

# **Exceed Couriers. Caergelach, Llandegfan, Menai Bridge. LL59 5UF**

## **Terms and Conditions of Business 01.01.2018**

### **1. DEFINITIONS**

“Account” means a Customer account registered with the Carrier containing Customer-specific information, including but not limited to a Customer’s name, contact information, payment card details and Booking history.

“Account Booking” means a Booking made by a Customer with an Account.

“App” means the mobile application that can be used by Customers to place Bookings with the Carrier.

“Booking” means a booking for the carriage of a Consignment placed by a Customer with the Carrier via telephone, email, facsimile, Online or the App.

“Carrier” means James Hadley t/a Exceed Couriers

“CMR Convention” means the United Nations’ Convention on the Contract for the International Carriage of Goods by Road.

“Conditions” means these conditions of carriage, which shall apply to the contract of carriage between the Customer and the Carrier.

“Consignee” means the person to whom the Carrier delivers the Consignment.

“Consignment” means goods or property, whether or not contained in separate parcels, packages, containers or envelopes including any paper and documents, to be delivered by the Carrier for the Customer to the Consignee.

“Customer” means the legal or natural person who contracts for the services of the Carrier.

“Dangerous Goods” means dangerous goods as defined in the Carriage of Dangerous Goods by Road Regulations 1996 (as amended, re-enacted or extended from time to time).

“Data Protection Legislation” means data protection legislation in force from time to time in the United Kingdom. It shall include the Data Protection Act 1998 (for so long as it remains in force), the General Data Protection Regulation (EU) 2016/679 and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK and any successor legislation to this regulation applicable and in force from time to time.

“Excluded Goods” means goods which may be carried by the Carrier pursuant to clause 3.9 which shall include, without limitation, precious stones, precious metals, watches, jewellery, glass, furs, china, art, antiques, prescription drugs, fragile and perishable goods, money, vouchers, travellers cheques, bearer bonds, bills of exchange, promissory notes, stamps, photographs, documents of title to property, bank, credit, pre-pay or other store cards with a cash equivalent value, spirits, tobacco and cigarettes and any other goods which the Carrier may at its sole discretion deem to be valuable.

“Non-Account Booking” means a Booking made by a Customer without an Account.

“Online” means Bookings and Booking enquiries made by the Customer Online via the Website.

“Personal Data” has the meaning given to it in the Data Protection Legislation.

“Prohibited Items” shall have the meaning ascribed to it in clause 3.9.

“Website” means the Carrier’s website located at [www.exceedsamedaycouriers.co.uk](http://www.exceedsamedaycouriers.co.uk).

“Working Day” means any day other than a Saturday or Sunday or a public or bank holiday in England.

### **2. GENERAL**

2.1 The Carrier provides an all-encompassing Consignment service to the Customer, which can include but is not limited to the carriage of Consignments, a booking service, account management support, tracking of deliveries, reporting of deliveries, provision of tracking as well as other features agreed between the Carrier and its Customer from time to time. The Customer acknowledges that for the carriage element of its service, the Carrier will engage an employee, agent or subcontractor.

2.2 The Carrier is not a common carrier and accepts at its sole discretion the carriage of Consignments subject only to these Conditions. Subject to clause 2.6 and 2.7, these Conditions shall apply to the exclusion of any other terms and conditions (including those of the Customer) unless agreed in writing by a Director of the Carrier. Subject always to clause 9.2, no employee, agent or subcontractor of the Carrier is authorised to alter or vary these Conditions.

2.3 The Customer acknowledges and agrees that the Conditions excluding or restricting any liability of the Carrier are reasonable having regard to the existence of alternatives and other carriers available to it.

2.4 The Customer warrants that it has full power and authority to enter into and perform its obligations under these Conditions.

2.5 The Carrier reserves the right to withdraw the Website and the facility to place Bookings Online or via the App without prior notice and also to refuse to accept and/or perform any orders placed thereon.

2.6 The Carrier and Customer acknowledge and agree that the CMR Convention and the standardised terms and conditions set out in the CMR Convention shall, to the exclusion of these Conditions, govern as matter of law any carriage by the Carrier of a Consignment by road, where the points of collection and delivery of the Consignment are located in different countries, of which at least one is a signatory to the CMR Convention. The CMR Convention shall not as a matter of law govern any carriage of a Consignment (a) between the United Kingdom, the Republic of Ireland, the Channel Islands or the Isle of Man; (b) under the terms of any international postal convention; or (c) in the context of furniture removal.

