4 TERMINATION

4.1 Either party may for any reason terminate a Contract by serving written notice of at least 5 Business Days on the other party.

4.2 Drive Direct may terminate a Contract immediately upon giving notice (or on a date specified in that notice) if:

4.2.1 You are in breach of that Contract and do not remedy that breach within 2 Business Days of being notified in writing to do so.

4.2.2 You are unable to pay Your debts as they fall due, are deemed insolvent under the Insolvency Act 1986 (s.123), or become the subject of any insolvency, bankruptcy, receivership, administrative receivership, administration or similar action or proceedings for any reason (except in the case of a solvent corporate restructure for which Drive Direct has, subject to clause 2.2, given its express prior written consent).

4.2.3 You cease (or threaten to cease) to carry on all or (in Drive Direct's reasonable opinion) a substantial part of Your business.

4.2.4 You start negotiating with creditors to re-schedule Your debt, or make a proposal for or enter into any compromise or arrangement with Your creditors.

4.2.5 You become the subject of winding up, dissolution or similar action or proceeding for any reason.

4.2.6 The ordered Services cannot be provided because of any Force Majeure Event.

4.3 In the event of any Contract terminating for any reason: (1) any party's accrued rights and remedies will not be excluded or limited; and (2) in any event, You will without delay pay all amounts payable under or in relation to that Contract (and all other Contracts), whether or not then due and owing.

5 SERVICES

5.1 Drive Direct may provide the Services itself or through any of its sub-contractors. In any event Drive Direct will exercise reasonable endeavours to ensure that the Services are provided in a manner consistent with the Quote and (without prejudice to the generality of the foregoing) with reasonably necessary diligence and care.

5.2 Subject to clauses 5.1 and 11.1, Drive Direct does not warrant or represent any particular outcome of the performance of any part of any Contract.

5.3 Subject to clause 6.3, Drive Direct will arrange for the Consignment Items to be insured for only accidental loss or damage from the time they are actually collected from the Collection Point until the time they are actually delivered to the Delivery Point by or on behalf of Drive Direct.

5.4 Drive Direct is entitled to transport and/or move the Consignment Items in such vehicles and by taking such routes as it deems fit.

5.5 In the event of breakdown and/or mechanical failure of a Consignment Item in Drive Direct's custody: (1) Drive Direct will exercise reasonable endeavours to procure that its appointed breakdown/recovery agent attends to the Consignment Item (unless to the extent the parties expressly agree alternative arrangements in writing); and (2) You will pay the charges specified in clause 8.6.

5.6 Drive Direct will be responsible for providing no more assistance at the Collection Point and/or the Delivery Point than the minimum amount necessary.

5.7 If You are unable or unwilling to comply with any obligation under and/or in relation to any Contract, Drive Direct may suspend or discontinue supply of the ordered Services (and delay delivery of Consignment Items) permanently or temporarily under that and/or any other Contract(s) until You have complied with those obligations. This is without prejudice to any of Drive Direct's other rights or remedies.

5.8 Drive Direct may provide services for or to third parties which are or may be competitive with You (or which offer products or services of the same or similar nature to those offered by You).

6 DELIVERY AND PERFORMANCE TIME

6.1 Delivery and performance dates, times and periods are estimates only. Subject to this (and clauses 2, 5.7, 11.2.1, and 11.2.2.) Drive Direct will exercise reasonable endeavours to ensure that Services are performed (and Consignment Items delivered) on or by the Delivery Time.

6.2 If in Drive Direct's reasonable opinion the Consignment Items cannot be collected at the Collection Point and Collection Time and/or delivered at the Delivery Point and Delivery Time for Health & Safety (and/or security) reasons, You will (as soon as practicable after Drive Direct's request) provide clear instructions to Drive Direct for collection/delivery of the Consignment Items to a different collection/delivery point and/or at a different collection/delivery time. In such circumstances (subject to clause 11.1) You will ensure that You and/or the Recipient do not hold Drive Direct responsible for non-delivery and/or mis-delivery and/or late delivery and/or incomplete deliver and/or damaged Consignment Items.

6.3 If the Recipient is unable or unwilling to accept delivery of the Consignment Items at the Delivery Time and Delivery Point for any reason (or if Drive Direct does not make or delays delivery due to having exercised its rights under clause 5.7 and/or clause 8.12.3), Drive Direct may choose to do any of the following (without prejudice to any of its rights or remedies) at Your risk and Your cost of insurance, storage and carriage:

6.3.1 arrange for the storage of the Consignment Items until actual delivery to the Recipient; and/or

6.3.2 return the Consignment Items to the Collection Point.

