

TERMS OF CARRIAGE

CONDITIONS OF CARRIAGE (NATIONAL) MAY 2019

Tuffnells Parcels Express Limited (Co. No. 319964), Registered Office: Rowan House, Cherry Orchard North, Kembrey Park, Swindon SN2 8UH

These Conditions supersede any and all previous arrangements, understanding or agreement and contain certain additional charges and exclude and limit the liability of Tuffnells Parcels Express Ltd in certain circumstances. You are strongly advised to read them carefully and arrange your own insurances as necessary

- Introduction**

All business is undertaken by Tuffnells Parcels Express Limited ("the Company") subject solely to these conditions ("the Conditions") which may be varied only by a director of the Company in writing. In these Conditions the word "Consignment" means goods (including any packaging and equipment associated therewith) in bulk or contained in one or more items, parcel, package or container sent at one time, in one load, by or for the customer ("the Customer") from one address to another address and shall include reference to part of the Consignment, as necessary. The term "VAT" means value added tax chargeable under the law of England and Wales for the time being and any similar, additional or analogous tax. The expressions "guaranteed delivery" or "guaranteed delivery times" shall not make time for delivery of the essence but shall mean only that the Company will use its reasonable endeavours to meet predicted delivery times unless prevented by any of the circumstances referred to in clause 5.2(c) or any other circumstances outside the Company's control.
- Services**

The Company agrees to provide the delivery services as set out in column 1 of clause 5.1 (as may be varied by the Company from time to time, without prior notice to the Customer) together with, where agreed specifically with the Company, collection services of the Customer's Consignment from a nominated collection location together "the Services".

With effect on and from the date(s) that are agreed by both the Customer and the Company, the Services will be performed by the Company on working days only (being Monday to Friday, excluding bank and other public or local holidays in the country in which the Consignment is despatched or destined) and, where agreed with the Company, to include Saturday by separate agreement.

If the Company agrees to collect any Consignment from the Customer, the Company will collect the Consignment from the agreed collection point, using the Company's standard operating procedures for collections.

Subject to clause 2.5, the Company will use its reasonable endeavours to ensure that the goods and/or deliver the Consignments that have been accepted by it for transit in its network in accordance with the relevant Service type set out in column 1 of clause 5.1.

The Company may decide not to perform any part of the Services in respect of any Consignments (or parts thereof) in circumstances where the Company considers it to be impractical or unreasonable to do so, including (but not limited to) in the following circumstances:

 - the delivery address is a PO Box Number;
 - the delivery address is not (at the Company's sole discretion) considered to be safe or where the Company's staff and agents' health and safety may be put at risk in any way;
 - the delivery address on the Consignment is not complete, inaccurate or illegible;
 - the Consignment contains any of the Prohibited Goods (as notified to the Customer from time to time);
 - the Consignment is not correctly packaged or labelled in accordance with the Packaging Guidelines or does not comply with the Packaging Limitations (details of which can be found at <https://www.tuffnells.co.uk/index.php/support/packaging-guidelines>);
 - the Customer has an account with the Company and any credit limit on such account has been exceeded or will, with the proposed Services to be performed, be so exceeded;
 - the Customer has breached any of these Conditions and such breach is continuing without remediation; or
 - it is impractical for the Company to do so, whether due to any of (i) network capacity constraints, (ii) the size, weight, volume or contents of the Consignment, (iii) the financial viability of conveying the Consignment, or (iv) any other reason determined at the Company's sole discretion.

