

## **1. Interpretation**

In these terms and conditions ("Conditions"):

1. "Dangerous Goods" means items from time to time specified in the United Nations Recommendations on the Transport of Dangerous Goods ("UNRTDG") and any other items which we from time to time specify;
2. "Delivery Address" means the full postal address (including the post code) specified on the Address Label;
3. "Consignee" means the consignee specified on the Address Label;
4. "Consignment" means any goods, whether a single item, in bulk or a number of separate items to be delivered to the same Consignee (including any of them or any part of them);
5. "Value" means, in respect of any Consignment, the lesser of the cost and the market value of such Consignment;
6. "we" means Avon Courier Express includes our employees, agents and sub-contractors and "us" and "our" will be interpreted accordingly; and
7. "you" means the person(s) or company whose order for the delivery of a Consignment is accepted by us and "your" will be interpreted accordingly.

## **2. Sub-contracting**

We may employ any person as our agent, sub-contractor or otherwise in the performance of any of our obligations under these Conditions. We enter into these Conditions on behalf of such persons who will be entitled to the benefit of them and will have no greater liability to you than we do.

## **3. Consignments**

1. You warrant that:
  1. if you do not own a Consignment or any part of it, you are an agent of the owner(s) of the Consignment and are authorised to enter into these Conditions on the owner(s) behalf;
  2. all Consignments and their packaging will be fit and safe to be handled and carried by us; and
  3. no Consignment will exceed any size or weight restrictions which we from time to time specify.
2. We do not carry and you warrant that no Consignment will contain any bullion, antiques, cashiers or travellers cheques, currency, stamps, firearms, money orders, cigarettes, precious stones or metals or negotiable instruments in bearer form and will have no liability (whether caused negligently or otherwise) for loss, damage, mis-delivery or non-delivery or late delivery of the same.
3. Unless we agree in writing, before transit commences, we do not carry and you warrant that no Consignment will contain any perishable goods, food, liquids, plants, drugs, medicines or alcoholic beverages and we will have no liability (whether caused negligently or otherwise) for loss, damage, mis-delivery or non-delivery or late delivery of the same.

4. You will indemnify us and keep us indemnified against any costs, expenses, liabilities, injuries, losses, damages, claims, demands, proceedings or legal costs and judgments which we suffer as a result of a breach of the warranties contained in conditions 3.1, 3.2 and 3.3.
5. You acknowledge that our transit system is not suitable for carrying glass, china, ceramics, pottery, stoneware, fossils, antiques and works of art, or similar such materials and we will have no liability (whether caused negligently or otherwise) for any damage caused to the same.
6. We may open or inspect any Consignment.

#### **4. Dangerous Goods**

1. You warrant that Consignments will not:
  1. contain any items specified in classes 1, 2.3 or 7 of the UNRTDG; and
  2. unless we otherwise agree in writing before transit commences, contain any other class of Dangerous Goods.
2. if we agree to carry any Dangerous Goods:
  1. you must comply with all requirements of the UNRTDG in relation to such goods and you warrant that no Consignment will contain any Dangerous Goods in excess of the amounts thereof specified in the UNRTDG;
  2. you must provide us with a full written declaration of the nature and content of such goods and the nature of the hazard presented by such goods together with all instructions for the safe handling of such goods;
  3. such goods must be properly and safely packed and labelled in accordance with any requirements which we specify and in accordance with statutory regulations in force from time to time for transport by road, sea or air;
3. You will indemnify us and keep us indemnified against all any costs, expenses, liabilities, injuries, losses, damages, claims, demands, proceedings or legal costs and judgments which we suffer or incur as a result of any breach of the warranties contained in this clause 4 or us carrying such Dangerous Goods, whether declared as such or not.

#### **5. Loading and Unloading**

1. Unless we agree otherwise:
  1. if we collect or deliver a Consignment to or from your premises, you will provide appropriate equipment and labour for loading or unloading the Consignment; and
  2. if a Consignment requires equipment or labour in excess of the driver to be unloaded at the Delivery Address, you warrant that such equipment or labour will be provided at the Delivery Address.
2. Any assistance we provide to load or unload a Consignment will be provided at our discretion and is at your sole risk and we will not be liable for any damage caused (whether negligently or otherwise). You will indemnify us and keep us indemnified against any costs, expenses, liabilities, injuries, losses, damages, claims, demands, proceedings or legal costs and judgments which we suffer as a result of the provision of such assistance.

#### **6. Transit**

1. In relation to each Consignment you must complete such consignment note ("Consignment Note") and address label ("Address Label") in each case as we

from time to time specify. You must affix an Address Label to each Consignment.

