

Terms of trading with Nightingale Cars of Romsey.

1. DEFINITIONS AND INTERPRETATION

“**Account**” means a customer account which has been opened by the Company in respect of a particular Customer and is identified by way of an allocated security number (the “**Customer Account Number**”)

“**Account Customer**” means any Customer which the Company provides Account Services in respect of a particular Booking and which shall include any representative of the Customer which makes the Booking or uses the Services pursuant to such Booking.

“**Account Services**” means the Services provided by the Company to an Account Customer, in accordance with clause 4 prior to making any Bookings.

“**Booking**” means a Customer’s request for Services howsoever communicated to the Company as evidenced by the Company’s records.

“**Cancellation Fee**” means a fee charged by the Company for the cancellation of the Services by the Customer prior to the booked collection time and after the Passenger Vehicle has departed to fulfil the Booking (whether or not it has arrived at the Collection Address) as detailed in the Price List (such fees will be higher for collection outside of Central London).

“**Cash Customer**” means a Customer which elects to pay for the Services by cash, which is collected by a Driver, in accordance with clauses 2.2 and 3.2.

“**Cash Services**” means Services provided by the Driver to the Customer, to be paid for by the Customer to the Driver by way of a cash payment.

“**Contract**” means a contract for the provision of the Services to the Customer and each such Contract shall incorporate these Terms.

“**Central London**” means the areas defined as Zone 1 and Zone 2 in the map of the London Underground as varied from time to time by Transport for London.

“**Charges**” means the Company’s charges shown in the Price List or other published literature.

“**Collection Address**” means the address stated by the Customer at the time of making the Booking as the address from which the Vehicle shall collect the Customer, any Passengers or the Goods.

“Company” means either Nightingale Cars of Romsey or such of its subsidiaries or associated companies, as is the company which provides the Services pursuant to a Contract and which expression shall, where the context allows, include their respective agents and sub-contractors.

“Credit and Debit Card Services” means Services provided by the Company to the Customer, to be paid for by the Customer to the Company by way of a credit or debit card payment.

“Customer” means any person(s), firm or company to whom the Company provides Services.

“Driver” means any person who provides his/her services, for the transportation of Passengers by a Passenger Vehicle, to the Company pursuant to a contract for services.

“Goods” means any goods transported by the Company pursuant to a Contract.

“in Writing” means any written communication including email and SMS.

“Passenger(s)” means the Customer and such persons who the Customer shall authorise and/or permit to make use of the Passenger Services by travelling in a Passenger Vehicle.

“Passenger Vehicle” means any vehicle provided by the Company for the carriage of Passengers.

“Price List” means the list maintained by the Company of its Charges relating to the Services from time to time and a current copy of which can be obtained on request.

“Services” means: (a) the carriage or delivery of Goods by courier in the UK; and (b) the delivery of Goods nationally or internationally (together the **“Courier Services”**) and (c) the transportation of Passengers by car.

2. PASSENGER SERVICES

2.1 Credit and Debit Card Services

Please note that the following clauses shall apply to all Bookings for the Credit and Debit Card Services, which shall include any Booking made by an Account Customer who has elected not to use the Account in respect of that particular Booking.

2.1.1 When making a Booking for the Credit and Debit Card Services, the Customer must elect to pay the Company for the Services either by way of a credit card or a debit card payment, details of which shall be processed by the Company.

2.1.2 In consideration for the performance of the Credit and Debit Card Services, the Customer shall pay the Charges by way of a credit or debit card payment in accordance with clause 2.1.1. Such Charges in relation to the Credit and Debit Card Services shall include a card handling fee.

2.2 Cash Services

Please note that the following clauses shall apply to all Bookings for the Cash Services, which shall include any Booking made by an Account Customer who has elected not to use the Account in respect of that particular Booking.

2.2.1 When making a booking for Cash Services, the contract shall be made as between the Company, acting as agent for the Driver, and the Customer in relation to Cash Services and such Contract shall be subject to these Terms, and any reference in these Terms to the Company shall be a reference to the Driver in relation to the provision of the Cash Services and these Terms shall be considered to be the terms of trading between the Driver and the Customer.

2.2.2 In consideration for the performance of the Cash Services, the Customer shall pay the Charges to the Driver (as principal) upon completion of the Services (i.e, upon arrival at the Customer's destination) or earlier if the Driver shall, at his absolute discretion, decide.

