

# Streetwise Couriers Ltd Sameday, International and APC Overnight Conditions of Carriage 2018

The Customer’s attention is particularly drawn to the exclusions and limitations of Liability at Conditions 9, 10 and 11 of these Conditions.

## 1. Definitions and interpretation

(1) In these Conditions, the following words and expressions have the following meanings:

- “ADR”** means the ADR (European Agreement Concerning the International Carriage of Dangerous Goods by Road) 2017 as amended or replaced from time to time;
- “APC”** means The Alternative Parcels Company Limited, Company Number 2855735;
- “Streetwise Couriers”** means Streetwise Couriers Ltd, company number 2697026
- “APC Privacy Policy”** means APC’s privacy policy from time to time, as set out on the APC Website;
- “APC Unidentified Freight Policy”** means APC’s unidentified freight policy from time to time, a copy of which can be obtained on request from APC or any Member Depot;
- “APC Website”** shall mean APC’s website from time to time, currently to be found at [www.apc-overnight.com](http://www.apc-overnight.com);
- “Business Day”** means any day other than a Saturday or Sunday or public or bank holiday in England and Wales;
- “Carrier”** means Streetwise Couriers
- “Consignee”** means the person or company to whom the Carrier is to deliver the Consignment in accordance with the Contract with the Customer;
- “Consignment”** means goods, whether a single item or in bulk or contained in one parcel, package or container, as the case may be, or any number of separate items, parcels, packages or containers being carried under a Contract;

<b>“Contract”</b>	means the contract of carriage between the Customer and the Carrier which incorporates these Conditions and any reference to the Contract shall mean the Contract and these Conditions;
<b>“Customer”</b>	means the person or company who contracts for the services of the Carrier including any other carrier who gives a Consignment to the Carrier for carriage;
<b>“Dangerous Goods”</b>	means goods of the type listed as dangerous goods in the ADR;
<b>“EPOD”</b>	means a device which provides for electronic proof of delivery in accordance with Condition 5(2);
<b>“Excluded Items”</b>	means any Dangerous Goods and any substances, goods or items listed on the APC Website from time to time, as being prohibited from inclusion on any Consignments by the Customer;
<b>“Insolvent”</b>	means the Customer: (A) gives notice under section 84 Insolvency Act 1986 of, or proposes or passes a resolution for, its winding up (save for the purpose of a solvent reconstruction or amalgamation); (B) has a winding up petition presented against it; (C) has a winding-up order made or a notice of striking off filed in respect of it; (D) (i) has an administration order or an application for an administration order made in respect of it, (ii) has a notice of appointment of an administrator or a notice of intention to appoint an administrator filed in respect of it at any court; (E) proposes, makes or is subject to (i) a company voluntary arrangement, (ii) a composition with its creditors generally, (iii) an application to a court of competent jurisdiction for protection from its creditors generally, or (iv) a scheme of arrangement under Part 26 Companies Act 2006 (save for the purpose of a solvent reconstruction or amalgamation); (F) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income; (G) ceases to trade or appears, in the reasonable opinion of the Carrier, to be likely to cease to trade; (H)(i) is unable to pay its debts as they fall due, or (ii) the value of its assets are less than its liabilities, including its contingent and prospective liabilities; or (I) as a sole trader or partner in a partnership (i) proposes, makes or is subject to an individual voluntary arrangement or composition with creditors (ii) applies for bankruptcy, is subject to a bankruptcy petition, or has a bankruptcy order made against them (iii), or (J) is the subject of anything

analogous to the foregoing under the laws of any applicable jurisdiction;

**“In writing”**

includes, unless otherwise agreed by the parties in writing, the transmission of information by electronic, optical or similar means of communication, including, but not limited to, facsimile, electronic mail or electronic data interchange, provided the information is readily accessible so as to be usable for subsequent reference;

**“Labelling Guidelines”**

means APC’s labelling guidelines, in force from time to time, a copy of which can be obtained from the APC Website, and/or upon request from APC or any Member Depot;

**“Liability”**

means liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party’s obligations under the Contract, in each case howsoever caused, including if caused by negligence;