2. Transit begins when we accept a Consignment for delivery. At your request we will sign a document acknowledging receipt of a Consignment. Such document will not, regardless of its terms, be evidence of the condition, nature, quantity or weight of the Consignment when delivered to us.
3. Transit ends:
  1. when a Consignment is delivered to the Delivery Address (including in accordance with condition 7.1. or if, in accordance with your instructions, a Consignment is left at the Delivery Address despite there being no-one available at the Delivery Address to take delivery of the Consignment); or
  2. 7 days after the Consignee is notified (whether in writing or orally) that we have made an unsuccessful attempt to deliver the Consignment and that the Consignment is available for collection from us.
4. Transit may occur using any means of transport and by any route we think fit. Without limiting this condition 6.4, you acknowledge that part of the transit of Consignment for Jersey, Guernsey, Northern Ireland, Republic of Ireland, Aberdeen or any Scottish island will be by air.

## **7. Delivery**

1. We will deliver Consignments to the Delivery Address, provided that if the Delivery Address has, or is served by a central mail delivery and/or collection area, we may deliver the Consignment to such area. We are not required to deliver Consignments personally to the Consignee.
2. You must select a service option on the Consignment Note specifying when the Consignment is to be delivered. If you do not select a service option you will be deemed to have selected the next day service option.
3. Subject to condition 17, if you select:
  1. the next day, Saturday, 48 hour or 72 hour service options we will deliver the Consignment by no later than the end of the relevant day or period after the day on which the Consignment is accepted;
  2. a service option specifying a time by which delivery is to be made, we will deliver the Consignment within 30 minutes after such time; and
  3. a service option specifying a time at which delivery is to be made, we will deliver the Consignment within 30 minutes before or after such time;
4. We only deliver on Saturdays if you mark the Saturday service option on the Address Label. If we make an unsuccessful attempt to make a delivery on a Saturday, you must still pay the Saturday delivery fee.
5. Time for delivery is not of the essence. We will not be in breach of these conditions if a Consignment is delivered late.
6. If we make two failed attempts to deliver a Consignment, we may charge you an additional sum for each subsequent attempted delivery or attempt to return the Consignment to you, whether successful or not.
7. At your request, within 14 days of the date the Consignment is delivered we will use reasonable endeavours to provide a proof of delivery of the Consignment, provided that provision of same does not constitute a condition of payment. We may at our discretion impose a charge for providing you with a proof of delivery outside this 14 day period.

## **8. Undelivered or Unclaimed Goods**

1. We may sell or dispose of any Consignment if:
  1. we cannot determine the sender or the Consignee of the Consignment;
  2. we are unable to deliver the Consignment; or
  3. transit is deemed to be at an end under condition 6.3.2, provided that before selling or disposing of the Consignment we will retain it for 3 months, and use reasonable endeavours to notify you that we intend to sell or dispose of the Consignment unless it is collected from us within the time period specified in such notice.
2. If when we sell a Consignment we identify you as the sender of the Consignment, we will tender the sale proceeds to you after deducting all charges and expenses we incur in selling the Consignment and any outstanding charges relating to the Consignment. Tender of such amount will, without prejudice to any claim or right which you may have against us under these Conditions, discharge us from all liability to you in respect of such Consignment and its carriage and storage.

## **9. Charges**

1. Transit charges are subject to change without prior notice and will be payable by you within 20 days of the date of our invoice or as we notify you in writing from time to time.
2. All charges are expressed exclusive of VAT which may be chargeable and which will be payable in addition by you.
3. If you do not pay any sum payable to us on its due date, without prejudice to any other rights which we may have:
  1. we may charge and you will pay interest upon such sum from the due date until payment is made in full, both before and after any judgment, at 2 percent per month;
  2. we may recover our costs and expenses of collecting such amount;
  3. we may suspend deliveries of other Consignments until the outstanding amount has been received by us; and
  4. any other sums owing from you to us, regardless of whether we have issued you with an invoice for such sums or whether such sums are due to be paid in the future will become immediately due and payable.
4. All payments due from you under these Conditions will be made without deduction whether by way of counterclaim, set-off or otherwise unless you have a valid court order requiring an amount equal to the deduction to be paid by us.
5. You will notify us of any change in your name, address or other circumstances that may affect the payment of any charges at least 14 days in advance of date of the change.