2.7 Where a Customer contracts with the Carrier as a consumer in a private non-commercial capacity, these Conditions shall be read in conjunction with Service Level Policy

### 3. CONSIGNMENT

3.1 Each Booking by the Customer with the Carrier shall be submitted by the Customer to the Carrier via telephone, email, facsimile, Online or the App.

3.2 The Carrier shall provide the Customer with a quotation for the carriage of the Consignment in question and such quotation shall be valid for a period of 7 days or such other period as the Carrier may specify. The Carrier shall provide written quotations to the Customer upon request. All Bookings are subject to acceptance by the Carrier and the Carrier reserves the right to refuse to accept any Bookings. All Bookings are subject to and governed by these Conditions, shall be deemed to be a separate and independent contract and the Carrier reserves the right to amend any Booking at any time upon notice to the Customer.

3.3 The contract between the Customer and Carrier in respect of a Booking (the "Contract") will be formed when the Carrier confirms receipt of that Booking. Customers should note that their Booking will not have been accepted by the Carrier until the time of such confirmation.

3.4 Additional charges (including, without limitation, time charges for waiting and/or loading) may be imposed by the Carrier (and the Customer shall pay such charges) if the Carrier is prevented from performing its obligations under these Conditions by reason of the acts and/or omissions of the Customer.

3.5 Unless agreed otherwise by the Carrier, the Consignment shall only be delivered to the address specified by the Customer at the time of Booking and the Carrier reserves its right to vary its charges by written notice to the Customer following any variation of the delivery address by the Customer.

3.6 All quotations for the Carrier's charges are calculated in accordance with the length of the journey for the shipment, the dimensions and gross weight of the Consignment and the type of Consignment service specified in the Booking. The Carrier offers a range of Consignment services including, without limitation, same day, overnight and international deliveries. The Carrier will calculate its quotation to the Customer and charge the Customer based on the mileage required to undertake the requested journey (as

determined by an industry standard form of measurement and subject to an agreed tolerance level of [+/- 5%] of the total mileage for the requested journey). Further details of the Carrier's charges and standard Consignment services are available upon request.

3.7 If the Customer requires additional services over and above the Carrier's standard carriage of Consignments, the Customer should contact the Carrier to discuss this. Whilst the Carrier will take reasonable steps to fulfil the Customer's additional requirements if the additional services involve supervision, direction or control as to the manner in which the Carrier's services are performed the Customer must contact the Carrier in advance as the Customer may be required to agree additional charges in advance with the Carrier.

#### Dangerous Goods

3.8 All Dangerous Goods must be disclosed by the Customer in advance and unless otherwise agreed, the Carrier will not accept or carry Dangerous Goods. Where the Carrier accepts Dangerous Goods for carriage they must be classified, packed and labelled in accordance with any applicable statutory regulation for the carriage of such Dangerous Goods and with any specific instructions of the Carrier which shall be set out in a separate written agreement entered into between the Carrier and the Customer. The Customer shall further provide such information, document or declaration as may be necessary to enable the carriage of such Dangerous Goods by the Carrier under that separate written agreement.

#### Excluded Goods

3.9 If the proposed Consignment contains Excluded Goods, the Customer must notify the Carrier at the time of Booking as to the content and value of such Consignment of Excluded Goods and the Carrier may (in its sole discretion) elect to carry such Excluded Goods. Except as set out in clause 10.1, the Carrier shall not be liable to the Customer for any loss, however caused, unless the Carrier has agreed in writing to the Customer to accept such liability. The Carrier reserves the right to charge the Customer (and the Customer shall pay) an additional sum for the carriage of the Consignment of Excluded Goods and will inform the Customer of such sum prior to accepting the Booking. If the Customer fails to so inform the Carrier in accordance with this clause 3.8, such Consignment will be delivered solely at the Customer's risk and the Customer shall indemnify and keep the Carrier indemnified against any and all losses, damages, claims, liabilities, costs and expenses (including, without limitation, legal costs and expenses) suffered or incurred by the Carrier arising out of, or in connection with, the delivery of the Consignment comprising such Excluded Goods in whole or in part.