**“Manifest System”**

means the Carrier’s own system for the tracking and management of Consignments from time to time;

**“Member Depot”**

means a depot which is part of the APC network and is signed up to the APC Trading Agreement as amended from time to time;

**“Member Depot Privacy Policy”**

means the privacy policy of any of the Member Depots, from time to time;

**“Packaging Guidelines”**

means APC’s packaging guidelines, in force from time to time, a copy of which can be obtained from the APC Website and/or provided upon request from APC or any Member Depot;

**“Specified Items”**

means items stated to be specified items on the APC Website from time to time, currently including, without limitation, living creatures, perishables and other goods liable to spoil, bullion, money, cheques, money orders, securities, tickets, vouchers, stamps, precious metals or precious stones, jewellery, works of art, antiques, memorabilia, watches, wines and spirits, furs, tobacco, glass, ceramics, pottery, porcelain, china, perspex, acrylics, fibre glass, television sets that are “non-compatible freight”, plasma screens; vehicle parts that are not boxed, bicycles that are not boxed, gearboxes, or any other mechanical part containing oil or invasive

liquid, furniture unless in flat pack form, mattresses in plastic covers comprising the Consignment;

**“Sub-Contractor”** means a carrier employed by the Carrier, and/or employed by such carrier’s sub-contractor;

**“Transit”** means the period of time when the Consignment is in the Carrier’s possession or control, which shall commence and end in accordance with the provisions of Condition 6.

(2) References to any statute, statutory provision or convention will include any subordinate or implementing legislation made under or in relation to it, and will be construed as references to such statute, statutory provision, convention and/or subordinate or implementing legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

## **2. The Contract with the Customer**

(1) These Conditions set out the rights and obligations on the Carrier and the Customer when the parties enter into a Contract for the carriage of goods. The Carrier accepts goods for carriage only upon the understanding that the Carrier is not a common carrier and only upon the terms and conditions set forth in these Conditions. These Conditions will apply to all Contracts to the exclusion of all other terms and conditions, including any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.

(2) The Carrier may use the services of a Sub-Contractor and any such Sub-Contractor may use the services of a Sub-Contractor for the purpose of fulfilling the Contract in whole or in part.

(3) The Carrier contracts for itself and as agent of and trustee for its employees and agents and all Sub-Contractors referred to in Condition 2(2) above and such other carriers’ employees and agents.

(4) APC and the Sub-Contractors referred to in Condition 2(3) above shall have the benefit of the Contract, shall be entitled to enforce the Contract in accordance with Condition 15(5)(a) and collectively and together with the Carrier shall be under no greater Liability to the Customer or any other party than is the Carrier.

## **3. Consignments**

(1) The Customer warrants and represents that:

- (a) the Customer is either the owner of the Consignment or is authorised by such owner to accept these Conditions on such owner’s behalf; and
- (b) the Customer has all rights, licences and title to submit the Consignment for carriage under the Contract.

(2) The Customer shall:

- (a) subject to clause 3(3) below, not include, and the Carrier shall not be obliged to accept for carriage, any Dangerous Goods or Specified Items, in any Consignment under the Contract. The Customer may include Specified Items in the Consignment,

but on the understanding that Specified items travel at the Customer's risk, and Condition 9(2) will apply; and

(b) not include any Excluded Items in any Consignment; and

(c) make arrangements to collect from the Carrier, Consignments containing Excluded items, that have been held by the Carrier. If after a period of 7 Business Days following notification that the Consignment is being held by the Carrier, the Consignment has not been collected, the Carrier will either dispose of the Consignment or return the Consignment to the Customer, and all associated costs of such disposal and/or return will be immediately payable by the Customer. If the Customer refuses to accept such returned Consignment, the Carrier will dispose of the Consignment, and all associated costs of such disposal will be immediately payable by the Customer.

(3) Dangerous Goods may be accepted for carriage by the Carrier at its sole discretion, but in any event the Carrier will not include such Dangerous Goods, unless:

(a) the amount carried is under the limited quantity ("LQ") provisions of chapter 3.4 of the ADR; and

(b) carriage of the Consignment is to be made within the UK mainland.