7 YOUR SUPPORT

7.1 You will in good faith and acting reasonably co-operate with Drive Direct in its performance of each Contract. This includes You:

7.1.1 giving or making available such documentation, information, data, assistance, support, facilities and resources (to include water, light and power at Your premises and/or the Collection Point and/or the Delivery Point) as may reasonably be required by Drive Direct from time to time to perform its obligations; and

7.1.2 otherwise fully complying with, observing and performing Your obligations and/or duties under and/or in relation to each Contract.

7.2 You will keep Drive Direct informed in writing of any fact or circumstance that will or may adversely affect Drive Direct's proper performance of each Contract. You will ensure that information given to Drive Direct by You or on Your behalf (before, on or after the formation of any Contract) is materially accurate, complete and not misleading.

7.3 You will ensure that Drive Direct and its sub-contractors (and each of their respective Representatives):

7.3.1 is fully and properly informed in writing about all Health & Safety (and/or security) policies and rules applicable to Your premises and/or the Collection Point and/or the Delivery Point in sufficient time for them to be properly read and understood;

- 7.3.2 is able to carry out risk assessments of and at Your premises and/or the Collection Point and/or the Delivery Point; and
- 7.3.3 is able to safely enter, remain and exit Your premises and/or the Collection Point and/or the Delivery Point during agreed hours for the purposes of each Contract.
- 7.4 You will also ensure that each Consignment Item is in compliance with all EU and/or UK legislation and other mandatory legal and regulatory requirements. In particular, You will ensure that:
- 7.4.1 each Consignment Item (that is a vehicle to be driven) is roadworthy; and
- 7.4.2 You and/or any of Your Representatives do not instruct, encourage, support or assist any Representative of Drive Direct or its sub-contractors to drive any Consignment Item that is a vehicle if it is unroadworthy or otherwise illegal to drive.
- 7.5 You will ensure that the Consignment Items in respect of a Contract are accompanied by a consignment note containing such particulars as Drive Direct may reasonably require. If any such consignment note is signed by or on behalf of Drive Direct, its sub-contractor or any of their respective Representatives then such signed note is not intended (and/or will not be treated) as evidence of the condition or correctness of the declared nature of the Consignment Items at the time of collection.
- 7.6 You will keep confidential, secret and secure (and not disclose or publish in any way whatsoever) any commercially sensitive information of Drive Direct whatsoever (including Drive Direct's business plans and objectives, presentations, proposals, charges for any Contract, services, systems, processes and performance figures) unless to the extent: (1) expressly agreed in writing by Drive Direct (subject to clause 2.2); (2) required by the law; or (3) it becomes public knowledge in circumstances when You are in full compliance, observance and performance of this clause 7.6.
- 7.7 Subject to clauses 11.1, You will fully indemnify (on a £1 for £1 basis) and keep indemnified Drive Direct for any Direct Losses and/or Contemplated Losses it suffers, sustains or incurs directly or indirectly (to include costs and expenses incurred in enforcement of Your obligations) due to:
- 7.7.1 Your non-compliance and/or non-observance and/or non-performance with (and/or breach of) the whole or any part of any of Your obligations under and/or in relation to any Contract(s); and/or
- 7.7.2 without prejudice to clause 7.7.1, the circumstances or events stated in clause 11.2.1 and 11.2.2 occurring.
- 8 CHARGES AND PAYMENT**
- 8.1 Drive Direct's standard rate charges for the ordered Services under a Contract will be as stated or confirmed in the Quote for that Contract (subject to the remainder of this clause 8).
- 8.2 All quotations will be calculated based on prevailing wage costs, Employer's national insurance contributions and other costs whatsoever at the time of the Quote being provided.
- 8.3 Drive Direct may adjust the charges in respect of a Quote due to:
- 8.3.1 any increases in any of the costs mentioned in clause 8.2 (and/or any further expenditure required in respect of the Services) as a result of any change in the law; and/or
- 8.3.2 You requesting Services to be provided outside of Drive Direct's normal working routines, practices and hours (including for driver's night out allowance, weekend and public holiday collections and/or deliveries, waiting time, breakdown and out of hour working); and/or
- 8.3.3 the Quote specifically taking into account fuel costs as part of the charges, based upon estimated fuel consumption quantity, and thereafter the actual consumption being higher than the estimated fuel consumption and/or the cost of fuel being higher than the cost at the start of the Services in respect of that Quote.
- 8.4 Drive Direct will (where applicable) provide only enough fuel to complete the contracted journey. Fuel will be provided and re-charged to You at cost.
- 8.5 You will pay for the packaging, packing and securing (as the case may be) of Consignment Items (at the rates agreed in writing with Drive Direct) if: (1) it is of a type or extent not normally provided by Drive Direct for such Consignment Items, and (2) either it becomes necessary for Your order or You specifically request it.