#### Prohibited Items

3.10 Unless the Carrier has agreed otherwise in advance in writing specifying any additional terms, charges and limitations on liability which shall apply, the Customer shall not submit for carriage (and the Carrier may without any liability whatsoever reject such carriage at any time upon notice to the Customer) any Consignment which contains firearms, munitions, inflammable items or other explosives, livestock or other animals, human remains, any obscene, defamatory, blasphemous, scandalous or other indecent material, any item (including, without limitation, drugs or other illegal substances) which is prohibited or illegal to possess or import into any country through or into which the carriage of the Consignment is to take place (the "Prohibited Items"). If the Customer submits Prohibited Items as a Consignment (and regardless of whether or not the Carrier has agreed to carry such Consignment), the Customer shall indemnify and keep the Carrier indemnified against any and all losses, damages, claims, liabilities, costs and expenses (including, without limitation, legal costs and expenses) suffered or incurred by the Carrier arising out of, or in connection with, the carriage of the Consignment comprising such Prohibited Items in whole or in part.

## 4. DELIVERY

4.1 The Customer shall ensure that the Consignment is secure, properly packed and labelled in accordance with good practice and any applicable statutory requirements and is fit and safe to be carried, stored and transported by road, air, rail or sea as may be appropriate.

4.2 The Carrier will use all reasonable efforts to collect and deliver the Consignment within the times specified for collection and delivery by the Carrier when confirming a Booking but unless otherwise agreed these are estimates only and time is not of the essence.

4.3 Unless the Carrier has otherwise agreed in writing with the Customer:

4.3.1 the Carrier shall not be required to provide any labour or special equipment for loading or unloading the Consignment, other than that carried by the vehicle used by the Carrier; and

4.3.2 the Customer warrants that it will provide or procure any special equipment required for loading or unloading the Consignment and shall indemnify and hold harmless the Carrier for any damage to the Consignment or the Carrier, however caused, if the Carrier is instructed to load or unload any Consignment requiring special equipment where such equipment has not been provided or procured by the Customer.

4.4 The Carrier shall under no circumstances be liable to the Customer for any loss of or damage to:

4.4.1 the Consignment; or

4.4.2 any property of the Customer

in connection with or arising out of:

4.4.3 the Carrier's use of any special equipment in the loading or unloading of the Consignment (other than that carried by the vehicle used by the Carrier);

4.4.4 the Carrier's entry onto the premises of the Customer or Consignee in the course of collecting or delivering the Consignment; or

4.4.5 the Carrier otherwise providing to the Customer (whether for the benefit of the Customer or the Consignee) any services (whether or not the Customer and/or the Consignee assist in such provision) that are beyond the scope of the services that would usually and reasonably be expected of a point-to-point courier

(together the "Out of Scope Services").

4.5 The Carrier shall not be required to provide the Out of Scope Services (in whole or in part) to the Customer (whether for the benefit of the Customer or the Consignee), unless such provision is provided for in the Customer's Booking and confirmed by the Carrier pursuant to clause 3.3.

4.6 The Customer shall indemnify and keep indemnified the Carrier and its affiliates, contractors, agents, directors and employees against all losses, liabilities, damages, claims, actions, proceedings, expenses and costs (including legal and professional costs) that the Carrier and/or such related parties suffer or incur arising out of or in connection with the Carrier's provision of the Out of Scope Services (whether or not the Customer and/or the Consignee assist in such provision), including but not limited to any claim by the Consignee that the Carrier's provision of the Out of Scope Services has caused any loss of or damage to the Consignment or the property of the Consignee.

4.7 The Carrier shall deliver Consignments according to such route as it in its absolute discretion thinks fit.

## 5. CONSIGNMENT NOTES

5.1 If required, the Carrier shall sign a document prepared by the Customer acknowledging receipt of the Consignment but such document shall not be evidence of the condition, declared nature, quantity or weight of the Consignment at the time it is received by the Carrier.

5.2 Subject to clause 5.3, the Carrier shall require written acknowledgment at the point of delivery of the Consignment and where the Carrier is unable to obtain such acknowledgment, the Carrier shall be deemed to have been unable to effect delivery for the purposes of clause 7.1. Written acknowledgment at the point of delivery shall be conclusive evidence of proper delivery.