(4) The Customer shall refer to the APC Website for, and shall comply with, all restrictions relating to Consignments, including, but not limited to details of all consignment parameters, including, but not limited to, the permitted size and weight of Consignments.

(5) Any delivery times and dates provided by the Carrier shall be according to that Carrier's rate tariff and shall be estimates only. The Carrier shall use reasonable endeavours to deliver Consignments within any estimated timescales provided by the Carrier to the Customer, but time for delivery of the Consignment will not be of the essence of the Contract.

(6)(a) The Customer must refer to the Packaging Guidelines to ensure that the Consignment is:

(i) sufficiently packaged to limit the movement of the contents and support and protect the contents through the handling and transportation process and during Transit.

(ii) safe for transport through the APC network and is safe to be handled by the Carrier's staff.

(b) The Customer must affix the Consignment label in accordance with the Labelling Guidelines, as set out in the Packaging Guidelines. The Customer must follow such Label Guidelines to ensure the Consignment's label quality is sufficient for the Carrier's scanning equipment.

(c) For the avoidance of doubt, the Carrier will not have any Liability for any damage to the packaging of the Consignment, as such packaging is for the purpose of protecting the contents of the Consignment, from the perils of transport during Transit.

#### **4. Loading and Unloading**

(1) Subject to the remaining provisions of this Condition 4, the Carrier shall be responsible for any loading and unloading of the Consignment.

(2) Unless otherwise agreed in advance in writing between the Carrier and the Customer:

(a) the Carrier shall not be under any obligation to provide any additional labour, other than one individual driving the vehicle, for loading or unloading the Consignment;

(b) the Customer warrants that any additional labour required for loading or unloading the Consignment will be provided by the Customer or on the Customer's behalf. Whether additional labour is necessary shall be assessed by the Carrier in its sole discretion;

(c) if additional labour is required for loading or unloading of a Consignment, and the Customer, in breach of the warranty in Condition 4(2)(b) above, does not provide, or provides insufficient, labour, the Carrier shall:

(i) have the right to refuse to load or unload the Consignment in its sole discretion and the Customer shall be responsible for any additional costs of re-delivery with the appropriate labour; or

(ii) if the Carrier is instructed to load or unload any Consignment despite the insufficient additional labour and the Carrier agrees to do so, the Carrier shall be under no Liability whatsoever to the Customer for any damage whatsoever, howsoever caused; and

(d) the Carrier shall not be required to provide service beyond the agreed place of collection or delivery, and may refuse to provide such service at its sole discretion. If any such service is agreed to be given by the Carrier, it shall be at the sole risk of the Customer.

(3) The Customer shall indemnify, keep indemnified, and hold the Carrier, APC and the Sub-Contractors harmless against all Liability (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damage to the carrying vehicle and to other goods carried) whatsoever which arises as a direct or indirect result of:

(a) the instructions given by the Customer under Condition 4(2)(c); or

(b) such service as set out in Condition 4(2)(d); or

(c) any breach by the Customer of Condition 3(6)(a) or 3(6)(b) above.

#### **5. Signatures**

(1) In relation to the collection of Consignments into Transit, the Carrier shall either:

(a) sign an electronic record on an EPOD; or

(b) sign a hard copy document which will then be held and input onto the Carrier's system;

acknowledging the receipt of the Consignment by the Carrier into Transit. The Customer acknowledges that such signature shall constitute proof of collection by the Carrier.

(2) In relation to delivery of Consignments to Consignees, the Consignee will be required to sign either an EPOD or hard copy document (which will then be held and input on to the Carrier's system by the Carrier or electronic record on an EPOD

acknowledging the receipt of the Consignment(s) at the time of delivery), and the Customer acknowledges that, for the purposes of the Contract, such signature shall constitute proof of delivery.

(3) The Carrier shall not inspect the Consignment at any point before or during Transit, and accordingly the existence of the Carrier's signature shall not act as evidence of the condition of the Consignment and its nature, quantity or weight declared in the relevant document; the signature is merely proof of collection. The burden of proving the condition of the Consignment and its nature, quantity or weight in a case of dispute, shall rest with the Customer.