2.2.3 In respect of Cash Services, payment shall be made in cash and the Driver shall not accept any other form of payment.

2.2.4 For the avoidance of any doubt the Customer shall not be charged VAT in relation to the payment for any Cash Services.

2.3 Passenger Services - Fees and Charges

2.3.1 The price provided to the Customer at the time of making the Booking shall be based on the journey specified by the Customer at the time of Booking (the "**Original Journey**"). The price quoted by the Company shall be based upon the Company's chosen route between the Collection Address and the Customer's destination (via any other pick-up points or drop-off points stated by the Customer at the time of making the Booking). Should the Customer wish to take a specific route (which is different to that taken by the Company) the Company reserves the right to charge the Customer an additional charge in relation to that Booking.

2.3.2 The Company reserves the right to charge the Customer for any additional costs which may be incurred by the Company as a result of any variation or deviation from the Original Journey specified at the time of Booking, as detailed below.

2.3.3 The Company shall be entitled to vary the Price List from time to time. Notification shall be given in writing to any Customer who is affected by a price change.

2.3.4 If a Booking is cancelled by the Customer on or after arrival of the Passenger Vehicle at the Collection Address a cancellation Fee shall be charged.

2.3.5 The Customer and Passenger(s) and any luggage or personal items shall be ready for collection at the time stipulated by the Customer when the Booking is made. .

2.3.6 In the event that the Customer requires the Company during the course of the Original Journey to make any alternative pick-up(s) or collection(s) of Passenger(s) during the course of the Original Journey or to drop off Passengers at any locations other than as specified in the Original Journey or to take any variation from the Original Journey as specified at the time of Booking, additional charges may be applied by the Company.

2.3.7 The Company reserves the right to charge the Customer a surcharge for all journeys made during the Christmas Period (Identified as 25th December).

2.4 Passenger Services - General

2.4.1 The Company may, in its absolute discretion, decline to accept any Booking.

2.4.2 The Company shall use reasonable endeavours to provide a Passenger Vehicle in good working order.

2.4.3 In providing the Passenger Services, a Driver shall choose, at his/her sole discretion, the route from the Collection Address to the Customer's destination. If a Customer requests that a specific route is taken, any price quoted in respect of such journey may be amended.

2.4.4 Customers must inform the Company at the time of making a booking if the Customer or any Passenger wishes to carry any domestic animals in any Passenger Vehicle. All domestic animals should be carried in a suitable box or cage, if appropriate and/or be suitably restrained. The Company and/or the Driver reserve the right to cancel a booking on arrival if the Company has not been informed of the Customer's requirement to carry an animal in the Passenger Vehicle. Guide dogs are exempt from this requirement and are permitted to be carried in any Passenger Vehicle.

- 2.4.5 Passengers are not permitted to smoke in any Passenger Vehicle
- 2.4.6 Passengers shall not play any musical instrument or recorded music in any Passenger Vehicle except with the written permission of the Company.
- 2.4.7 Passengers shall not consume alcohol in any Passenger Vehicle the Company reserves the right to decline carriage to any Passenger who, in its opinion, is intoxicated.
- 2.4.8 The transportation of luggage in a Passenger Vehicle shall be permitted in the absolute discretion of the Company. Passengers shall remain responsible at all times for their luggage. The Company may assist the Customer with the loading and unloading of his/her luggage from the Passenger Vehicle, at the Company's sole discretion.
- 2.4.9 The Company accepts no responsibility for the loss or damage to any luggage which is transported in a Passenger Vehicle. The Customer acknowledges and accepts that any luggage stored in the Passenger Vehicle may move around during the journey and accordingly the Customer (and any Passengers) should take extra care when opening the luggage compartment of the Passenger Vehicle.
- 2.4.10 Passengers are required to comply with current customs laws and regulations and the Company shall not be responsible for any delays caused by any failure to comply with the same.
- 2.4.11 All Passengers are required to use seatbelts at all times.
- 2.4.12 The Company will allow unaccompanied children less than 14 years of age to travel alone in a Passenger Vehicle. When booking a journey for any child less than 14 years of age the caller must inform the Company that a child will be travelling. The Company does not accept any additional responsibility for any child who travels unaccompanied in a Passenger Vehicle.
- 2.4.13 The Company reserves the right to refuse to transport any Passenger who behaves in a disorderly, threatening or abusive manner or who, in its absolute discretion, the Company considers a nuisance or a danger to its employees, agents, subcontractors or to fellow Passengers. The Company is committed to providing services in accordance with the Equality Act. The Company will do what it reasonably can to assist those who are not capable of boarding and alighting a Passenger Vehicle unaided.
- 2.4.14 The Company reserves the right to charge reasonable cleaning charges plus three hours loss of earnings for the driver at our normal hourly rate in the event of spillages or in the event that any Passenger vomits or otherwise soils or damages a Passenger Vehicle.
- 2.4.15 Any dates, periods or times specified by the Company in connection with the performance of the Passenger Services are estimates only and time shall not be of the

