



## Elite Sameday Ltd Conditions of Carriage effective 1<sup>st</sup> January 2007

### **1 Parties**

The parties to this agreement are:

- 1.1 Elite Sameday Ltd ('the Courier') which expression shall where the context allows include his employees agents and sub-contractors
- 1.2 The person firm or company deemed Customer ("the Customer") by placing an order with the above

### **2 Definitions**

'Sub-Contractor means any person whose services the Courier engages or makes use of to perform the whole or any part of the services the subject of this contract

'Dangerous goods' means goods included in the list of dangerous goods as defined in the Classification Packaging and Labeling of Dangerous Substances Regulations (known as the C.P.L. Regulations), and in the classification and labeling of explosives regulations (The Radioactive Substances (Carriage by Road) (Great Britain) Regulations 1974) and including any other relevant legislation or regulations together with any amendments to them, or means goods which present a comparable hazard

'Theft attractive goods' include: Money, Securities, Deeds, Bills of exchange, Promissory notes, Stamps, Photographs, Mobile telephones and all ancillary equipment, General telephony equipment, Documents of title to property, Jewellery, Precious stones, gold, silver, platinum, Other precious metals, Non-ferrous metals other than in components, Furs, Watches, Cassettes, videos  
Spirits, tobacco and cigarettes

"Consequential Loss" shall include without limitation all economic losses loss of profits increased management or labour costs loss of future business loss of reputation and goodwill loss of market or falls in prices of whatever nature and all other damages costs or expenses or other indirect losses including any liability to or claims by any third party.

"Consignment" means the delivery of goods in bulk or contained in one parcel package container or envelope or as the case may be or any separate number of parcels packages containers or envelopes sent at any one time in one load by or for the Customer from one address to one address. "Goods" includes papers and documents other than those expressly excluded.

### **3 Courier's obligations**

- 3.1 The Courier shall use its best endeavors to deliver the goods specified overleaf to the delivery address so specified at about or before the time so specified
- 3.2 The Courier shall not be liable for any delay in delivery caused by the unavailability at the delivery address of the consignee or other authorised recipient
- 3.3 The Courier shall not be liable for loss of or damage to or mis-delivery or delayed delivery of the goods occasioned by:
  - 3.3:1 act of God including but not limited to storm tempest or flood
  - 3.3:2 act of war hostilities riot or civil commotion or the threat or fear of such conditions prevailing
  - 3.3:3 criminal malicious or negligent actions or acts or omissions of third parties
  - 3.3:4 industrial action or unforeseeable traffic conditions
  - 3.3:5 the effect of ionising radiation or uncontrolled nuclear reaction
  - 3.3:6 suspension or cancellation of transport services by reason of or of the threat or fear of inclement weather or any of the matters set out in clauses 3.3:1 to 3.3:5 inclusive
  - 3.3:7 Fire-lighting or explosion
  - 3.3:8 Seizure under legal process
  - 3.3:9 Act default or omission of whatever nature of the Customer his employees or agents or any person having any interest in the goods
  - 3.3:10 Insufficient or improper packing labelling or addressing

### **4 Customer's obligations**

Subject to the provisions of this agreement the Customer undertakes:

- 4.1 That in relation to the Goods the Customer is either solely beneficially entitled to the Goods or has the authority of all those interested in the Goods to enter into this contract and to bind them to its terms
- 4.2 In the event of any claim by any third party against the Courier arising out of this contract to indemnify the Courier against the claim and all legal and other costs incurred except to the extent that the Customer establishes that the Courier would have been liable to the Customer had the original claim been made by the Customer but on the assumption that the Customer had retained title to the Goods
- 4.3 To give any instructions requested by the Courier in pursuance of clause 3 above as soon as reasonably practicable
- 4.4 To make all payments as provided in clause 13 below