## **6. Transit**

(1) Subject to Conditions 9 and 10, risk in the Consignment will be with the Carrier during Transit.

(2) Unless otherwise agreed, the Consignment shall be delivered to the Carrier's premises by the Customer. Transit shall commence at the point when either:

- (a) the Carrier takes possession of the Consignment from the Customer at the Carrier's premises; or
- (b) the Carrier takes possession of the Consignment from the Customer at the location designated in advance by the Customer for the collection of the Consignment by the Carrier; and
- (c) the Carrier has provided a signature for the Consignment in accordance with Condition 5(1).

(3) Subject to Condition 6(5), Transit shall (unless otherwise previously determined) end when the Consignment is unloaded at the address provided in writing by the Customer to the Member Depot at the time the Customer drops the Consignment off or, if specified by the Customer, at the address detailed on the Carrier's Manifest System for that Customer from time to time and subject to Condition 6(4) below the Consignee has provided a signature for the Consignment in accordance with Condition 5(2) above.

(4) In the event that the Consignee is not at the requested delivery point and the Customer has provided the Carrier with any specific instructions for delivery which mean that the Consignee's signature shall not be required on delivery then provided that the Carrier, or its relevant agent carries out such instructions then Transit will be deemed to have ended and the Carrier shall no longer be responsible for the Consignment.

(5) Subject to Condition 7(1) if delivery cannot be made, then the following provisions shall apply:

- (a) If the Consignee is not available to take delivery of the Consignment, or no safe and/or adequate access or no adequate unloading facilities exist at the Consignee's address then the Carrier shall:
  - (i) leave the Carrier's form of written notice for the Consignee providing instructions for arrangement of redelivery by the Carrier or collection by the Consignee; and
  - (ii) return the Consignment to the Carrier's, premises (as will be detailed on the written notice detailed in Condition 6(5)(a)(i) above).

(b) In the circumstances outlined in Condition 6(5)(a) Transit shall be deemed to end at the expiry of three (3) Business Days after the notice provided in accordance with Condition 6(5)(a)(i) has been given to the Consignee. For the purposes of Condition 6(5)(a), written notice will be deemed to have been given at the time the notice specified in Condition 6(5)(a)(i) is left at the Consignee's address;

(c) when a Consignment is held by the Carrier for collection from the Carrier's premises by the Consignee (for example, under instructions such as 'to await order' or 'to be kept till called for') or upon any like instructions and the Consignment is not called for and removed by the Customer or Consignee within three (3) Business Days following the date of collection, or such later date as may be set out in the respective instructions then Transit shall be deemed to end; and

(d) Where the Carrier delivers a Consignment, but the Consignee does not accept the Goods, the Carrier may agree, at its sole discretion, to return the Consignment to the Customer free of charge. In such circumstances, the Carrier does not accept any Liability for or in relation to the Consignment for such return service.

(6) Notwithstanding Condition 2(3), if carriage of any Consignment by rail, sea, inland waterway or air is required, this is arranged by the Carrier as agent of the Customer and such carriage shall be subject to the conditions of the rail, sea, inland waterway or air carrier contracted to carry the Consignment. The Carrier shall have no Liability whatsoever to whomsoever and howsoever arising in respect of such carriage except where the Consignment is carried partly by road and partly by such other means of transport, in such circumstances any loss, damage or delay shall be deemed to have occurred while the Consignment was being carried by road, unless the contrary is proved by the Carrier.

## **7. Undelivered or Unclaimed Consignments**

(1) Where the Carrier is unable to deliver a Consignment to the Consignee, because the Consignee of a Consignment is unidentifiable for whatever reason, the Carrier shall send such Consignment to any of APC's National Sortation Centres in accordance with the APC Unidentified Freight Policy for investigation without delay.

(2) In the case of Consignments held at the Carrier's premises due to the circumstances of Condition 6(5)(a) arising, if the Consignment has not been collected or appropriate delivery re-arranged within 3 Business Days following the date of attempted delivery, the Consignment shall be returned to the Customer. The Carrier reserves the right to charge for such return of the Consignment to the Customer.