5.3 Where the Customer notifies the Carrier prior to the delivery or attempted delivery of the Consignment that the Carrier need not provide to the Customer a signature as proof of delivery of the Consignment, the Carrier shall be under no obligation to provide the Customer with the same and the Customer shall be deemed to have unconditionally and irrevocably waived any and all claims it may have in respect of the final delivery of the Consignment to the Consignee. Where a Customer notifies the Carrier that proof of delivery is not required pursuant to this clause 5.3, the Carrier shall not be liable to the Customer if it is later claimed by the Consignee that the Consignment has not been delivered.

## 6. TRANSIT

6.1 Transit commences when the Carrier takes possession of the Consignment, whether at the Carrier's premises or at some other point of collection.

6.2 Subject to clause 6.3, Transit by the Carrier shall (unless otherwise agreed) end when the Consignment is tendered at the Consignee's address provided at the time of Booking by the Customer.

6.3 Where a Consignment cannot be delivered (for whatever reason) or is held by the Carrier to await order or further instructions and such instructions are not given or the Consignment is not collected within 24 hours of notice being given to the Customer or such other time as the Carrier may nominate, then transit shall be deemed to end at the expiry of such time.

6.4 The Carrier shall be entitled to recover its charges in full for any delivery, which is unsuccessful due to incorrect or inadequate information provided by the Customer and in addition recover any expenses or losses it suffered or incurred in attempting to effect delivery.

6.5 The Customer understands and accepts that the Carrier shall be entitled to open and examine any Consignment that the Carrier reasonably considers to be a security or health and safety risk to the Carrier and to take, at its sole discretion, such appropriate action thereafter.

## 7. UNDELIVERED OR UNCLAIMED GOODS

7.1 Where the Carrier is unable to effect delivery as requested by the Customer when making a Booking, or where transit has come to an end, the Carrier shall use its reasonable endeavours to notify the Customer and the Consignee of any undelivered or unclaimed Consignment. Unless the Consignment is collected from the Carrier by the Customer, or instructions are given for the disposal, onward carriage or return to the Customer of the Consignment, within 7 days of such notice being given (or such other time as the Carrier may nominate), title to the Consignment shall transfer to the Carrier and the Carrier may destroy or sell the Consignment as if it were the absolute owner. Where a Consignment is returned to the Customer by the Carrier or a Customer arranges for the onward carriage and delivery of the Consignment by the Carrier (excluding any return to the Customer), that return or onward carriage (as the case may be) shall be at the Customer's sole cost and expense and shall be charged to the Customer (and the Customer shall pay) at the Carrier's standard rates from time to time in force.

7.2 Where the Carrier sells the Consignment to a third party pursuant to clause 7.1, the Carrier shall use its reasonable endeavours to obtain a reasonable price for the Consignment and shall apply the proceeds of sale to the payment of all its proper expenses and charges suffered or incurred in relation to the carriage, storage and sale or disposal of the Consignment. Any proceeds left over shall be paid to the Customer upon which the Carrier shall be discharged from all liability in respect of the Consignment. Where the proceeds of sale do not meet or exceed the total value of the Carrier's expenses and charges, the Carrier shall charge the Customer (and the Customer shall pay) a sum equal to the shortfall.

## 8. CANCELLATION

8.1 Subject always to the provisions of this clause 8, the Carrier and Customer shall each be entitled to cancel a Booking and terminate the Contract at any time for any reason with immediate effect by notice to the other.

8.2 Where the Carrier cancels a Booking pursuant to clause 8.1 by reason of a breach of these Conditions by the Customer, the Carrier may, without prejudice to any rights or remedies it may have at law or under these Conditions, charge (and the Customer shall pay) a reasonable fee for time and effort incurred by the Carrier in connection with that Booking, up to the full value of the charges specified by the Carrier in accordance with clause 9.1. The Carrier further reserves the right to hold the Customer liable for missed work opportunities caused by a breach of the Conditions and the cancellation of a Booking pursuant to this clause 8.2.

8.3 In the event of cancellation of any Booking for a Consignment by the Customer, the Customer shall be liable to the Carrier for the Carrier's charges in full for the carriage of the Consignment. This clause 8.3 shall apply only to cancelled Bookings where the Carrier has collected the Consignment in question.

