

# Optional Service Contract Terms

Effective 03.25.2022

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**IMPORTANT NOTE: These Optional Service Contract Terms are effective 03.25.2022 for all Users who registered before they were posted on 03.25.2022, and effective when posted for everyone else.**

Users who enter into a Service Contract on the Site with another User are free to agree to these Optional Service Terms in whole or in part, or to agree to different or additional terms for their Service Contract(s). However, if and to the extent that the Users who are party to a Service Contract have not agreed to different terms, then they agree to incorporate these Optional Terms. Users may not, by agreement amongst themselves, alter the rights or responsibilities of QWQER or Stripe, including any provision of the Stripe Payment Instructions, or agree to any terms that would violate the Terms of Service. Neither QWQER, Stripe, nor any affiliate of QWQER is a party to any Service Contract by or between Users regardless of whether these Optional Terms are incorporated.

You acknowledge and agree that Users have discretion whether to contract with each other and will negotiate and determine the specific terms of their Service Contracts with each other. The Optional Service Terms is a sample only, which may not be appropriate for all Service Contracts and which may be adjusted and added to as Users deem appropriate. Users choose whether to use the Optional Service Terms in whole or in part.

## 1. PARTIES

Customer and Driver identified on the Site under the Service Contract are the parties to the Services Contract. The address of each party is the address entered under the tax information on the Site. QWQER is not a party to the Service Contract.

## 2. SERVICES

Customer and Driver agree that the Driver is performing services as an independent contractor and that Driver is not an employee or agent of Customer. Driver will perform the Driver Services in a professional manner and will comply with all rules and regulations as provided in the [Terms of Service](#), [Driver's License, Record Verification and Rules & Regulations Attestations](#) and [Driver Rules and Regulations Consent Form](#). The manner and means of performing the Driver Services will be determined and controlled solely by Driver, which is engaged by Customer as an independent contractor.

The terms concerning the services to be performed under the Service Contract described on the Site form part of the Service Contract. Users agree that, once accepted, the terms of the Service Contract cannot be modified by a User without obtaining the consent of the other before making

changes to the Service Contract, including by adding additional Delivery destinations, by closing a Service Contract, or making other changes to the Service Contract on the Site. If consent of the other party is not first obtained, the other party may reject such changes by terminating the Service Contract or accept such changes by continuing to work on the Service Contract.

### **3. RESPONSIBILITY FOR EMPLOYEES AND SUBCONTRACTORS, INCLUDING AGENCY MEMBERS**

If a User subcontracts with or employs third parties to perform Driver Services on behalf of the User for any Engagement, the User represents and warrants that it does so as a legally recognized entity or person and in compliance with all applicable laws and regulations. Further, at all times a User that agreed to perform services under a Services Contract remains responsible for the quality of the services.

### **4. DRIVER DELIVERY REPORTS**

Driver agrees to accurately report Delivery mileage, weight/volume of delivery items and timely completion of Deliveries by notifying Customer of the same in method, manner and form suitable to and instructed by Customer, as agreed between the parties for any applicable Delivery.

### **5. TERMINATION OF A SERVICE CONTRACT**

Either Customer or Driver has the right to terminate the Service Contract after providing any agreed-upon notice, or immediately on the end date specified in the Service Contract terms and/or upon completion of the Delivery, in the event of a material breach, or with the consent of the other party. Except as required by law or as otherwise may be agreed to by the Parties, Customer remains obligated to pay the Driver Fees for any Driver Services provided prior to termination of the Service Contract.

Under Mileage-Based Contracts, once a Customer's Payment Method has been charged by Stripe and payment processing for the applicable Delivery has been initiated, absent a full refund to Customer by Driver, the Service Contract does not terminate until the Delivery is completed. However, either Customer or Driver has the right to terminate a Mileage-Based Contract at any time with the consent of the other party or in the event of a material breach. If a Mileage-Based Contract is terminated, Customer does not have the right to recover any payments already released to Driver by Stripe.