(3) Subject to Condition 7(4) below, in the case of Consignments held at the Carrier's premises due to the circumstances of Condition 6(5)(b) arising, when Transit is deemed to end, the Consignment shall be returned to the Customer. The Carrier reserves the right to charge for such return of the Consignment to the Customer.

(4) If having followed the procedures outlined in Conditions 7(1) to 7(3) (as applicable) the Customer also cannot be identified, the Consignment will be held in accordance with APC Unidentified Freight Policy for a further three (3) calendar months, during



which time the Consignment shall be held in accordance with APC's Unidentified Freight procedures.

## **8. Carrier's Charges**

- (1) The Services are provided for a fixed price as agreed between the parties at the date of the Order. Unless agreed otherwise, the total price shall be paid to Streetwise in full at the time of the Order. All amounts due under the Contract shall be paid by the Customer to Streetwise in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Streetwise shall invoice the Customer for the charges at each relevant stage, together with expenses and VAT (where appropriate), calculated as provided in condition 8.2.
- (2) Any fixed price agreed with the Customer excludes:
  - (a) the cost of any reasonably and properly provided by third parties required by Streetwise for the supply of the Services;
  - (b) any or all taxes, charges, levies, import duties, custom clearance, assessments and other fees of any kind imposed by governmental or other authority in respect of the transportation, exportation, importation, or other distribution of the Customer's Goods outside of the United Kingdom; and
  - (b) VAT, which Streetwise shall add to its invoices at the appropriate rate.
- (3) Unless agreed otherwise, the Customer shall pay each invoice submitted to it by Streetwise in full, and in cleared funds, within 14 days of receipt.
- (4) Without prejudice to any other right or remedy that Streetwise may have, if the Customer fails to pay on the due date Streetwise may:
  - (5) (a) charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
  - (b) suspend all Services until payment has been made in full.
- (6) Time for payment shall be of the essence of the Contract.
- (7) Streetwise may, without prejudice to any other rights it may have, set off any liability of the Customer to Streetwise against any liability of Streetwise to the Customer.
  
- (8) Charges shall be payable by the Customer in accordance with Condition 8(1) above without reduction or deferment on account of any claim, counterclaim or set-off.
  
- (9) If the Customer becomes Insolvent or any sums owed by the Customer on any invoice or account with the Carrier become overdue for payment, then
  - (a) any credit terms shall be cancelled with immediate effect;
  - (b) the Carrier will be entitled to invoice all charges incurred which have not yet been invoiced; and
  - (c) all invoices or accounts issued by the Carrier shall immediately be deemed due for payment and thereupon become payable.
  
- (10) If any sum payable under this Agreement is not paid on or before the due date for payment the Carrier will be entitled to charge the Customer interest on that sum at five per cent (5%) per annum above the base lending rate for Bank Of England base rate prevailing at the date of the Carrier's invoice or account, from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.

## **9. Liability for Loss or Damage**

(1) Subject always to the limitations of Condition 10 and the remaining provisions of this Condition and save where may be agreed in writing to the contrary between the parties prior to Transit, the Carrier shall be liable for the physical loss, mis-delivery of or damage to any goods comprising the Consignment caused during Transit, except the Carrier shall have no Liability if any of the following occurs, and, where possible, the Carrier has used reasonable care to minimise the effects of such:

- (a) force majeure including, but not limited to, any act of God, lightning, earthquake, fire, flood, storm or other extreme weather conditions, any consequences of war, invasion, act of foreign enemy, hostilities (whether war or not), civil war, rebellion, insurrection, terrorist act, military or usurped power or confiscation, requisition, or destruction or damage by or under the order of any government or public or local authority riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour howsoever caused;
- (b) insufficient or improper packing;
- (c) seizure or forfeiture under legal process;
- (d) error, act, omission, mis-statement or misrepresentation by the Customer, the Consignee or other owner of the Consignment or by employees or agents of any of them;
- (e) inherent Liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural deterioration of the Consignment;
- (f) insufficient or improper labelling or addressing;
- (g) Consignee not taking or accepting delivery within a reasonable time after delivery of the Consignment has been attempted;
- (h) the circumstances as set out in Condition 4(2)(c)(ii) or 4(2)(d);
- (i) the circumstances as set out in Condition 6(4); or
- (j) other circumstances beyond the Carrier's reasonable control.