8.4 Where the Customer cancels a Booking after the Carrier has departed to collect the Consignment (but before collection has taken place), the Carrier may charge (and the Customer shall pay) a reasonable fee for time and effort incurred by the Carrier in connection with that Booking, up to the full value of the charges specified by the Carrier in accordance with clause 9.1. The Carrier further reserves the right to hold the Customer liable for missed work opportunities caused by the cancellation of a Booking following the Carrier's departure (but prior to collection).

8.5 Subject to clause 8.6, the Customer has a legal right to cancel any Booking with immediate effect by written notice to the Carrier during a 7 Working Day period beginning the day after the date of the confirmation referred to in clause 3.3.

8.6 The Customer shall not have a right to cancel the Booking pursuant to clause 8.5 where the Carrier has departed to collect the Consignment, in accordance with the Customer's request, prior to the expiry of the 7 Working Day period referred to in clause 8.5.

8.7 Where the Customer cancels a Booking pursuant to clause 8.5, the Carrier shall refund to the Customer all sums paid by the Customer to the Carrier in connection with that Booking prior to the date of cancellation as soon as possible and, in any event, within 30 calendar days of cancellation.

## 9. CARRIER'S CHARGES

9.1 The Customer shall pay the Carrier's charges in accordance with these Conditions. The charges payable in respect of a Booking shall be specified by the Carrier as part of the confirmation referred to in clause 3.3.

9.2 Subject to clause 9.4, payment terms are 14 days from date of invoice, and any variation to these terms are to be agreed in writing by an authorised employee of the Carrier. Payment terms may be extended to 28 days from date of invoice for a Customer who has signed the necessary consent forms to authorise its bank to make payment by direct debit.

9.3 The Carrier's charges shall be based on its tariff in effect at the time of carriage of the Consignment and unless payment is made by credit card, invoice(s) shall be rendered by the Carrier to the Customer at least once a month. Credit facilities granted to a Customer may be withdrawn at the Carrier's absolute discretion at any time and the balance outstanding shall become due immediately on demand. If payment is made by credit card the Carrier reserves the right to apply an additional charge to cover its costs of accepting the payment (and the Carrier will tell the Customer the amount of such charge before making the Booking).

9.4 If at the time of Booking the Customer pays for a Consignment by credit card, the amount quoted by the Carrier to the Customer at the time of Booking will be charged to the Customer's credit card wherever reasonably practicable within 24 hours (or such other period as the Carrier may reasonably determine) of the Carrier's acceptance of the Booking. In the event that any additional charges are imposed by the Carrier pursuant to clause 3.4 above, the Customer hereby authorises the Carrier to charge such additional charges to the Customer's credit card wherever reasonably practicable within 24 hours (or such other period as the Carrier may reasonably determine) of the Carrier incurring such charges.

9.5 The Carrier reserves the right on 30 days written notice to increase charges to reflect increases in fuel prices. The Carrier reserves the right to vary its tariff, because of any change in business or regulation or any increase in the cost of providing any services, by giving the Customer not less than 30 days' written notice. If the Customer does not wish to continue to make any Booking after the date of the changes which take place, it is free to make such a choice. Any variation of the tariff will not affect the tariff which applied to any Booking made before the variation takes effect.

9.6 The Carrier shall be entitled to charge interest (both before and after judgment) on the amount unpaid at the rate of 4% above the base rate of the Bank of England from time to time until payment is made in full. When payment is not made by the due date, the Customer shall indemnify the Carrier for any costs and/or expenses it may suffer or incur in recovering the sum due, including reasonable legal fees and costs of collection.

9.7 Any queries in respect of an invoice must be made in writing within 7 days of the date of the invoice otherwise it will be deemed to have been accepted and will be payable in full by the Customer.

9.8 All charges quoted and charged are exclusive of value added tax and all other duties or taxes which may become due or payable from time to time and shall be added to invoices at the rate applicable at the date of invoice.

9.9 The Carrier operates an electronic invoicing system. All invoices, credit notes and statements will be sent to the Customer electronically. If the Customer requires paper invoices or credit notes (or cannot provide the carrier with an email address) the Carrier reserves the right to make charges for the provision of such paper invoices.

## 10. LIMITATION OF LIABILITY

10.1 Notwithstanding any other clause of these Conditions, neither party excludes or limits liability for personal injury or death arising from the negligence or wilful default of either party, its servants, dealers or sub-contractors; or for any fraudulent misrepresentation.