If the Company has reasonable suspicion that a Consignment contains Prohibited Goods the Company may (without notice to the Customer) open that Consignment or delay any part of the Services (including for the avoidance of doubt, delivery). If a Prohibited Good is identified within a Consignment, the Company may deal with such item in its sole and absolute discretion (without incurring any liability to the Customer or to its intended consignee), including destroying or otherwise disposing of such item in whole or in part or returning it to the Customer (and the Customer will be responsible for all costs thereof however arising).
- Quotations and Traffic Profile**

The Company's performance of the Services (together with all quotations and/or agreed conditions of the Company to perform the Services) are strictly based on the traffic profile and/or Consignment metrics either supplied by the Customer or based on the Customer's previous course of trading with the Company. The Company reserves the right to revise its charges (retrospectively and prospectively) at any time on notice to the Customer in the following circumstances:

 - the Customer's business (including the nature of any item, parcel or package within any Consignment) differs from the forecast Consignment traffic profile or the previous course of trading;
 - there is a difference between the forecast traffic profile volume and the Customer's actual trading profile volume;
 - there is a difference between the forecast traffic profile's shape, size and/or weight or the volume of items in any Consignment and the actual profile's shape, size and weight or volume of items in any Consignment handled.

All quotations for any of the Services are valid only for 7 days from the date of quotation and may otherwise, at any time, be subject to withdrawal or variation as a result of increases in the Company's costs (including, but not limited to, as a result of changes in law, an increase in fuel costs, increases in labour costs, congestion charges, postal fees or license fees).
- Customer's Obligations**

The Company warrants that it is either the owner of the Consignment which is the subject of these Conditions or is authorised to enter into these Conditions;

 - the Customer agrees not to deduct claims or credits or set off from the Company's account nor at any time make a claim or credit or set off or withhold payment of money to the Company;
 - the Customer shall be liable for any and all hourly rate notified from time to time by the Company) to the Company of the unreasonable detention of vehicles and/or drivers at the point of collection or delivery and the additional cost of undertaking the Services where incomplete or incorrect delivery address details are supplied by the Customer. The Company reserves the right to charge for re-attempted delivery – see clause 10.7(f);
 - the Customer indemnifies and holds harmless the Company from and against all claims, costs and expenses incurred in consequence of the carriage, or non-disclosure by the Customer to the Company of full details prior to carriage, of any Prohibited Goods, of any Consignments that have not been properly labelled, packed or packaged or of any dangerous goods as governed by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (as amended, updated and replaced from time to time);
 - warrants that each Consignment is adequately packed and packaged to resist damage to the contents thereof and the normal handling of the Consignment;
 - shall ensure that there is provision of necessary equipment, power (other than that carried by the delivery vehicle) and labour (including an authorised person to acknowledge receipt) available promptly at the point of collection;
 - shall ensure that each Consignment is addressed, labelled and packaged in accordance with the Packaging Guidelines and the Packaging Limitations; and
 - shall ensure that the actual size and weight is visibly recorded for every Consignment in accordance with the Packaging Guidelines and that the size and weight is factually accurate and not misrepresented.
- Company's Responsibility for the Consignment**

Subject to the limitations and exclusions contained in this clause and these Conditions generally, the Company shall be liable for loss of, or damage to, a Consignment only up to the following amounts in respect of the following Services:

	(2)	(3)
Priority 930	£15,000	per 1,000 kgs
Priority 1030	£15,000	per 1,000 kgs
Priority 1200	£15,000	per 1,000 kgs
Priority 1	£15,000	per 1,000 kgs
Priority 2	£5,000	per 1,000 kgs
Priority 3	£5,000	per 1,000 kgs
Databag	£5,000	per 1,000 kgs
Offshore	£5,000	per 1,000 kgs
FBK/FWD (loss only)	£5,000	per 1,000 kgs
RAD (loss only)	£5,000	per 1,000 kgs

provided that any liability per Consignment shall be pro-rated to the actual weight of any item, parcel or package actually lost or damaged within any such Consignment.