(2) The Carrier shall not have any Liability for any physical loss, mis-delivery of or damage to any Consignment consisting in part or entirely of Excluded Items or Specified Items.

(3) The Carrier shall not in any circumstances be liable for loss or damage arising after Transit is deemed to have ended within the meaning of Condition 6(3), whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier, its employees, agents or sub-contractors.

## **10. Limitation of Liability**

### **Physical Loss, Mis-delivery and Damage**

(1) Except as otherwise provided in these Conditions and subject to the other provisions of this Condition 10, the Liability of the Carrier, Sub-Contractors and APC in respect of claims for physical loss, mis-delivery of or damage to goods comprising the Consignment, howsoever arising, shall in all circumstances, subject always to the overall maximum Liability set out in Condition 10(1)(c)(d)(e), be limited to the lesser of:

- (a) the value of the goods actually lost, mis-delivered or damaged (and the value of the goods actually lost, mis-delivered or damaged shall be taken to be the replacement cost to the Customer at the commencement of Transit, and shall include any Customs and Excise duties or taxes payable in respect of those goods);  
or
- (b) the cost of repairing any damage to or reconditioning the goods; or
- (c) a maximum of £100 in respect of a "Parcel Consignment" and £50 for "Mail pack"

(MP), "Courier pack" (CP) and "Lightweight Consignment" (LW) (each of the aforementioned terms being the names of APC's products, as specified on the APC Website) actually lost, mis-delivered or damaged, as set out in, and subject to Condition 10(2).

(d) International Deliveries - £8.00 per kilogram up to a maximum of £60.00 whichever is the lesser;

(e) Same Day Deliveries – up to a maximum sum of £5,000;

(2) The Carrier's Liability under Condition 10(1)(c)(d)(e) above shall be subject to the following:

(a) the maximum Liability to be taken into consideration shall be only the value of the good(s), or part thereof, actually lost, mis-delivered or damaged regardless of whether the loss, mis-delivery or damage affects the value of other parts of the Consignment;

(b) the Carrier shall be entitled to proof of the value of the whole of the Consignment and of any part which is alleged lost, mis-delivered or damaged;

(c) the Customer shall be entitled to give the Carrier written notice prior to commencement of Transit requesting that the limitations in 10(1)(c) (d)(e) above be increased. Any increased limit proposed by the Customer shall not exceed the value of the Consignment. The Carrier shall consider the Customer's request and, if the Carrier agrees to the increased Liability cover, the Carrier shall notify the Customer of the revised carriage charges that the Customer will be liable for in consideration of the increased limit. The Carrier shall be entitled to offer the Customer a different increase to the Liability cover than requested by the Customer. If the revised carriage charges and increased limit is not acceptable to the Customer, then the aforementioned limitations in 10(1)(c) (d)(e) shall continue to apply; and

(d) in attempting to reach an agreement pursuant to Condition 10(2)(c) above the Customer shall provide the Carrier with all such information regarding the Consignment as the Carrier shall need to assess any suggested new limit and charges.

(3) The Carrier reserves the right to view any Consignment to which a claim is made by the Customer or Consignee within its original packaging. Failure to provide the original packaging will invalidate the claim.

### **Other Losses**

(4) Subject to the other provisions of this Condition 10, including the increased Liability cover cap in Condition 10(5), the Liability of the Carrier in respect of claims for any other loss whatsoever (including indirect, economic or consequential loss or damage and loss of market), and howsoever arising in connection with the Consignment, shall not exceed the amount of the carriage charges in respect of the Consignment or the amount of the claimant's proved loss, whichever is the lesser, unless;

(a) at the time of entering into the Contract with the Carrier the Customer declares to the Carrier a special interest in delivery in the event of physical loss, mis-delivery or damage or of an agreed time limit being exceeded and agrees to pay a surcharge calculated on the amount of that interest; and

(b) at least five (5) Business Days prior to the commencement of transit the Customer has delivered to the Carrier written confirmation of the special interest, agreed time limit and amount of the interest.