- 8.6 You will pay Drive Direct's expenses (which is subject to an upward only review by Drive Direct from time to time) for the purposes of clause 5.5.
- 8.7 To the extent that any Consignment Item is not available for collection for any reason whatsoever (such as, without limitation, for technical problems, no keys, blocked access, labour shortages or any Force Majeure Event) You will pay Drive Direct's expenses incurred for each hour (or pro rata for a part of an hour) incurred in waiting time and/or re-attending the Collection Point at a different Collection Time. This is without prejudice to Drive Direct's other rights or remedies.
- 8.8 In each week Drive Direct will invoice You for the Services and other work carried out for You during the week immediately before that week. Manual invoicing should be agreed in advance of the Services commencing (however, in any event, Drive Direct reserves the right to charge a handling fee for each manual invoice).
- 8.9 You will pay in full all amounts stated in an electronic or manual invoice within 30 days of the date of that invoice unless Drive Direct (subject to clause 2.2) expressly agrees or determines otherwise in writing for any reason.
- 8.10 Time is of the essence for any payment from You to Drive Direct under and/or in relation to any Contract.
- 8.11 Drive Direct has a general and irrevocable lien over any of Your Consignment Items being transported and/or moved by Drive Direct (or on its behalf) as security for any amount due and payable by You to Drive Direct in respect of any and all invoices issued under any and all Contracts.
- 8.12 If You are unable or unwilling to pay any amount under a Contract in full on the due date then (without prejudice to any other right or remedy of Drive Direct) the following applies:
- 8.12.1 Drive Direct may charge interest (at a rate of 3% per month) on such sum from the due date for payment until payment is received in full (whether before or after any judgement) to accrue daily and compounded quarterly; and/or
- 8.12.2 exercise its rights under clause 5.7 until payment has been made in full; and/or
- 8.12.3 fully exercise the lien under clause 8.11 over any or all of Your Consignment Items in Drive Direct's custody, possession or control by serving written notice on You, and if any such notified lien is not fully satisfied within 5 Business Days of it being served on You then Drive Direct may sell all or any of the Consignment Items which are covered by such notified lien and use the realised cash to pay for amounts outstanding from You (with You remaining liable for any shortfall or, if applicable, Drive Direct paying You the balance less sales/disposal costs and expenses).
- 8.13 All charges and prices are exclusive of any value added tax (and other applicable duties and tariffs). You agree to pay such tax, duties and tariffs at the applicable respective rates.
- 8.14 If You make a part payment then the remainder of the amount due will still be paid by You, until and unless Drive Direct (subject to clause 2.2) expressly agrees otherwise in writing.
- 8.15 You will not withhold payment of any sum payable by You to Drive Direct by reason of any claim, counter-claim, set-off or otherwise against Drive Direct (to include any claim for damages).
- 9 RISK**
- Subject to clause 11.1, risk of damage to or loss of the Consignment Items (and the responsibility to insure them) in respect of a Contract will pass to You on delivery.
- 10 CUSTOMER CARE**
- 10.1 You will discuss with Drive Direct in good faith any reasonable complaint, grievance or claim that You seek to make or bring against Drive Direct (regarding the ordered Services and/or Consignment Items) to reach a reasonable solution.
- 10.2 If You (in good faith and acting reasonably) are not satisfied with the standard of the supplied Services and/or the condition of the Consignment Items the following will apply (subject to clause 11):
- 10.2.1 You will notify us in writing as follows:
- **for apparent or reasonably apparent defects in Consignment Items (and/or non-delivery, mis-delivery, late delivery or incomplete delivery) -** without delay on receipt of the Consignment Items;
 - **for any other defect in Consignment Items -** within 48 hours of discovering or becoming aware of the defect; or
 - **for Services -** within 48 hours of completion of the Services.
- 10.2.2 You will arrange with Drive Direct for appropriate inspections and/or tests to be carried out. You will also give Drive Direct its sub-contractors and their respective Representatives full access to all of Your personnel, information, data, records and materials to the extent reasonably required by or on behalf of Drive Direct.
- 10.2.3 Where Drive Direct determines (acting in good faith and reasonably) that the supplied Services and/or delivered Consignment Items do not comply with these Terms, You will fully pay (on a £1 for £1 indemnity basis) for any reasonable charges of Drive Direct resulting from Your notice under clause 10.2.1. If Drive Direct (acting reasonably) determines otherwise, Drive Direct may select one of the following options:
- **in the case of Consignment Items missing or being damaged -** have them (or, where applicable, the relevant parts) repaired or replaced at Drive Direct's reasonable cost or, if the amount is lower, pay You the wholesale cost (less tax) of such Consignment Item; or
 - **in any case -** provide You with a refund of the whole or a reasonable part of any amounts paid by You for the relevant supplied Services (as the case may be) under the applicable Contract.