THE COMPANY SHALL NOT BE LIABLE FOR:
the first £25 of any claim for loss of or damage to any item, parcel or package;

 - any loss of profit element related to the cash value of the item, parcel or package that has been lost or damaged; or
 - any amount whatsoever where any loss or damage has arisen (whether directly or indirectly) from or in respect of any of the following circumstances:
 - an act of God;
 - seizure under legal process;
 - riots, civil commotion or unrest, demonstrations, strike or lockouts (general or partial stoppage);
 - any consequence of war, terrorism and kindred risks;
 - weather events, which result in road closures or other closures which impact access to a delivery address or route timings;
 - severe traffic congestion/traffic issues that see the Company unable to access a delivery address or which adversely affect route timings;
 - failure or downtime in respect of any telephony or mobile telecommunications;
 - any event of serious disruption outside the Company's control, which reduces its capacity to fulfil its obligations;
 - error, act, omission or misrepresentation of either the Customer or the consignee/consignee of the Consignment or any of their respective employees or agents;
 - insufficient or improper packing or labelling including incomplete or incorrect address information;
 - any event of serious disruption outside the Company's control, which reduces its capacity to fulfil its obligations; or
 - regulatory prohibition or which are Prohibited Goods.

The Company's liability for lost or damaged items, parcels or packages within any Consignment will at all times, be limited to the lower of:
(a) the manufacturer's cost price of the item, parcel or package which has been lost or damaged within any such Consignment within the Company's control; or
(b) the liquidated damages sum stated at clause 5.1 in respect of the actual weight of the lost or damaged item, parcel or package.

In the absence of a manufacturer's cost price being disclosed with sufficient particularity to the Company, a deduction of 30% will be applied to the cash value claimed by the Customer for the item, parcel or package at the relevant time.

The Company shall not be liable for any direct or indirect loss of: profit; use opportunity; business; anticipated savings; or goodwill, nor shall the Company be liable for any indirect or consequential loss or damage (including penalty charges) whether or not resulting from the act, neglect or default of the Company except that nothing in these Conditions shall operate to exclude or limit the liability of the Company for death or personal injury arising out of its negligence.

The Company shall not be liable for any failure or delay in the performance of its obligations under these Conditions that arises due to or is contributed to by any act or omission of the Customer, its employees, agents or contractors (including any sub-contractors) of the consignee or any of its employees, agents or contractors.

The Company shall not be liable for loss of, or damage to, any Consignment where the consignee has acknowledged receipt of the same. For the avoidance of doubt, the Company's inability to provide proof of delivery to the Customer shall not of itself constitute an admission of liability for the loss of any Consignment.

The Company shall not be liable for the loss of all or any part of a Consignment to the extent that the same is subsequently found and returned to the Customer. The value of the goods returned to the Customer may be offset against the value of any claim made against the Company whether or not such returned goods formed part of the particular Consignment to which such claim relates.

 - If delivery is unsuccessful due to the absence of the consignee or the consignee refusing delivery and thereafter the Consignment is lost or damaged, the Company shall not be responsible for any such loss or damage.

The Company shall not be liable for any damage to a Consignment however caused where collection has been ordered by the Customer from a collection address or delivery address other than the Customer's premises (commonly known as "FastBack" ("FBK") or "FastForward" ("FWD")) or where a Consignment is collected from a residential address ("RAD").

The Company shall, if so required, sign a document prepared by the consignee acknowledging receipt of the Consignment provided that no such document shall be evidence of the condition of or the correctness of the declared nature, quality, quantity or weight of the Consignment at the time it is received by the Company.

The Company shall be under no obligation to retain copies of any documentation related to the delivery of a Consignment for longer than 6 months following the date of delivery.

All warranties, conditions and other terms implied by statute (including under the Supply of Goods and Services Act 1982) or common law, are, to the fullest extent permitted by law, excluded from these Conditions.

- Guaranteed Delivery and Refunds**

All guaranteed delivery times quoted by the Company refer to working days as set out in clause 2.2.

Guaranteed delivery times are not applicable to certain areas of Scotland and Offshore Islands (except where the Customer has specified next working day delivery to those areas where such a service is offered by the Company) including the Isle of Wight.