### **Increased Liability Cover Cap**

(5)(a) Except in relation to the items specified in Condition 5(b), the Carrier's, Sub-

Contractor's and APC's Liability in respect of each Consignment manifested on the Increased Liability Cover option shall be limited to the value declared by the Customer for that Consignment, or £5,000 (whichever is the lesser).

(b) In the case of computer equipment, peripherals, software, mobile telephones and accessories, or other audio - visual equipment, the Carrier's, Sub-Contractor's and APC's Liability shall not be greater than £3,000 per Consignment.

## **Exclusions**

(6) The Carrier, its Sub-Contractors, and APC shall not in any circumstances have any Liability in respect of a Consignment, whether such Consignment has been delivered or not, where:

(a) there has been fraud on the part of the Customer, Consignee, or the employees or agents of any, in respect of that Consignment; or

(b) where there has been criminal activity on the part of the Customer, Consignee, or the employees or agents of any, in respect of that Consignment.

(7) For the avoidance of doubt, the Carrier enters into these Conditions with the Customer and the Customer's remedies are solely against the Carrier. The Customer shall not have any claim against any other party in respect of a breach of these Conditions but the Carrier shall be liable for any and all claims from Customers in relation to any Consignment.

(8) The provisions of Condition 12 shall apply to all claims by the Customer.

## **11. Indemnity to the Carrier**

(1) The Customer shall indemnify, keep indemnified and hold the Carrier, APC and the Sub-Contractors harmless against:

(a) all Liability incurred by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damage to the carrying vehicle and to other goods carried) by reason of:

(i) any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Consignment or by any servant or agent of either of them;

(ii) insufficient or improper packing, labelling or addressing of the Consignment; or

(iii) fraud or criminal activity as in Condition 10(6); or

(iv); any breach by the Customer of the Contract;

(b) all claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever made and howsoever arising (including but not limited to claims caused by or arising out of the carriage of Dangerous Goods and claims made upon the Carrier by HM Revenue and Customs in respect of dutiable goods consigned in bond) in excess of the Liability of the Carrier under these Conditions in respect of any loss or damage whatsoever to, or in connection with, the Consignment whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier, its employees, agents or sub-contractors.

## **12. Time Limits for Claims**

(1) Subject to Condition 12(2), the Carrier, APC and the Sub-Contractors shall not have any Liability for:

(a) damage to the whole or any part of the Consignment, or physical loss, mis-delivery or non-delivery of part of the Consignment, unless:

(i) the Carrier, APC and the Sub-Contractors are advised of such loss, mis-delivery or non-delivery in writing by the Customer within three (3) Business Days; and

(ii) proof of such claim is provided by the Customer in writing within ten (10) Business Days, after the end of Transit;

(b) any other loss unless advised of such loss in writing by the Customer within twenty (20) Business Days, and unless proof of the claim is provided within thirty (30) Business Days after the commencement of Transit.

(2) If the Customer proves that:

(a) it was not reasonably possible for the Customer to advise the Carrier or make a claim in writing within the time limit applicable, and

(b) such advice or claim was given or made within a reasonable time, the Carrier shall not have the benefit of the exclusion of Liability afforded by Condition 12(1).

(3) The Carrier, APC and any Sub-Contractors shall in any event be discharged from all Liability, whatsoever and howsoever arising, in respect of the Consignment unless proceedings are commenced and notice in writing is given to the Carrier within one (1) year of the date when Transit commenced.

### **13. Lien**

(1) The Carrier shall have:

(a) a particular lien on the Consignment; and

(b) a general lien against the Customer and owner for sums unpaid on any invoice, account or contract whatsoever.