## **10. General Exclusions of Liability**

1. We will not be liable to you for any loss, damage, mis-delivery, non-delivery or delayed delivery of any Consignment which occurs as a direct or indirect result of:
  1. anything you or your employees or agents do or omit to do or any misstatement or misrepresentation you, your employees or agents make;
  2. any inherent liability to wastage, latent or inherent defect, vice or natural deterioration or electrical derangement of the Consignment;
  3. the Consignment being insufficiently or improperly packaged;

4. the Consignment being incorrectly or insufficiently addressed (including the correct postal code) or labelled;
2. We will in no circumstances be liable to you for pure economic loss or loss of profit, business, sale, market, goodwill and like loss, whether direct or indirect and whether caused negligently or otherwise.
3. Notwithstanding anything to the contrary contained in these Conditions, our liability for fraud, or death or personal injury resulting from our negligence, is not limited.
4. Notwithstanding anything to the contrary contained elsewhere in these Conditions, if you have sub-contracted the delivery of any Consignment to us, we will not be under any greater liability to you in respect of such Consignment than you have contractually to your customer.
5. We will not be liable for any loss, mis-delivery, non-delivery or delayed delivery of or damage to a Consignment or otherwise for any failure or delay in performance of our obligations under these Conditions due to any event beyond our reasonable control including, without limitation:
  1. delay or cancellation of ferries, flights or railway transport;
  2. failure by a Consignee to accept delivery of a Consignment;
  3. delays in or refusal of customs clearance;
  4. act of God, war, riot, civil commotion, malicious damage or blockades, strikes, lockouts or other industrial disputes (whether involving our workforce or that of a third party) compliance with any law or governmental order, rule, regulation or direction seizure under legal process, national emergencies, fire, flood, tempest or storm, accident, breakdown of plant or machinery default of supplies (including, without limitation fuel) or sub-contractors.

#### **11. Time Limit for Claims**

1. We will not be liable (whether in negligence or otherwise) for damage to Consignments or loss, mis-delivery or non-delivery of any Consignment (or any part thereof), unless you notify us (other than upon any delivery document) of the same within:
  1. 3 days of the date of delivery if the proof of delivery is signed as having been received in good condition; and
  2. 7 days of the date of delivery (or the due date for delivery if the whole Consignment has been lost or mis-delivered) in all other cases, and make a written claim against us within 21 days of the date of delivery or the due date of delivery (as appropriate).
2. We will not be liable (whether in negligence or otherwise) to you in respect of any late delivery, or any loss, damage, mis-delivery or non-delivery of a Consignment unless legal proceedings are commenced against us within 12 months from the date when transit commences.

#### **12. Liability for Late Delivery**

1. Our sole liability in respect of late delivery of a Consignment, whether as a result of negligence or otherwise, is limited to the lesser of the difference in price between:
  1. the service option you selected and the next quickest service option available for such Consignment which, if we had delivered the Consignment in accordance with such option, could have resulted in delivery of the Consignment at the same time as it was delivered; and

2. the service option you selected and the slowest service option available for such Consignment.
2. We will have no liability for late delivery of any Consignment for which you select the slowest service option available for such Consignment.

### **13. Full Transit Liability Option**

1. Before transit commences you may request an increase in our liability under condition 14 under the extended cover option ("Extended Cover"). If we agree, Extended Cover is available in units of £1,000 (each a "unit" of Extended Cover) up to a maximum of 10 units per consignment. In such circumstances the specified sum for the purpose of condition 14.1.3 will be as specified in condition 14.3.
2. We do not provide insurance cover for Consignments and you will not receive an insurance policy if you purchase Extended Cover.

### **14. Liability for Loss and Damage**

1. Our sole liability for loss, mis-delivery or non-delivery of or damage to any Consignment whether caused negligently or otherwise, is limited to the lesser of:
  1. the Value of the Consignment, or the part of the Consignment as appropriate, which has been lost, mis-delivered or damaged;
  2. the cost of repairing any damage to the Consignment; and
  3. the sum specified in either condition 14.2 or 14.3 provided that our maximum liability per Consignment under this condition 14.1 is £10,000.00.
2. In respect of any Consignment in relation to which you have not taken out Extended Cover under condition 13, the applicable sum for the purpose of condition 14.1.3 will be a sum equal to £10.00 per kilogram of the gross weight of such Consignment or the part of such Consignment which has been lost, mis-delivered or damaged.
3. In respect of any Consignment for which you have taken out Extended Cover, the applicable sum for the purpose of condition 14.1.3 will be the number of units of Extended Cover purchased for such Consignment provided that if the Value or the cost of repairing the Consignment exceeds the number of units of Extended Cover purchased for such Consignment, our liability will be limited to an amount equal to the same proportion of the amount of the loss or damage to the Consignment as such number of units of Extended Cover is to the Value or the cost of repair as appropriate of the Consignment.
4. We will use our reasonable endeavours to find any cheque which forms part of a Consignment and which is lost during transit, provided that our liability for such loss will be limited to the lesser of the cost of cancelling and reissuing any such cheque and £10.00.
5. If during transit a Consignment is carried by water, rail or air, our liability for any loss of or damage to the Consignment during the period of transit by water, rail or air will not exceed the liability of the carrier providing the water, rail or air carriage to us.
6. Any Consignment which has a Value of less than £20.00 is carried at your risk and we will have no liability to any loss, mis-delivery or non-delivery of or damage to such Consignment.
7. Shock labels or similar devices designed to show whether a Consignment has been subject to treatment likely to cause damage to it are not accepted as proof of damage of any Consignment.