Save where the consignee imposes a restriction on delivery times, if the Company fails to deliver the whole of the Consignment within the guaranteed delivery time then the Customer shall be entitled to a refund of the Company's charges equivalent to the lesser of either the difference between the service requested (e.g. Priority 930) and the service provided (e.g. Priority 1200) or a 20% discount and any such refund however calculated shall be applied pro-rata by the quantity of items, parcels or packages delivered within the Consignment where only part of the Consignment is not delivered within the guaranteed delivery time.

No refund is payable where failure to deliver within the Company's guaranteed delivery time is caused by any of the following:
 - the Consignment being a FBK/FWD or carriage forward;
 - any event detailed in clause 5.2(i) to (v);
 - exercise of the Company's general lien;
 - the delivery address being an Airport, Wharf, Dock, Container Base, BFO, a PO Box Number, a RAD, a building site, an exhibition stand or subject to a booking-in procedure; or
 - the delivery address being outside mainland Great Britain (except for the Isle of Wight or where the Company has

specified next working day delivery to those areas where such a service is offered by the Company).

No refund is payable unless the Customer requests the same in writing within 28 calendar days of the commencement of transit.

No refunds for failed deliveries are payable to the Customer for Consignments whose items therein are not in accordance with the Packaging Guidelines and the Packaging Limitations.

No refunds are payable to the Customer where the Customer is not observing in all respects the agreed payment terms or has exceeded its credit limit.

- Time Limit for Claims**

The Company shall not be liable for the loss of an entire Consignment unless it is notified in writing within 14 calendar days after the commencement of transit.

The Company shall be liable for damage to, or loss of, any part of the Consignment unless it is notified in writing and received by the Company within 7 calendar days after the commencement of transit.

The Company shall not be liable for any claim in respect of a Consignment or part thereof where the Company's completed claim form is not returned within 42 calendar days of the commencement of transit. All claim forms must be e-mailed to the Company at Claims@tuffnells.co.uk in order to validate the date of receipt. Any claim will automatically be closed if a completed claim form is not received by the Company within 42 days of commencement of transit. Invoice queries must be strictly notified to the Company in writing within 14 calendar days from the date of invoice.

- Transit**

Transit shall commence when the Consignment is handed to the Company (whether at the designated point of collection or at the Company's premises).

Transit shall (unless otherwise determined) end when the Consignment arrives at the agreed place of delivery, provided that:
(a) if no safe or adequate access exists, or there are no adequate unloading facilities or assistance, then transit shall be deemed to end at the expiry of one calendar day after notice in writing (or by telephone) of the arrival of the Consignment at the agreed delivery point;

when, for any other reason whatsoever, a Consignment cannot be delivered or when a Consignment is held by the Company "to await order" or "to be kept until called for" or upon any similar instruction and such instructions are not immediately given or the Consignment is not called for and removed within a reasonable period of time, then transit shall thereupon be deemed to end and:
(a) if an authorised person is not available to acknowledge receipt of the Consignment at the agreed place of delivery, then the Consignment shall be presumed to have been delivered notwithstanding the absence of a signed delivery copy of the Company's Consignment note.

Risk in the Consignment shall pass from the Customer to the Company on commencement of transit in accordance with clause 8.1 and shall pass from the Company to the Customer upon transit ending in accordance with clause 8.2.

- Delivery - Clauses Signatures**

The endorsement of the words "not checked", or "unexamined" (or different words to the same effect) on a delivery note shall not render the Company liable for any damage or loss subsequently discovered.

- Company's Charges**

Invoices are issued by the Company to the Customer in accordance with the terms agreed or otherwise on a weekly basis.

Invoices may be subject to a minimum invoice charge as notified by the Company from time to time.

All charges, including any minimum invoice charges, are payable in GBP within 14 days of the date of the Company's invoice by direct debit and are stated exclusive of VAT, which will be charged at the appropriate rate from time to time.

On payment or payment in absence of these Conditions:
(a) If no business is transacted between the Company and the Customer for a period of at least four (4) consecutive months or where the Company reasonably believes that the Customer is the subject of an event set out in any of clauses 14.1(c)-(h), the Company may immediately withdraw the Customer's credit facilities (if any).