10.2 Except as expressly provided in these Conditions, the total liability of the Carrier which arises out of or under these Conditions (whether in contract, tort, statute or otherwise) in respect of any contract arising from a Booking is specified in this clause 10.

10.3 The Carrier shall not be liable to the Customer, whether in contract, tort or by statute, or otherwise in respect of any loss of profits and/or for any special, indirect, incidental or consequential loss or damage suffered by the Customer howsoever caused including, without limitation:

10.3.1 loss due to delay in delivery; and/or

10.3.2 loss of anticipated savings; and/or

10.3.3 loss of business and/or goods; and/or

10.3.4 loss of goodwill; and/or

10.3.5 loss of use; and/or

10.3.6 loss of data or other information; and/or

10.3.7 loss relating to the procurement by the Customer of any substitution of goods or services.

The types of loss and/or damage specified in clauses 10.3.1 to 10.3.7 above shall not constitute direct loss for the purpose of these Conditions.

### Consignment Values and Liability

10.4 The Customer shall notify the Carrier at the time of Booking of the value of the Consignment in accordance with the notification requirements set out in the tables below.

10.5 The Carrier's total aggregate liability to a Customer in respect of a Consignment shall be as set out in the tables below. The Carrier shall provide a higher limit on its liability for Consignments which relate to Consignments of value where the Customer notifies the Carrier of those values and the Customer pays the additional fees as set out in the tables. The parties acknowledge and agree that the Carrier's maximum liability in respect of each Consignment will also depend on whether the Customer has an Account with the Carrier.

Table 1: Non-Account Bookings - Same Day Deliveries within Great Britain

Value of Consignment	Customer to declare value to Carrier	Additional Fee Payable by Customer	Maximum Total Liability of Carrier in respect of Consignment
Less than £100	No	No	£100
More than £100 but less than £1,000	Yes	No	£1,000

Over £1,000	Yes	Yes: to be advised to Customer at the time of Booking	To be advised to Customer at the time of Booking
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Table 2: Account Bookings - Same Day Deliveries within Great Britain

Value of Consignment	Customer to declare value to Carrier	Additional Fee Payable by Customer	Maximum Total Liability of Carrier in respect of Consignment
Less than £1,000	No	No	£1,000
More than £1,000 but less than £5,000	Yes	No	£5,000
Over £5,000	Yes	Yes: to be advised to Customer at the time of Booking	To be advised to Customer at the time of Booking

#### Excluded Goods

10.6 The Carrier will not be liable to the Customer for the carriage of Excluded Goods unless: (i) the Customer notifies the Carrier in advance that the Consignment contains in whole or in part Excluded Goods pursuant to clause 3.9 above; and (ii) the Carrier decides (at its sole discretion) to accept the carriage of such Excluded Goods. If the Carrier agrees to accept the carriage of the Excluded Goods (at such additional fee as the Carrier may determine (which the Customer shall pay)), the Carrier's liability in respect of the same day delivery of the Excluded Goods shall be as set out in Tables 1 and 2 of clause 10.5, and shall be as set out in Table 3 of clause 10.5 for any overnight deliveries (whether within Great Britain or otherwise) or for any international deliveries of the Excluded Goods.

#### Storage of Consignments

10.7 For any Consignments stored by the Carrier at its premises, the total liability of the Carrier for any loss of or damage to such Consignment shall not exceed the sum of one thousand pounds sterling (£1,000), unless the declared value of the Consignment exceeds such sum and the Carrier has subsequently agreed in writing to a higher limitation on its liability.

#### Further Exclusions on Carrier's Liability

10.8 The Carrier shall not be held responsible for any event beyond the reasonable control of the Carrier, which prevents it from performing its obligations under the relevant contract including, but not limited to:

10.8.1 acts, omissions or misrepresentations by the Customer, owner of the Consignment, Consignee or independent contractor or any failure of the foregoing to package and/or label the Consignment correctly pursuant to clause 4.1. The Customer acknowledges and agrees that in such circumstances the Carrier shall not be liable for any loss of or damage to the Consignment that arises out of or in connection with a failure to package and/or label it correctly;

10.8.2 natural deterioration or fragility of the Consignment (notwithstanding that it may be marked "Fragile"); and/or

10.8.3 any unforeseen circumstances or causes beyond the Carrier's reasonable control, including but not limited to, act of God, war, riot, malicious damage, compliance with any law or government emergency procedure, accident, fire, flood, storm or industrial dispute, insufficient or improper packing, labelling or addressing, unless it is previously agreed in writing that the Carrier shall perform such task; or

10.8.4 marine risk.