### **5 Limitation of liability**

- 5.1 The liability of the Courier in the event of loss of or damage to or mis-delivery of the goods (where the Couriers liability is not otherwise excluded) shall not exceed £100.00 per ton of Consignment or part thereof in the case of an event affecting part only of the Consignment. Where the Customer requires a higher value of cover this shall be expressly negotiated and agreed in writing and an additional charge may be made. The weight of the goods actually lost damaged or misdelivered shall be taken to be the weight given on the relevant delivery or consignment notes, or when not available, shall be their actual weight.
- 5.2 The liability of the Courier for delay in delivery (where the Couriers liability is not otherwise excluded) shall not exceed a sum equal to the carriage charges or a proportion of those charges in the case of an event affecting part only of the goods
- 5.3 The Courier shall not be liable for any physical loss, mis-delivery or damage to any theft-attractive goods unless the Courier has specifically agreed in writing prior to transit commencing to carry such items and the Customer has agreed in writing to reimburse the carrier in respect of all additional costs including insurance costs which result from the carriage of the said items and the loss mis-delivery or damage is occasioned during transit and is proved to be due to the negligence of the Courier its servants or agents.
- 5.4 The Courier shall not in any event be liable for any consequential loss whatsoever and howsoever arising (including in relation to theft attractive goods) which shall include without limitation all economic losses, loss of profits, increased management or labour costs, loss of future business, loss of reputation and goodwill, loss of market or falls in prices of whatever nature and all other damages costs or expenses or other indirect losses including any liability to or claims by any third party.

### **6 Excluded goods**

- 6.1 The Customer shall not submit for carriage and the Courier may at any time abandon the carriage of any goods of a type specified in clause 6.3 below
- 6.2 If the Courier abandons goods in pursuance of clause 6.1 above he shall immediately notify the Customer of the circumstances but shall be under no liability in respect of the safe-keeping of the abandoned goods
- 6.3 The following are excluded goods:
  - 6.3.1 Explosive and inflammable articles firearms including parts of any firearms ammunition and detonators
  - 6.3.2 Dangerous goods
  - 6.3.3 Any article the possession of which in or the importation of which into any country from through or to which the carriage is to take place is illegal or prohibited
  - 6.3.4 Any article prohibited as hand luggage by British Airways
  - 6.3.5 Any written printed or pictorial matter which is obscene blasphemous scandalous or defamatory or proscribed or prohibited
  - 6.3.6 Human remains
  - 6.3.7 Livestock

### **7 Warranties and indemnities**

The Customer shall indemnify the Courier in respect of the whole of any fine or penalty or legal and other costs incurred by the Courier and any other loss outlay and expense sustained by the Courier by reason of the Customers breach of clauses 3, 4 and 6 above.

- 7.1 The extent of the Couriers responsibilities and liabilities are defined in these conditions and the Customer shall save harmless and keep the Courier indemnified from and against all claims costs and demands of whatsoever nature and by whomsoever made and howsoever arising from negligence or otherwise in excess of the liability of the Courier under these Conditions arising directly or indirectly from the collection, carriage, storage and/or delivery of the Customers Consignment.
- 7.2 In the absence of written notice to the contrary given to the Courier at the time of delivery to them, all goods and the packaging within which they are contained are warranted by the Customer to be fit to be carried and stored.
- 7.3 The Customer agrees that he will not submit to the Courier any Consignment containing dangerous, verminous, infested, contaminated or condemned goods unless he shall first have given to the Courier in writing full details of the same and obtained the written agreement of the Courier to the submission of such Consignment.
- 7.4 The Customer will be responsible for and will indemnify the Courier against all losses damage and claims of whatsoever nature made upon the Courier for which the Courier may be or become liable arising from the tender of a Consignment all or part of which consists of dangerous, verminous, infested, contaminated or condemned goods including loss and/or damage sustained by the Courier to its own property and injuries or loss sustained by servants and/or sub-contractors of the Courier.

**8 Third Parties**

The Courier shall be entitled to appoint sub-contractors and/or agents and it is hereby declared any sub-contractor of the Courier and the employees of the Courier and any such sub-contractor and also any person deriving title to the goods from the Customer are third parties to this contract within the meaning of the Contracts (Rights of Third Parties) Act 1999 and shall be entitled to enforce this contract accordingly.