## **15. Lien**

We have a general and particular lien over all Consignments for all monies owing from you. If any lien is not satisfied within 7 days of us notifying you of its exercise, we may sell the Consignment as your agent. We will tender the sale proceeds to you after deducting all monies owing from you and all expenses and charges incurred in the sale. Having done so we will have no further liability to you for the Consignment.

## **16. Unreasonable Detention**

After an initial period of 10 minutes, we may charge you £5.00 for each 15 minute period spent attempting to collect or deliver a Consignment.

## **17. Periods of Time**

Where these Conditions specify a period of time such period will not include any day which is a Saturday, Sunday or public or bank holiday in any country through which transit of the Consignment passes.

## **18. International Deliveries**

1. If the Convention on the Contract for the International Carriage of Goods by Road ("CMR") applies to the delivery of any Consignment by us
  1. if any provisions of these Conditions conflicts with any provisions of the CMR, the provisions of the CMR will take precedence; and
  2. our liability for loss of or damage to or late delivery of a Consignment will be governed by and limited in accordance with the CMR.
2. If the Warsaw Convention of 1929 ("1929 Convention") or the Warsaw Convention as amended at the Hague 1955 ("1955 Convention") applies to the delivery of any Consignment by us:
  1. If any provision of these Conditions conflicts with any provision of the 1929 Convention or the 1955 Convention (as appropriate) the provisions of the 1929 Convention or the 1955 Convention (as appropriate) will take precedence, and
  2. our liability for loss of or damage to a Consignment or late delivery of a Consignment will be governed by and limited in accordance with the 1929 Convention or the 1955 Convention (as appropriate).
3. If a Consignment is being exported you must supply correct and complete documentation required for customs clearance at the commencement of transit.
4. You will indemnify us and keep us indemnified against any costs, expenses, liabilities, injuries, losses, damages, claims, demands, proceedings or legal costs and judgements which we suffer as a result of:
  1. you failing to provide us with the documentation specified in condition 18.3;
  2. any claims made by HM Customs and Excise in respect of dutiable goods consigned in bond; and
  3. any claim made by HM Customs and Excise under Section 30(10) of the Value Added Tax Act 1994.

## **19. General**

1. The headings in these Conditions are for convenience only and do not affect their interpretation.
2. We are not and do not contract as a common carrier. Any Consignment accepted for transit is accepted upon these Conditions to the exclusion of all others that you attempt to apply, even if they are endorsed upon, delivered with or contained in any document that you deliver to us. Delivery of a Consignment to us by you will be conclusive evidence of your acceptance of these conditions.
3. Variations to these Conditions and representations about the services we are to provide to you will be ineffective unless expressly agreed in writing by an authorised signatory.
4. Any failure by us to enforce or partially enforce any provision of these conditions will not amount to a waiver of our rights.
5. These conditions are personal to you and you may not assign, licence or sub-contract any or all of your rights or obligations under them without our prior written consent.
6. Any provision of these conditions which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) will, to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provision of these conditions and the remainder of such provision shall not be effected.
7. All communications between the parties about these conditions must be in writing and delivered by hand, pre-paid first class or fax, if to us, to our registered office and if to you, to the address specified on the account application form, or in either case, to such other address as notified by either party to the other.
8. Communications will be deemed to be received:
  1. if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and Bank or public holidays) after posting (excluding the day of posting);
  2. if delivered by hand, on the day of delivery;
  3. if sent by fax before 4pm on a day other than a Saturday, Sunday or a Bank or public holiday, at the time of transmission or otherwise on the next day which is not a Saturday, Sunday or a bank or public holiday.
9. These Conditions contain all the terms which we have agreed in relation to the subject matter of these Conditions. Neither party has been induced to enter into these Conditions by a statement or promise which they do not contain. This Condition 19.9 will not exclude any liability which one party would otherwise have to the other in respect of any fraudulent statements.
10. Formation, construction, performance, validity and all aspects of these Conditions is governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
11. The parties to these Conditions do not intend that any of its terms will be enforceable by virtue of the Contracts (rights of third parties) act 1999 by any person not a party to it.

## **20. Data Protection Act**

1. You consent to and understand that, for all account applications, a credit search will take place using a credit reference agency. This information may also be shared with other Courier Express companies.