essence for the performance by the Company of its obligations under the Contract. The Company makes no warranty that the Customer or Customer's goods or property shall be delivered within the Customer's stipulated time period (if any) and/or within any time period stated by the Company unless expressly agreed in writing by a director of the Company.

3. COURIER SERVICES

3.1 Credit and Debit Card Services

3.1.1 When making a Booking for the Credit and Debit Card Services, the Customer must elect to pay the Company for the Services either by way of a credit card or a debit card payment, details of which shall be processed by the Company.

3.1.2 In consideration for the performance of the Credit and Debit Card Services, the Customer shall pay the Charges by way of a credit or debit card payment in accordance with clause 3.1.1. Such Charges in relation to the Credit and Debit Card Services shall include a card handling fee (as detailed in the Price List).

3.2 Cash Services

3.2.1 When making a booking for Cash Services, the contract shall be made as between the Company, acting as agent for the Driver, and the Customer in relation to Cash Services and such Contract shall be subject to these Terms, and any reference in these Terms to the Company shall be a reference to the Driver in relation to the provision of the Cash Services and these Terms shall be considered to be the terms of trading between the Driver and the Customer.

3.2.2 In consideration for the performance of the Cash Services, the Customer shall pay the Charges to the Driver (as principal) upon completion of the Services (ie, upon arrival at the agreed destination) or earlier if the Driver shall, at his absolute discretion, decide.

3.2.3 In respect of Cash Services, payment shall be made in cash and the Driver shall not accept any other form of payment.

3.2.4 For the avoidance of any doubt, the Customer shall not be charged VAT in relation to the payment for any Cash Services.

3.3 General – Courier Services

3.3.1 The Company shall use reasonable endeavours in respect of the Courier Services, to deliver all Goods consigned for delivery to the delivery address given by the Customer within any time for so doing given by the Company or within a reasonable period of time and any receipt obtained by the Company in respect of delivery of Goods shall be conclusive as to time and place of delivery.

3.3.2 The Customer warrants to the Company that all Goods consigned for delivery are adequately packed and labelled with the details of the identity and the address of the party to whom they are to be delivered as well as the return address of the Customer.

3.3.3 The Customer shall not consign for delivery and the Company shall not be required to undertake delivery of the following:

3.3.3.1 Any Goods which are radioactive, toxic, inflammable, explosive, noxious or otherwise of an inherently dangerous nature;

3.3.3.2 Any Goods that have an intrinsic value of over £1,000 unless that value has been notified to the Company, in writing at the time of booking the Services and the Company has agreed to undertake delivery thereof in writing;

3.3.3.3 Any Goods, the possession of which is illegal or which it is illegal to export under English Law or the law of any country to or through which delivery is to be made;

3.3.3.4 Any Goods of a perishable nature that may deteriorate in transit;

3.3.3.5 Any Goods that are fragile and/or that are likely to be damaged in transit unless the precise nature of the Goods has been notified to the Company in writing at the time of making the Booking and the Company has agreed to undertake delivery thereof in writing; and

3.3.3.6 Any bullion, precious metals, cash (coins or banknotes) precious stones, jewellery, antiques, works of art, livestock, animals or foodstuffs unless the precise nature of the Goods been notified to the Company, in writing at the time of making the Booking and the Company has agreed to undertake delivery thereof in writing.

3.3.4 Where the Customer consigns such Goods for delivery as are prohibited by Clause 3.3.3:

3.3.4.1 The Company shall be entitled to return, destroy or otherwise dispose of such Goods as the Company shall, in its absolute discretion, see fit and the Company shall have no liability to the Customer whatsoever in respect of such Goods howsoever arising, and

3.3.4.2 The Customer shall indemnify the Company in respect of all resulting costs, expenses and losses incurred by the Company.