11 LIABILITY

- 11.1 Drive Direct agrees that it will be liable for any express written warranties given by it under these Terms. Drive Direct also agrees that it will be liable for any fraud committed by it and for any death or personal injury caused by its negligence (and for any other matter to the extent that liability for that matter cannot be excluded or limited under the law - such law to include without any limitation whatsoever, for the avoidance of doubt, the CMR Convention for cross border transport over land and the Hague-Visby Rules for transport over sea).
- 11.2 Subject to clause 11.1, Drive Direct will not be liable to You - under any EU or UK legislation or regulations, tort (including for negligence or breach of statutory duty), contract, misrepresentation, equity or otherwise - to the extent that You suffer, sustain or incur any Direct Losses and/or Contemplated Losses (to include, without any limitation whatsoever, for those concerning non-delivery, mis-delivery, late delivery, incomplete delivery or damaged Consignment Items) directly or indirectly in any of the following circumstances:
- 11.2.1 due to any act or omission of You or any of Your Representatives (to include: Your breach and/or non-compliance and/or non-observance and/or non-performance of any Contract in whole or in part; and/or any negligence by You or any of Your Representatives; and/or any improper, illegal or unauthorised use or handling of the Consignment Items by You or any of Your Representatives); and/or
 - 11.2.2 to the extent that You have not complied with, observed or performed clause 10.2; and/or
 - 11.2.3 due to the mechanical failure of any Consignment Item (and/or accidents, damage or incidents caused by the faulty construction, faulty manufacture, or faulty service, maintenance, repair or refurbishment of any Consignment Item); and/or
 - 11.2.4 due to any Force Majeure Event; and/or
 - 11.2.5 to the extent that You have not paid for the Services that do not comply with these Terms; and/or
 - 11.2.6 to the extent that You have not taken all reasonable steps to mitigate Your Direct Losses and/or Contemplated Losses (to include the recovery of any monies from any third party such as an insurer and/or manufacturer of the Consignment Items in question); and/or
 - 11.2.7 to the extent that, in respect of **any** claim against Drive Direct under and/or in relation to a Contract, the aggregate amount claimed for that claim is less than 1% of the total amount paid by You under that Contract; and/or
 - 11.2.8 to the extent that, in respect of **all** claims against Drive Direct under and/or in relation to all Contracts concerning the same Consignment Item, the aggregate amount claimed per such Consignment Item exceeds £100,000; and/or
 - 11.2.9 to the extent that any claim is not issued and served against Drive Direct within 6 months of notification under clause 10.2.1 for that claim.

12 GENERAL POINTS

- 12.1 English law will govern each Contract and these Terms in all respects. English Courts will have exclusive jurisdiction unless Drive Direct expressly states otherwise in writing for enforcement reasons.
- 12.2 Each party will keep the other party informed of its up to date contact details. All notices given under or in respect of a Contract or these Terms will be given in writing and in the English language. They will be sent to the last known postal or e-mail address, or fax number, of the other party. They will be deemed served: 72 hours after dispatch (if posted), 48 hours after confirmed dispatch (if e-mailed or faxed) or immediately (if delivered by hand). E-mails and faxes require a delivery report as evidence of service. All notices to be served on Drive Direct must be served for the attention of at least one formally appointed and registered director of Drive Direct.
- 12.3 Drive Direct may deduct and set-off any amount owed by it to You from any amount owed by You to it.
- 12.4 Each Contract is made for the benefit of the parties to it and (in the case of the rights and benefits of Drive Direct) for the benefit of Drive Direct's sub-contractors and the respective Representatives of Drive Direct and its sub-contractors. Each Contract is not intended to benefit, or be enforceable by, anyone else under the Contract (Rights of Third Parties) Act 1999 or otherwise.
- 12.5 A waiver of any right under any Contract(s) is only effective if it is in writing. Any such waiver will apply only to the circumstances for which it is given.
- 12.6 The Terms apply to the fullest extent permitted by the law. If any part of the Terms is held/determined to be unenforceable by any court/body of competent jurisdiction, that part will be deemed modified (or, as a last resort, deleted) to the minimum extent necessary for that part to become enforceable. The remainder of the Terms will continue to apply in any event. The parties will fully co-operate in good faith in respect of this clause.
- 12.7 The expressions **including**, **include**, **in particular** or any similar expression in any part of these Terms will not limit the sense or scope of the words appearing before them or after them in that part.
- 12.8 The headings and sub-headings are not intended (and will not be deemed in that part) to affect interpretation of the Terms.
- 12.9 A 'person' includes a natural person, body corporate or unincorporated body (whether or not having separate legal personality).