The Company reserves the right from time to time to impose (and thereafter vary) a Fuel Surcharge, with a minimum charge payable weekly as notified to the Customer from time to time. In the following circumstances the Company shall impose (at its sole discretion) an additional surcharge per Consignment as notified to the Customer from time to time or as stated below:
 - deliveries to a residential address;
 - consignments collected on behalf of the Customer from an address other than the regular collection address ("FBK and FWD");
 - abortive FBK/FWD collection request calls – in addition, the Company reserves the right to apply a re-issue charge and/or an abortive administration charge as necessary in these circumstances;
 - each verbal or electronic proof of delivery request and/or for each copy consent note proof of delivery request;
 - deliveries to the Isle of Wight, Cornwall, Dyfed, Gwynedd, Powys, Anglesey, Industrial Scotland, (all Scotland except the Highlands and Scottish offshore islands) the Highlands of Scotland and all offshore islands;
 - for each re-delivery attempt of failed deliveries, an amount equal to 50% of the original Consignment charge. Where the collection address is not complete or inaccurate resulting in a failed delivery, the Company reserves the right to impose a surcharge of an amount equal to 100% of the original Consignment charge for any subsequent attempted re-delivery;
 - for any Consignment of 50 packs or more, at an additional charge of £2 per pack; and
 - for any Consignment of 3 pallets or more, at an additional charge of £30 per pallet.

Where Consignments are carried for charges based on weight, the Company shall be entitled to charge on the actual weight of the Consignment if greater than the weight declared by the Customer on the Consignment note or other delivery document. In addition, the Company reserves the right to check and check-weight all Consignments and to impose an additional charge based on the actual cube volume or actual weight of each Consignment at the Company's sole discretion.

Mainland charges for any part of the Consignment (irrespective of service type) are calculated on a capacity rating of 141 cu. ft. per 1,000 kgs (250 kgs per cubic metre). Offshore charges are calculated on a rating of 120 cu. ft. per 1,000 kgs (295 kgs per cubic metre). The Company reserves the right to charge an additional volume charge and not the actual weight of any monies owed to the Customer.

The Customer shall be liable to deduct any monies owed to the Company in the form of a debt note or to apply any set off or lien whatsoever.

- Recovery of Company's Charges**

The Company shall be entitled to charge the following to the Customer at its sole discretion:
(a) interest at 8% above the base rate of National Westminster Bank from time to time, which sums shall accrue on a daily basis, compounded quarterly, on all amounts due to the Company and outstanding beyond any agreed credit period; a late payment collection fee of 10% of the amount outstanding beyond any agreed credit period, with a minimum charge of £25 (plus VAT);

any legal or other costs incurred in collecting any amount outstanding which shall, for the avoidance of doubt, be recoverable by the Company in addition to the debt; and

administrative charges (to be notified to the Customer from time to time) associated with the Company investigating the circumstances of, or imposing an additional charge pursuant to clause 10.8.
- General**

If the Customer fails to make payment on the due date or the Customer's account is terminated by either party at any time, any credit facilities offered to the Customer shall be immediately withdrawn on such date and all of the Company's charges howsoever arising for Services performed up to such date shall thereupon be due for payment in full immediately.

- Company's Lien**

The Company shall have a general lien on each and every item, parcel, package and Consignment within the Company's possession in respect of its charges which either: (i) relate to that Consignment; or (ii) any other Consignment, for any monies due to the Company at any time. If the monies due are not paid within 14 days of the due date for payment under clause 10.3, the Company may, without prejudice to its other rights and remedies against the Customer, exercise its lien and sell or otherwise dispose of all or any part of the Consignment and apply the proceeds thereof towards the monies outstanding and due to the Company, together with the expenses of sale and all reasonable storage charges pending sale or disposal of the Consignment.

The Company shall not be under any obligation to give advance notice to the Customer of its intention to exercise any rights under its lien or otherwise to sell or otherwise dispose of any part of the Consignment. The Company will use a reasonably appropriate method of sale, it will not be liable for any inadequacy in the price received.