**9 Transit**

- 9.1 Transit begins when the goods are handed to or collected by the Courier for carriage.
- 9.2 Transit shall be suspended:
  - 9.2.1 When the goods are held by the Courier at some place other than the destination at the request of or for the convenience of the Customer or because the Customer or Consignee refuses or is unable to take delivery at the destination or
  - 9.2.2 When the goods are detained for Customs purposes; and shall be resumed when the Courier resumes the carriage of the goods.
- 9.3 Transit shall (unless otherwise previously determined) end:
  - 9.3.1 in the case of goods to be delivered by the Courier when they are tendered at the usual place of delivery within the customary delivery hours of the district, or at such other times or places as may be agreed between the Courier and the Customer
  - 9.3.2 in the case of goods not to be delivered by the Courier awaiting order or collection, at the expiration of one clear day after notice of arrival has been given either orally or in writing to the consignee or, to the sender when the address of the Consignee is not known; provided that when the addresses of both the sender and consignee are not known, the said end shall be the expiration of one clear day after the arrival of the goods at the place to which they are consigned.
- 9.4 The Courier shall be entitled to raise a charge in respect of any wasted or needless journeys made or for any delay in attempting to effect delivery of the goods due to any default of the Customer and/or consignee in accordance with its own costings scales.

**10 Means of transport**

- 10.1 Goods accepted by the Courier for carriage may be carried by such means of transport and by such route as the Courier thinks fit and these conditions shall apply to whatever means or routes by which the goods are carried.
- 10.2 Goods canted wholly or partly by water or air or rail shall in connection with liability in respect of such carriage be carried subject to the applicable Conditions of Carriage by water or air or rail of the carrier who carries the goods such conditions to be read as though reference therein to water or air or rail carrier were reference to the Courier. In the absence of proof to the contrary where goods are canted partly by land and partly by water or air or rail any loss damage or delay shall be deemed to have occurred whilst the goods are being carried by road.

**11 Loading and unloading**

- 11.1 On collection or delivery at Senders or Consignee's premises the Courier shall be under no obligation to provide any plant, power or labour for loading or unloading.
- 11.2 Subject to these Conditions, the Couriers servants and/or employees have no authority to give assistance other than under supervision in the loading and unloading at the usual place of collection or delivery and the Courier shall not be liable for any loss or damage howsoever caused including negligence attributable to such or to any other assistance given and the Customer shall indemnify the Courier against any claims made against the Courier as a result of any such other assistance given.
- 11.3 Consignments or part thereof requiring special appliances for unloading from a road vehicle are accepted for carriage only on the condition that the Customer has duly ascertained from the consignee that such appliances are available at the destination. Where the Courier is, without prior arrangement in writing having been made by the Customer, called upon to load or unload Consignments or parts thereof for which special appliances are required, the Courier shall be under no liability whatsoever to the Customer for any damage howsoever caused, whether or not by the negligence of the Courier and the Customer shall be responsible for and indemnify the Courier against any damage or liability which the Courier may suffer or incur either itself or in respect of loss, damage or injury suffered by the Couriers employees or any third party.
- 11.4 The Courier reserves the right to make a charge without notification for time spent waiting at either the Senders or Receivers premises should that waiting time be at the behest of the Customer.
  - 11.4.1 The charge will be an hourly rate equivalent to the current Minimum Charge in effect for the relevant size of vehicle.
  - 11.4.2 The charging period will commence after 15 minutes waiting.
  - 11.4.3 Time spent loading shall be viewed in the same respect as waiting time.
  - 11.4.4 In the event of The Courier attending premises in the size of vehicle as indicated by The Customer and it being insufficient either in size or payload for the goods to be carried, a charge shall be made. The value of this charge will be at the discretion of The Courier and paid by The Customer.
  - 11.4.5 A cancellation charge will be levied against The Customer when canceling a job before collection is affected but after the vehicle has been dispatched by the Courier for the purpose of collecting the Customers goods.