10.9 The Customer shall provide to the Carrier written proof of the value of the Consignment damaged or lost and the Carrier shall be entitled to inspect the damaged Consignment.

## 11. WEBSITE AND APP

11.1 The information provided on the Website and/or the App has not been written to meet specific Customer requirements and it is the sole responsibility of the Customer to satisfy itself that any Booking made Online or via the App will be suitable for its requirements. All express or implied warranties in relation to the Website and/or the App are hereby excluded to the fullest extent permitted by law.

11.2 Whilst the Carrier makes all reasonable attempts to exclude viruses from the Website and/or the App, it cannot ensure that the Website or the App will be virus free. The Customer acknowledges and agrees that any use of the Website or App by the Customer shall be at its own risk.

11.3 Customers have no rights in or to the Website or the App and all rights in and to the Website and the App, including any underlying software and computer codes, are exclusively owned by the Carrier or licensed to the Carrier by a third party supplier.

11.4 The Website and App are intended for use by the residents in Great Britain only and only in respect of their activities within Great Britain.

## 12. TRACKING

12.1 The Carrier may from time to time offer to Customers without charge access to and use of Tracking, a web-based application that allows users to scan, log and track movements of their Consignments. The Carrier reserves the right to charge Customers for access to and use of Tracking at any time at a rate determined by the Carrier in its sole discretion.

12.2 The Carrier may temporarily or permanently suspend a Customer's access to Tracking at any time and for any reason, including, without limitation, where a Customer fails to pay for or notifies the Carrier that it is not prepared to pay for access to and use of Tracking following notification by the Carrier that it will charge the Customer for the same.

12.3 Whilst the Carrier makes all reasonable attempts to exclude viruses from Tracking, it cannot ensure that Tracking will be virus free. The Customer acknowledges and agrees that any use of Tracking by the Customer shall be at its own risk.

12.4 Customers have no rights in or to Tracking and all rights in and to Tracking including any underlying software and computer codes, are exclusively owned by the Carrier or licensed to the Carrier by a third party supplier.

12.5 Access to and use of Tracking is provided on an "as is" basis and the Customer acknowledges and agrees that, subject to clause 10, the Carrier shall accept no liability arising out of or in connection with the Customer's use of Tracking. All express or implied warranties in relation to Tracking are hereby excluded to the fullest extent permitted by law.

12.6 Tracking is intended for use by the residents in Great Britain only and only in respect of their activities within Great Britain.

## 13. TIME LIMITS FOR CLAIMS

The Carrier shall not be liable for loss of, misdelivery or damage to any Consignment unless it is notified by the Customer of such loss or damage in writing within 7 days of the end of the transit and the claim giving details of the value and the circumstances of any loss is made in writing within 14 days after the end of transit. A claim for loss or damage will not be accepted on the consignment note.

## 14. INDEMNITY TO THE CARRIER

14.1 The Customer shall indemnify the Carrier against:

14.1.1 all losses suffered by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, costs, expenses and loss of or damage to the carrying vehicle and to other goods

carried) as a result of any breach by the Customer of these Conditions, fraud, error, omission, or misrepresentation by the Customer, owner of the Consignment or Consignee;

14.1.2 all claims and demands made against the Carrier by any third party in excess of the liability of the Carrier under these Conditions;

14.1.3 all losses suffered by and claims made against the Carrier resulting from loss of or damage to property caused by or arising out of the carriage of Dangerous Goods, Excluded Goods and/or the Prohibited Items;

14.1.4 all claims made upon the Carrier by HM Revenue & Customs in respect of dutiable goods consigned in bond whether or not transit has ended or been suspended; and

14.1.5 all claims and demands made against the Carrier as a result of a breach of clause 16.3.

## 15. SEVERANCE

If any provision of these Conditions is held by any court or competent authority to be invalid or unenforceable in whole or in part, the validity of the remainder of these Conditions and of such provision shall continue in full force and effect.