- Restrictions**

The Company will not accept Cash-On-Delivery, FOCR, FCT or Cash-against documents consignments.

- Termination/Suspension of Account**

The Company may withdraw any of the Services at any time and may also terminate or suspend the Customer's account with immediate effect, without liability, in the following circumstances:
 - upon the Customer's irremediable breach of any of these Conditions or (where such a breach is capable of remedy) on failure to remedy any breach within three (3) days of being given written notice of such breach by the Company of any of these Conditions;
 - where the Customer has persistently made false claims in respect of Consignment volume, or Consignments persistently in error; Prohibited Goods or otherwise;
 - where the Customer becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986, suspends or threatens to suspend or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income; Prohibited Goods or otherwise;
 - where the Customer fails to pay his account in full on the due day on two (2) or more consecutive occasions or on any four (4) or more occasions in any period of six (6) months, or such other number of occasions as the Company deems unreasonable, where the Customer obtains judgment in a court or tribunal of competent jurisdiction against the Customer in respect of a debt or unpaid invoice;
 - where the Customer has in the Company's reasonable opinion ceased or threatened to cease to trade or carry on business;
 - where an encumbrancer takes possession of, or if any distraint, execution or other legal process is enforced on any of the property or assets of the Customer;
 - where the behaviour of the Customer is not consistent with accepted business trading relations or where he does any act which brings the reputation or goodwill of the Company into disrepute or otherwise adversely affects trading connections with or the business of the Company.

On termination or suspension of obligations under these Conditions will automatically terminate with the exception of: (a) such rights of action as shall have accrued prior to the date of termination (including, but not limited to, any and all claims for any breach of any term, condition or undertaking contained in these Conditions); and (b) all obligations under these Conditions which are expressed to (or to be implied or intended to) survive its termination and continue thereafter including (but not limited to) clauses 5, 6, 7, 10, 11, 12, 14, 15, 16 and 17; and (c) all Consignments then in transit shall continue to be subject to the Services; and (d) all sums then due and owing and which remain to be invoiced shall become immediately due.

- Data Protection**

The Company shall only use the Customer's personal information in accordance with the Tuffnells' Privacy Policy which can be found at <https://www.tuffnells.co.uk/privacy-policy>. Please take the time to read the Privacy Policy, as it includes important terms which apply to these Conditions.

Save as may be varied by the Privacy Policy, the Company will in any case use the personal information you provide to the Company in order to:
 - provide the Services to the Customer;
 - conduct a credit reference search and record;
 - process payment for the Services; and
 - inform the Customer about similar products or services that the Company provides.

- Confidentiality**

The Customer warrants that any information about the business of the Company, which may be provided to it or come into its possession by any means, will not be passed to any other party whether orally, in writing, electronically or in any other form without the express permission of the Company.

- General**

On termination in these Conditions on the Customer not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.

The Customer may not assign or otherwise transfer all or any part of its rights or obligations under these Conditions without prior written consent of the Company but the Company may at any time, assign, transfer, charge, mortgage, subcontract, delegate, trust or otherwise dispose in any manner with all or any of its rights or obligations under these Conditions.

A person who is not a party to these Conditions shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

Nothing in these Conditions is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority or power in the name of or on behalf of or otherwise to bind the other in any way.

No failure or delay by the Company to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy by the Company shall preclude or restrict the further exercise of that or any other right or remedy.

The Company is not a common carrier and accepts Consignments only in accordance with the terms of these Conditions. The Company reserves the right (at its sole discretion) to refuse to carry any Consignments at any time.

The Company may vary these Conditions at any time with given authority and notice to the Customer.

If any clause or sub-clause of these Conditions shall be found to be unenforceable, the remaining conditions shall remain in full force and effect with any necessary consequential variations thereto.

These Conditions shall be governed by the law of England and the parties shall be subject to the exclusive jurisdiction of the English courts.