- 12.10 Any obligation on a person not to do anything includes an obligation not to agree, allow, permit or acquiesce in that thing being done by another person.
- 12.11 A reference to any statute or statutory provision or convention includes all subordinate legislation and mandatory rules made under it and is a reference to it (including the subordinate legislation and mandatory rules) in force from time to time, taking into account all amendments, re-statements and consolidations.
- 12.12 To the extent that Drive Direct is entitled to exercise discretion under any provision of the Terms, it may do so at its sole and absolute discretion.

GLOSSARY

Account Application means the written application (in Drive Direct's standard form) for You to open an account with Drive Direct for Services to be supplied to You thereafter from time to time in accordance with these Terms.

Drive Direct means Drive Direct Commercial Logistics Limited (incorporated and registered in England and Wales with company number 06417520).

Business Day means any day other than a Saturday, Sunday or public holiday in England.

CMR Convention means the United Nations convention officially called the "Convention on the Contract for the International Carriage of Goods by Road" (the original version being signed in Geneva on 19 May 1956) - as amended.

Collection Point means, in respect of a Contract, the geographical location specified in the Quote for the collection of the Consignment Items for that Contract (or, subject to clause 2.2, such other location as the parties expressly agree in writing).

Collection Time means, in respect of a Contract, the time and date specified as the collection time and date in the Quote (or, subject to clause 2.2, such other time and date as the parties expressly agree in writing).

Consignment Items means the vehicles, plant or other products, goods, materials and spare parts transported and/or moved by Drive Direct from time to time for You as part of the Services.

Contemplated Losses means, in respect of an event or circumstance concerning a Contract: any and all losses, damages, costs, charges, fees, fines, penalties, expenses, claims, actions, demands, proceedings and other such detriments whatsoever in the contemplation of both parties (at the time when they made that Contract) as the probable result of that event or circumstance (that is, without prejudice to the foregoing, arising indirectly or consequentially from such event or circumstance).

Contract means any legally binding agreement, understanding, arrangement or commitment for the supply of particular Consignment Items and/or Services by Drive Direct to You.

Delivery Point means, in respect of a Contract, the geographical location specified in the Quote for the delivery of the Consignment Items for that Contract (or, subject to clause 2.2, such other location as the parties expressly agree in writing).

Delivery Time means, in respect of a Contract, the time and date specified as the delivery time and date in the Quote (or, subject to clause 2.2, such other time and date as the parties expressly agree in writing).

Direct Losses means, in respect of an event or circumstance: any and all losses, damages, costs, charges, fees, fines, penalties, expenses, claims, actions, demands, proceedings and other such detriments whatsoever arising naturally or directly (that is, according to the usual course of things) from such event or circumstance.

Force Majeure Event means any event or circumstance regarding: mandatory compliance with the law; any act of god (including fire, flood, earthquake, windstorm, adverse weather conditions or other natural disaster or conditions); any war, armed conflict, terrorist attack, civil commotion, riot or similar action; any national or international political campaign, sanction, embargo, loss or reduction of diplomatic relations or similar action; loss at sea, fire, explosion, accidental damage, collapsing buildings (or the failure of plant, machinery, computers or vehicles) or similar event; any labour dispute (including strikes, industrial action or lockouts or similar action); any non-performance by any supplier to or sub-contractor of Drive Direct; or any other event or circumstance beyond Drive Direct's reasonable control.

Hague-Visby Rules means the international rules for the carriage of goods officially known as the "International Convention for the Unification of Certain Rules of Law relating to Bills of Lading" of 1924 - as amended (to include the amendments made by the "Protocol to Amend the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading" of 1968 and the SDR Protocol of 1979).

Quote means, in respect of a Contract, the verbal or written quote given by Drive Direct to You for Your ordered Services concerning that Contract.

Recipient means, in respect of a Contract, the person who is to receive the Consignment Items under that Contract.

Representative means, in respect of a party, any partner, member, designated member, director, company secretary, employee, non-employed worker, agent, professional adviser or other such representative of that party.

Services means, in respect of a Contract, the services to be supplied by Drive Direct for You and specified or confirmed in the Quote concerning that Contract.

Terms means the conditions and other terms contained in this document.

You or Your means, in respect of a Contract, the person for whom the ordered Services are to be provided under that Contract.