3.3.5 The Company shall have absolute discretion in respect of any Goods consigned for delivery as to the means of delivery, route and method of delivery, handling, storage and transportation thereof unless agreed otherwise in writing.

3.3.6 Any dates, periods or times specified by the Company in connection with the performance of the Services are estimates only and time shall not be of the essence for the performance by the Company of its obligations under the Contract and the Company makes no warranty that the Customer or Customer's goods or property shall be delivered within the Customers stipulated time period (if any) and/or within any time period stated by the Company unless expressly agreed in writing by a director of the Company.

3.3.8 The Company does not insure any Goods consigned for delivery. It is therefore the responsibility of the Customer to ensure that all Goods are appropriately insured. The Company accepts no liability for any loss or damage to any Goods, subject always to clause 6.6.

3.3.10 Each delivery of Goods shall be accompanied by a delivery note which shows the date of the delivery and any other relevant information. Upon delivery of the Goods, the Customer, having had a reasonable opportunity to inspect the Goods, shall sign the delivery note as confirmation that the Goods have been delivered and that no damage has been caused to the Goods in transit. Where the Customer believes that the Goods have been damaged, the Customer should inform the Company without delay.

4. ACCOUNT SERVICES

4.1 Bookings and Charges

4.1.1 Prior to making any Booking for Account Services, the Customer must first open an Account with the Company.

4.1.2 The Company shall be entitled to assume that any Booking made in accordance with this clause 4.1 is duly authorised by the Customer and the Customer shall be liable in respect of all Charges relating thereto.

4.1.3 In consideration of performance of the Account Services, the Customer shall pay the Charges, as invoiced by the Company, within 30 days of the date of an invoice (the "Due Date").

4.1.4 Payment shall be made by direct debit, by cheque, telegraphic transfer or BACS to such bank account as the Company shall notify the Customer.

4.1.5 The Company shall invoice the Customer each month in respect of the Account Services carried out for the Customer during the previous month or at such other intervals as may be agreed by the parties in writing. Each invoice will be accompanied by a statement detailing the Services invoiced.

4.1.6 In the event of non-payment of any Charges by the Due Date, the Company shall be entitled to charge and the Customer shall pay, interest at a rate of 10% per annum on any amount outstanding until payment is made, both before and after any judgment.

4.1.7 The Company may, at any time, set a limit on the total credit given and due by any Customer at any one time and the Company shall not be obliged to provide Account Services once that limit has been reached. Any such limit shall be notified to the Customer in writing by the Company.

4.1.8 Any dispute in respect of the Charges shall be submitted, in writing, within 14 days of receipt by the Customer of the relevant invoice.

4.1.9 When an Account is terminated, by any means whatsoever, the Customer shall pay to the Company all outstanding Charges which are owed to the Company as at the date of termination.

4.2 Passenger Services

Clauses 2.3 and 2.4 of these Terms shall apply to all Passenger Services made in accordance with this clause 4 by an Account Customer.

4.3 Courier Services

Clause 3 of these Terms shall apply to all Courier Services made in accordance with this clause 4 by an Account Customer.

6. GENERAL

The following clauses apply to all Passenger Services and all Courier Services, including Account Services.

6.1 These Terms shall be incorporated and form part of all Contracts for the provision of the Services by the Company to the Customer.

6.3 Each party acknowledges that it is not relying on any statements, warranties or representations given or made by the other whether actual or implied by common law or under statute in relation to the subject matter of any Contract and that it shall have no rights or remedies with respect to such subject matter otherwise than under the relevant Contract.

6.4 No delay or omission by either party in exercising in whole or in part any right, power or remedy provided by law or under the Contract shall:

6.4.1 affect that right, power or remedy; or

6.4.2 operate as a waiver of it.

6.5 The Customer agrees to indemnify and keep the Company fully indemnified from and against any direct and indirect losses, claims, expenses, damages or liability whatsoever incurred or suffered by the Company as a result of the negligence, acts or omissions or default under the Contract by the Customer, or any Passengers, employees, agents or subcontractors.

6.6 The Customer shall be liable for any damage caused by Passengers to any Passenger Vehicle

6.7 Subject to the following provisions of this clause 6, except in respect of death or personal injury caused by the Company's negligence, or that of its servants or agents, the Company's liability to the Customer for loss and/or damage caused by the negligence of the Company and/or its servants or agents, or otherwise which arises out of or in connection with the provision of the Services or their use by the Customer shall be limited as follows:

6.7.1 in relation to the Services generally, the Company's liability shall not exceed £150;

6.7.2 in the case of lost or damaged Goods (including where relevant luggage of Customers travelling in Passenger Vehicle), the Company's liability shall not exceed £100 unless the Customer has notified the Company that the Goods have a value in excess of £100 and the Company has agreed in writing to be responsible for the repair or replacement of the Goods up to a greater value and the Customer shall indemnify the Company against any Passenger claiming sums in excess of such limits.