## 16. OTHER IMPORTANT PROVISIONS

16.1 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions save for those parties to whom the Carrier has subcontracted its obligations under these Conditions, who shall have the right to exercise and enforce all rights granted to the Carrier under them. This clause 16.1 does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

16.2 The Carrier undertakes to comply with any and all provisions of the Data Protection Act 1998 as applicable.

16.3 At no time during the period that the Carrier is undertaking the Booking for the Customer is the Customer permitted to supervise, direct or control the manner in which any of the Carrier's employees or sub-contractors undertake the service unless an express agreement is reached in accordance with clause 3.7.

16.4 During the continuance of the business relationship with the Carrier, and for a period of 6 months immediately following the last Booking placed by the Customer, the Customer shall not, directly or indirectly, solicit or offer employment or any other form of contract for services to any of the Carrier's (a) employees; or (b) subcontractors, who were directly involved in the performance of a contract of carriage during the 6 months immediately preceding the last Booking placed by the Customer.

16.5 The payment terms and charges paid to the Carrier are confidential, and the Customer shall take all reasonable steps to ensure that such terms remain confidential. The Customer may not disclose the terms or make any public announcement about the relationship the parties have entered into without the prior written agreement of the Carrier, save for any disclosure required by law or by a statutory or regulatory body with power to order such disclosure.

16.6 Any notice or other communication to be given under or in connection with this Agreement:

16.6.1 by a Customer to the Carrier, shall be given in writing and sent by first-class post to the Carrier's registered address and/or by email to [operations@exceedcouriers.co.uk](mailto:operations@exceedcouriers.co.uk); and

16.6.2 by the Carrier to a Customer, shall be given in writing and sent by first-class post and/or by e-mail to the postal address and/or the e-mail address provided by the Customer to the Carrier during the Booking process

or such other postal or e-mail address as either party may substitute by written notice to the other. A notice shall be deemed delivered 2 working days after the date of posting and 24 hours after sending by email (as applicable).

16.7 Carrier shall be entitled to subcontract in whole or in part the performance of any or all of its obligations under these Conditions. The Customer shall not assign, novate, subcontract or otherwise

dispose of, or deal with, any or all of its rights and obligations under these Conditions without the prior written consent of the Carrier.

16.8 The waiver of either party of any breach of these Conditions will not prevent the subsequent enforcement of that term and will not be deemed a waiver of any subsequent breach.

16.9 These Conditions and the documents referred to in them, including but not limited the confirmation referred to in clause 3.3, constitute the entire agreement between the Carrier and Customer and supersede all prior agreements, representations and understandings relating to the subject matter of the Contract. The Customer represents and undertakes that in entering into a Contract in accordance with these Conditions the Customer does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person other than as expressly set out in these Conditions. Nothing in these Conditions shall limit either party's liability in respect of fraudulent misrepresentation.

16.10 These Conditions (and any non-contractual claims) shall be subject to and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

16.11 Telephone calls to and from the Carrier may be recorded and monitored.

## 17. DATA PROTECTION

17.1 The Customer shall give any notices and obtain any consents necessary to enable the Carrier to lawfully process any Personal Data (which may include delivery and contact information) provided by the Customer to the Carrier to enable the Carrier to exercise its rights and perform its obligations in relation to Bookings.

17.2 The parties acknowledge that:

17.2.1 the Carrier is a controller/data controller in relation to any delivery and contact information provided by the Customer to the Carrier. The Carrier shall process this information in accordance with applicable Data Protection Legislation (save for any failure caused by breach of the Customer's obligations under clause 10.1); and

17.2.2 the Carrier does not have any access to (and does not process) the contents of any Consignment. Accordingly: (i) the Carrier is neither a processor nor a controller of any Personal Data forming part of the contents of any Consignment; and (ii) it is the Customer's responsibility to determine whether the services provided by the Carrier are appropriate for the transfer of any data (including Personal Data) included in any Consignment.

17.3 The Customer shall indemnify the Carrier against all losses (including but not limited to liabilities, costs, expenses, damages and fines) suffered or incurred by the Carrier arising out of or in connection with the provision of the services, to the extent that such losses arise out of or in connection with the Customer's failure to select appropriate services for the transfer of any data (including Personal Data) included in any Consignment.