(2) If such lien, whether particular or general, is not satisfied within a reasonable time, the Carrier may sell the Consignment, or part thereof, as agent for the Customer and/or owner and apply the proceeds towards any sums unpaid and the expenses of the retention, insurance and sale of the Consignment and shall, upon accounting to the Customer for any balance remaining, be discharged from all Liability whatsoever in respect of the Consignment.

(3) The Carrier may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with Condition 8(2) hereof and whether or not the contractual carriage has been completed and these conditions shall continue to apply during the period of exercise of such lien.

### **14. Unreasonable Detention**

The Customer shall be liable to pay any additional charges for unreasonable delay or detention of any vehicle, trailer, container or other equipment of the Carrier, Sub-contractor or APC caused by the Customer or Consignee. The rights of the Carrier against any other person in respect of such delay or detention shall remain unaffected.

### **15. General**

(1) **Entire Agreement:** The Contract, the APC Unidentified Freight Procedure, the APC Privacy Policy, the Member Depot Privacy Policy, the Labelling Guidelines and the Packaging Guidelines, constitute the entire agreement between the parties and supersede any prior agreement or arrangement in respect of its subject matter and:

(a) neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract;

- (b) the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract; and
- (c) nothing in the Contract will be interpreted or construed as limiting or excluding the Liability of any person for fraud or fraudulent misrepresentation.

(2) **Severance:** If any provision of the Contract is found by any court or body or authority of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void, such provision will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.

(3) **Variation:** No variation to the Contract will be effective unless it is in writing and is expressly authorised by the Carrier and by APC in writing.

(4) **Conventions and precedence:** Any goods carried for the Customer by the Carrier whether within or outside of the UK may be governed by a convention or agreement between countries. If any applicable convention becomes inconsistent with these Conditions, the terms of such convention will take precedence over these Conditions. Conventions that may apply, include but are not limited to:

- (a) Transporting goods by air – Warsaw convention 1929 or the convention for the Unification of Certain Rules for International Carriage by Air as amended at the Hague 1955.
- (b) Transporting goods by road – the Geneva Convention for the contract of International Carriage of Goods by Road (CMR) 1956.
- (c) Transporting goods by sea – the international Convention for Unification of Certain Rule of Law relating to Bills of Lading 1924.

The above international conventions may from time to time be amended. It shall be the responsibility of the Customer to check and satisfy itself of the applicable international conditions before sending any international consignments with the Carrier. The Customer should be aware that there may at times be more than one convention applying to the carriage of the Customer's goods.

**(5) Third Party Rights:**

- (a) APC shall be entitled to enforce the conditions of this Contract in Contracts between:
  - (i) Customers and Member Depots; and
  - (ii) Customers and Sub-Contractors;subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of this Contract.
- (b) Save as provided in Condition 15(5)(a), the parties do not intend that any term of this Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

**16. Law and Jurisdiction**

The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by English law. Each party agrees that the courts of England have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).

**17. Use of Customer Data**

- (a) The Customer provides personal data (as defined in the General Data Protection

Regulation 2016, and the Data Protection Act 2018, as amended or replaced) of Consignees and other individuals to APC and the Carrier in order to facilitate the carriage of goods.

(b) In relation to any personal data provided by the Customer:

(i) The Customer warrants, undertakes and represents that the personal data is accurate and it may lawfully share the personal data with the Carrier as envisaged in accordance with all applicable laws, and APC and the Carrier's use of such personal data as anticipated by these Conditions of Carriage or the APC Privacy Policy and/or Member Depot Privacy Policy, as applicable, shall not put APC or any Member Depot in breach of any applicable laws;

(ii) To the extent the personal data includes telephone number and email address of the Consignee, the Customer has made the Consignee aware that such details may be used by APC or the Carrier to enhance the delivery process for the Consignee and it will use notifications for that purpose. This may involve the Company sharing such details with limited third parties for the provision of the carriage of goods.

(c) APC and the Carrier may process the personal data for the purposes of providing the carriage of goods and as anticipated by the APC Privacy Policy or the Member Depot Privacy Policy, as applicable, and may share the personal data with its agents or subcontractors or affiliates or other third party service providers for the purpose of providing the carriage of goods and informing the development of services offered now or that may be offered in the future.