6.8 To the extent permitted by law, the Company shall not be liable in any way whatsoever for the acts or omissions of any sub-contractors to whom the Company sub-contracts the Services to in accordance with clause 6.18. The Company shall use its reasonable endeavours to ensure that it only sub-contracts the Services to such third parties that have at least the minimum insurance cover required in the third party's country of operation. If the Company is aware that a third party does not have a level of insurance coverage which the

Company would expect, the Company reserves the right to request that the Customer signs a standard form disclaimer and acknowledgement in respect of the same.

6.9 The Company shall not be liable to the Customer for any loss of anticipated savings, business revenues, or profits whether categorised as direct or indirect or any indirect, special or consequential loss (including losses arising from business interruption, wasted management time, loss of goodwill, data and all other such loss whether or not arising in the normal course of business).

6.10 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations under the Contract if the delay or failure was due to any circumstances or cause beyond the Company's reasonable control.

6.11 The Company shall, in any event, have no liability in respect of any claim, howsoever arising, that is not notified to the Company by the Customer, in writing, with sufficient particularity, to identify the nature and the quantum of the claim within fourteen days of the occurrence of the circumstances giving rise to the claim.

6.12 The Customer acknowledges that the limitations on the Company's liability as set out in this clause 5 are fair and reasonable in the circumstances having been taken into account and reflected in the level of the Charges.

6.13 Any complaints relating to the Services shall be addressed to the Company and made in writing within 14 days of the event giving rise to the complaint.

6.14 Termination of this Contract shall be without prejudice to any rights and/or obligations of the Company and/or the Customer accruing prior to the date of such termination.

6.15 Any notice required or permitted to be given by either party to the other under these Terms, shall be in writing and may be given personally or sent by fax or by prepaid registered post to the other party at its registered office or principal place or business or such other address as may at the relevant time have been notified as that party's address for service. Any notice sent by facsimile shall, in the case of a facsimile sent before 5.30 pm on a Business Day, be deemed served on receipt of a successful transmission notice and, in the case of a facsimile sent after 5.30 pm on a Business Day, at 10 am on the next following Business Day. Any notice served by registered post shall be deemed served 48 hours after posting to an address in the United Kingdom or 5 Business Days after posting to an address outside the United Kingdom. In proving the service of any notice it will be sufficient to prove, in the case of a registered post letter to provide proof of delivery and, in the case of a facsimile, that such a facsimile was duly despatched to a current fax number of the addressee by providing a confirmation of fax dispatch report.

6.16 A person who is not a party to any Contract shall not have any rights under or in connection with it.

6.17 The Company reserves the right to subcontract or delegate in any manner any or all of its obligations under any Contract to any third party or agent.

6.18 If any provision of these Terms, which is not of a fundamental nature, is held by any court or other competent authority to be invalid or unenforceable in whole or in part, such part, term or provision shall be deemed deleted from these Terms and the remainder shall not be affected. Should the foregoing apply the parties shall use all reasonable endeavours to agree upon any lawful and reasonable changes to these Terms which may be necessary in order to effect, as close as possible, to give effect to the commercial intent of these Terms.

6.19 The Company reserves the right to amend these Terms at any time upon written notice to the Customer. Notice of non-material amendments to these Terms shall be posted on the Company's website.

6.20 These Terms shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.

Nightingale Cars "the company" reserves the right without prejudice to itself to refer to these terms and conditions to settle disputes and to interpret and negotiate any such dispute as it sees fit.

Nightingale Cars will act in good faith in dealing with all disputes and endeavour to seek to resolve complaints however will refer to these terms of trading and Test Valley Borough Council licensing regulations to guide its decisions.

Acceptance of these terms and conditions when making a booking/contract with Nightingale Cars are absolute and without further interpretation.

Nightingale Cars will fully adhere to the licensing conditions as required by Test Valley Borough Council Licensing conditions which can be found at;
<http://www.testvalley.gov.uk/business/licensingandregulation/licensing/taxi-licensing/>