### **6. INTELLECTUAL PROPERTY RIGHTS**

#### **6.1 THIRD-PARTY RIGHTS**

Driver represents and warrants that Driver will not incorporate or use the materials of any third party including those of any other Customer or any employer, in performing the Delivery Services that are not generally available for use by the public or have not been legally transferred to the Customer.

## **7. CONFIDENTIAL INFORMATION**

### **7.1 CONFIDENTIALITY**

To the extent a Customer or Driver provides Confidential Information to the other, the recipient will protect the secrecy of the discloser's Confidential Information with the same degree of care as it uses to protect its own Confidential Information, but in no event with less than due care, and will: (a) not disclose or permit others to disclose another's Confidential Information to anyone without first obtaining the express written consent of the owner of the Confidential Information; (b) not use or permit the use of another's Confidential Information, except as necessary for the performance of Delivery Services (including, without limitation, the storage or transmission of Confidential Information on or through the Site for use by Driver); and (c) limit access to another's Confidential Information to its personnel who need to know such information for the performance of Driver Services.

### **7.2 RETURN**

If and when Confidential Information is no longer needed for the performance of the Driver Services for a Services Contract or at Customer's or Driver's written request (which may be made at any time at Customer's or Driver's sole discretion), the party that received Confidential Information, will, at its expense, promptly destroy or return the disclosing party's Confidential Information and any copies thereof contained in or on its premises, systems, or any other equipment otherwise under its control. The party that received Confidential Information agrees to provide written certification to the party disclosing the Confidential Information of compliance with this subsection within ten days after the receipt of disclosing party's written request for such certification.

### **7.3 PUBLICATION**

Without limiting Section 7 (Confidentiality), Customer and Driver will not publish, or cause to be published, any other party's Confidential Information or Work Product, except as may be necessary for performance of Driver Services for a Service Contract.

### **7.4 IMMUNITY**

A disclosure of information will be immune from prosecution or civil action under the Defend Trade Secrets Act, 18 U.S.C. Sec. 1832, if it: (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

## 8. DEFINITIONS

The following capitalized terms have the following meanings:

“**Customer**” means any person who entered into a Service Contract to obtain Driver/Delivery Services from a Driver.

“**Confidential Information**” means any information provided to, or created by, a User for a Service Contract or to perform or assist in performing Driver Services, regardless of whether in tangible, electronic, verbal, graphic, visual, or other form. Confidential Information does not include material or information that is known to the public or that: (a) is generally known by third parties as a result of no act or omission of Driver or Customer; (b) subsequent to disclosure hereunder, was lawfully received without restriction on disclosure from a third party having the right to disseminate the information; (c) was already known by User prior to receiving it from the other party and was not received from a third party in breach of that third party’s obligations of confidentiality; or (d) was independently developed by User without use of another person’s Confidential Information.

“**Engagement**” means an engagement for Driver Services that a Driver provides to a Customer under a Service Contract on the Site.

“**Mileage-Based Contract**” means a Service Contract for which Customer is charged a fee based upon mileage rates provided in the [Rate Schedule](#), along with applicable weight/volume charges for bulk Deliveries, agreed between a Customer and a Driver, prior to the commencement of a Service Contract, for the completion of all Driver Services contracted by Customer for such Service Contract.

“**Driver**” means any person who entered into a Service Contract to perform Delivery services for a Customer.

“**Driver Fees**” means: The fixed fee agreed between a Customer and a Driver based on the applicable Delivery Mileage in accordance with the Rate Schedule, less any Service Fees payable to QWQER or Stripe per the Site User Agreement and applicable Terms and Conditions.

“**Driver Services**” means all services performed for or delivered to Customers by Drivers.

“**Service Contract**” means the contractual provisions between a Customer and a Driver governing the Driver Services to be performed by a Driver for Customer for an Engagement.