**12 Dangerous goods**

- 12.1 Except where the Courier has agreed in writing signed by a Director, the Courier does not contract to carry or store dangerous, verminous, infested, contaminated or condemned goods.
- 12.2 Where the Courier accepts dangerous goods (in this Condition 12 called 'the Goods') for carriage or storage the Goods will be carried or stored subject to all the foregoing Conditions and subject also to the special Conditions specified and referred to in this Condition and in the event of conflict between the said special Conditions and the foregoing, the special Conditions shall prevail.
- 12.3 the special Conditions relating to the carriage of the Goods are:
  - 12.3.1 At the time of tendering the Goods for carriage or storage the sender shall supply to the Courier a declaration in writing giving adequate and sufficient information in relation to the nature of the Goods and the hazard presented (whether or not required by statute).
  - 12.3.2 The Goods shall be properly and sufficiently packed and labelled in accordance with any requirements specified by the Courier or otherwise with any statutory regulations in force applicable to the carriage of the Goods including but not limited to the C.P.L. and allied regulations.
  - 12.3.3 Any additional Conditions and/or requirements communicated to the Customer by the Courier shall prevail
  - 12.3.4 In case of non-compliance with any of the provisions of this Condition:
  - 12.3.4.1 in any event the Courier shall not be under any liability whatsoever in respect of the dangerous Consignment save in the case of willful misconduct by the Courier in which case liability shall be determined in accordance with these Conditions; and
  - 12.3.4.2 The Customer will be responsible for and indemnify the Courier against loss or damage and claims made upon it for which it may be or become liable in respect of injury to persons or damage to property unless the Customer proves that the loss or damage or injury is due to the willful misconduct of the Courier.
- 12.4 The Courier shall not be liable for loss of, or damage or delay to the Goods unless the Customer proves that such loss, damage or delay was not caused wholly or partly by failure on his part to comply with any of the special Conditions in paragraph 12.3 hereof.
- 12.5 The Courier may at any time at the senders sole risk and expense return the whole or any part of the dangerous Consignment to the Customer (who shall receive it at once) or destroy or otherwise dispose of the whole or any part thereof if the Courier is of the opinion that it is necessary or advisable to do so.

**13 Payment**

- 13.1 The Customer shall pay for the delivery service within 30 days of the issue date of the Couriers' invoice without set-off or deduction or counterclaim
- 13.2 in default of payment the Courier shall be entitled to charge interest at the rate of 5% above the then prevailing base lending rate of National Westminster Bank Plc from the date of invoice. The Customer shall be liable to reimburse the Courier for any and all charges howsoever incurred in the recovery of outstanding monies due. Costs arising from recovering monies due to the Courier may be incurred by the use of internal and or external debt recovery bodies, legal and or court actions and by use of bailiffs. Where practical any and all charges may be applied to the outstanding monies and then collected by an external body.

**14 Time Limits for Claims**

- 14.1 The Courier shall not be liable for any damage to goods or delay unless it is advised in writing within 21 days of delivery or the date specified for delivery in regard to goods not actually received.
- 14.2 In any event any damaged goods must made available to the Courier for inspection
- 14.3 The Courier shall not be liable for any loss or mis-delivery unless it is advised in writing by the Customer (otherwise than upon delivery of the Couriers documents) within 28 days of transit commencing and the claim is made in writing within 42 days after transit began
- 14.4 The Courier shall in any event be discharged from all liability whatsoever in respect of the Consignment unless proceedings are commenced within a period of one year from the termination or transit or, in the case of loss mis-delivery or non-delivery of the whole Consignment, from the said 28 days referred to in Clause 15.3.

**16 Courier's lien**

The Courier shall have a general lien against the owner of the Goods for any money due from the Customer or such other owner to the Courier and if any such lien is not satisfied within a reasonable time the Courier may in its absolute discretion sell all or part of the Goods as agent for the owner and apply the proceeds towards the money due and the expenses of retention insurance and sale of the Goods and shall on accounting to the Customer for any surplus be discharged from sit liability whatever in respect of the Goods.

**17 By placing a booking with Elite Sameday Ltd it is understood that the Customer has accepted these Terms and Conditions.**

**18 The contract and these Terms and Conditions shall be construed and governed by the Laws of England.**

Signature on behalf of Elite Sameday Ltd:
Customer:
Signature on behalf of Customer:
Print name of signatory:
Date of signature:
