



Master Services Agreement

Between Qargo Tech Inc, a Delaware corporation with Delaware file number 10301132 (“Qargo”, “we”, “us” “our”), whose principal place of business is at 330 N Wabash Ave, 6061, Chicago, 60611, Illinois and the customer named on the Order Form (“Customer”, “you”, “your”);

The “Agreement” is made up of the Order Form, this Master Services Agreement (MSA), the Service Level Agreement (“SLA”), the Data Processing Agreement (“DPA”), and other relevant Addenda.

In the event of a conflict, the order of precedence is: (1) Order Form, (2) DPA, (3) the MSA and (4) any additional relevant Addenda (unless an Addendum expressly prevails).

1. Definitions & Interpretations

1.1. Definitions

“Add-on Features” means any optional, additional features provided by Qargo to the Customer within the Qargo TMS, as further described in the Order Form;

“AI Features” means those applications, modules and functionality of the Qargo TMS that make use of artificial intelligence, generative artificial intelligence, machine learning, large language models or similar technologies, including the Qargo Intelligence Add-on Feature. The Customer’s use of the AI Features is governed by the AI Addendum;

“Authorized User” means any of the Customer’s employees, agents and independent contractors and other individuals or entities who are authorized by the Customer to use the Services (wholly or in part) and the Documentation;

“Business Day” means each day which is not a Saturday, a Sunday or a bank holiday or public holiday in Illinois;

“Business Hours” means between the hours of 8:00 AM to 6:00 PM on Business Days;

“Charges” means the Pre-payment Charge, Subscription Charge and any other charges (including but not limited to, charges for Professional Services and Add-on Features) as may be set out in an Order Form and agreed between the parties from time to time;

“Claim(s)” means all demands, claims and liability (actual and consequential and direct and indirect and whether known and unknown, suspected and unsuspected, disclosed and undisclosed, criminal or civil, in contract, tort or otherwise) for all losses including any other expenses of any nature whatsoever;

“Confidential Information” means information that is proprietary or confidential by nature or which is identified as Confidential Information. This does not include information that the receiving party already held lawfully, or that is publicly available (other than through breach);

“Customer” or “You” means the entity purchasing the Services whose details are outlined in the Order Form.

“Customer Data” means all data, information and material input or uploaded to the Qargo TMS or otherwise provided to Qargo or accessible by Qargo by the Customer’s Authorized Users in connection with the Agreement, and includes any output, results, reports or other data generated by the Services (including the AI Features) from such data;



"Customer Portal" means the part of the Qargo TMS that the Customer makes available to Portal Users to view, manage and update transport journeys and related information, as described in the Documentation.

"Documentation" means any information made available to the Customer by Qargo from time to time (including online on [Qargo's knowledge hub](#) or otherwise) which is produced by Qargo and which describes the functionality, use or operation of the Services, to provide general help and assistance to Qargo's customers;

"Driver App" means the mobile application available to the Customer via an app-store for use by Authorized Users;

"Force Majeure Event" means any happening or event beyond the reasonable control of the party concerned, including acts of God, flood, fire, earthquake, epidemic or pandemic, war, terrorism, civil unrest, acts or orders of any governmental authority, strikes or labor disputes (other than those involving the affected party's own workforce), failure of public utilities or telecommunications networks, and widespread internet or cloud-infrastructure outages, which results in a failure or delay in the performance of that party's obligations under this Agreement;

"Go Live Date" means the date, specified in the Order Form or as otherwise agreed between the parties, when the Subscription Services will commence;

"Initial Term" means the initial period of the Subscription Services as set out in the Order Form, commencing on the Go Live Date and as further described in Clause 2.3;

"Intellectual Property" means patents, rights to inventions, copyright and neighboring and related rights, trademarks and service marks, business names and domain names, rights in trade dress, goodwill and the right to sue for unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Modifications" means bespoke feature development or changes to the Qargo TMS, provided as Professional Services, as agreed upon in an Order Form;

"Onboarding Period" means the period beginning upon the Customer's payment of the Pre-payment Charge, and ending on the Go Live Date, during which Qargo will configure and prepare the Qargo TMS for the Customer's use;

"Order Form" means a statement of work, quotation, proposal, written notice or other similar document describing the Services to be provided by Qargo which have been purchased by the Customer, setting out the relevant Charges;

"Portal Users" means the Customer's customers, consignees, subcontractors and other participants in the Customer's supply chain whom the Customer authorizes to access the Customer Portal. Portal Users are Authorized Users for the purposes of this Agreement.

"Pre-payment Charge" means a percentage of the total Subscription Charges for the Initial Term, as specified in the Order Form, payable by the Customer upon signing the Order Form and prior to the commencement of the Onboarding Period;



“Professional Services” means any Modification, Third Party Integration, training or onboarding services related to the Qargo TMS as requested and paid for by the Customer and defined in a related Order Form;

“Qargo TMS” means Qargo’s Transportation Management System Software, access provided on a Software-as-a-Service (SaaS) basis, available at app.qargo.com (inclusive of related features such as the Driver App, Customer Portal, Add-on Features, Third Party Integrations and Modifications);

“Renewal Term” means each successive twelve (12) month period following the Initial Term;

“Services” means the Qargo TMS, Support Services, Professional Services and any Add-on Features as set out in the Order Form;

“Software” means the proprietary software owned or licensed by Qargo which forms part of, or is used in the provision of, the Qargo TMS and is made available to the Customer under the terms of this Agreement. For clarity, the Customer does not receive a copy of the Software, nor does it acquire any rights to the Software beyond those expressly granted in this Agreement;

“Subscription Charges” means the fees for the Customer’s subscription to Qargo TMS, Support Services and any Add-on Features, of which a portion will be paid as a Pre-payment Charge in the Initial Term;

“Subscription Period” means the Initial Term and any Renewal Term during which the Customer is entitled to access and use the Subscription Services under the applicable Order Form.

“Support Services” means the technical support provided by Qargo to the Customer related to the Qargo TMS, as further detailed in the SLA;

“Third Party Integrations” means the integration of software from Third Party Provider with Qargo TMS;

“Third Party Provider” means a party that is not the Customer or Qargo, that provides software, products, services, data or a platform which may be used in connection with the Services;

“Virus” means any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2. **Interpretation.** Headings do not affect interpretation. Singular includes plural and vice versa. References to legislation include amendments and re-enactments. “Including”, “in particular”, “for example” and similar terms do not limit the preceding words. “Written” and “in writing” include email, but not fax, SMS, WhatsApp or social media. References to clauses are to clauses in the MSA. The DPA has effect as if set out in full in this MSA. Reference to any legislation, or to any provision of any legislation, applies only to the extent that such legislation applies to the party or to the matter in question.

2. Term and Termination

- 2.1. **Effective Date.** This Agreement starts on the date the Order Form is signed by the Customer (“Effective Date”).



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- 2.2. **Onboarding Period.** Upon receipt of the Pre-payment Charge, the Onboarding Period will begin. During this time, Qargo will work with Customer to configure and prepare the Qargo TMS for the Customer's specific requirements. The details of the onboarding process, any related Professional Services purchased will be outlined in the Order Form.
- 2.3. **Initial Term.** At the end of the Onboarding Period, on the Go-Live Date, the Initial Term will begin, and shall continue for the duration set out in the Order Form.
- 2.4. **Renewal.** After the Initial Term, this Agreement shall renew automatically for successive 12-month Renewal Terms unless terminated in accordance with clauses 2.5 or 2.6, or unless either party gives no less than 30 days' prior written notice of non-renewal (such notice to expire at the end of the Initial Term or any subsequent Renewal Term only).
- 2.5. **Termination for breach.** Either party may terminate the Agreement immediately by notice to the other party if the other party materially breaches the Agreement, unless (where the breach can be remedied) the other party remedies the breach within 30 days after being notified to do so.
- 2.6. **Termination for insolvency.** Either party may terminate this Agreement immediately on written notice to the other party if the other party: (a) becomes insolvent or is generally unable to pay its debts as they become due; (b) makes a general assignment for the benefit of its creditors; (c) commences, or has commenced against it, a voluntary or involuntary case or proceeding under Title 11 of the United States Code (the "Bankruptcy Code") or under any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, provided that, in the case of an involuntary case or proceeding, the terminating party may terminate only if it is not dismissed or stayed within sixty (60) days after commencement; (d) has a receiver, trustee, custodian or similar official appointed for all or a substantial part of its assets; (e) has any attachment, execution or other legal process levied or enforced against all or a substantial part of its assets which is not discharged within thirty (30) days; or (f) ceases, or threatens to cease, to carry on its business.
- 2.7. **Effect of Termination.** Upon termination of this Agreement for any reason: (a) Qargo will revoke the Customer's access to the Services, (b) all amounts payable to Qargo by the Customer shall become immediately due and owing, and (c) accrued rights or liabilities are not affected. For clarity, in the case of termination due to:
 - 2.7.1. **Customer's material breach:** no refund of Charges paid in advance shall be due in respect of any unexpired portion of the then-current Subscription Period.
 - 2.7.2. **Qargo's material breach:** Qargo shall provide the Customer with a pro-rata refund of any prepaid Subscription Charges for the remaining, unused portion of the Subscription Period.
- 2.8. **Survival.** The following provisions shall survive the termination or expiration of this Agreement for any reason: clauses 2.7 to 2.9, 5.1, 5.3 to 5.5, 6 to 12 (inclusive), and the DPA, together with any other provision which by its nature should survive.
- 2.9. **Data export.** The Customer may request an export of the Customer Data within thirty (30) days of termination or expiry of this Agreement. The export will be provided in a common format. After that period, Qargo will delete the Customer Data in accordance with clause 10 of the DPA.



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3. Qargo's Obligations

- 3.1. **Right to use Services.** Subject to the terms of this Agreement, Qargo grants to the Customer a non-exclusive, non-transferable, non-sublicensable right for Customer's Authorized Users to use the Services and Documentation for internal business purposes.
 - 3.1.1. **Use of Customer Portal.** The Customer may permit Portal Users to access the Customer Portal in connection with the Customer's transport operations, and such access forms part of the Customer's permitted use of the Services.
- 3.2. **Service standard.** Qargo shall provide the Services to the Customer in a professional and workmanlike manner, using commercially reasonable skill and care consistent with generally accepted industry standards, subject to the terms of this Agreement. If Qargo fails to meet this commitment, and this failure is not caused by the Customer's use of the Services contrary to the Documentation, Qargo will use commercially reasonable efforts to correct the issue or provide the Customer with a suitable workaround. Such correction or workaround is the Customer's sole and exclusive remedy for breach of this clause 3.2, without prejudice to the Customer's rights under clause 2.5 and to any Service Credits under the SLA.
- 3.3. **Warranties.** Qargo warrants that (a) it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement and (b) the Services, when used in accordance with the Documentation, will materially function as described in the specifications outlined in the Documentation and the Order Form.
- 3.4. **Updates.** Qargo may update the Services from time to time, with such changes not materially reducing the functionality, performance, or security of the Services. Notification of significant changes will be provided via the Qargo TMS.
- 3.5. **Compliance.** Qargo shall comply with all applicable laws and regulations in connection with the provision of the Services.

4. Customer's Obligations

- 4.1. **Things Customer must do.** The Customer must (a) provide Qargo with all necessary cooperation as may be required by Qargo to provide the Services, (b) comply with all applicable laws and regulations and (c) be solely responsible for establishing, monitoring and implementing security practices to control access to and use of the Services and all Customer Data therein, (d) be solely responsible for all access to and use of the Customer Portal by its Portal Users as if it were the Customer's own use and authorizing, managing and revoking Portal User access, and (e) obtain and maintain all necessary licenses and permissions to access and use the Services.
- 4.2. **Things Customer must not do.** Customer must not, and must ensure Authorized Users do not: (a) except where permitted by law that cannot be excluded, copy, modify, reverse engineer or create derivative works from any part of the Qargo TMS, (b) access the Services to build a competing product or service, (c) make the Services available to any third party or otherwise permit a third party to access or use the Services except (i) as expressly permitted by this Agreement and (ii) permitting Portal Users to access the Customer Portal in accordance with clause 3.1.1, (d) attempt to interfere with the proper working or performance of the Services or Software and (e) manipulate identifiers in order to disguise the origin of any Customer Data transmitted through the Service.



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- 4.3. **Illegal content.** Customer must not upload, store, transmit or otherwise make available through the Services any Illegal Content, or otherwise use the Services in a manner that is unlawful, fraudulent or that infringes the rights of any third party. “Illegal Content” means information or activity that does not comply with applicable law, including the laws of the United States and of any U.S. state and, where applicable, EU law or the law of any EU Member State. The Customer is responsible for all content that it and its Authorized Users store on the Services. Qargo does not monitor Customer Data and has no general obligation to do so. Any person may report Illegal Content to support@qargo.com, identifying the content, where it sits on the Services and why they consider it unlawful. On becoming aware of Illegal Content, Qargo may remove or disable access to it and may suspend the Customer under clause 4.4, and will tell the Customer what it has done and why unless prevented by law or by a competent authority.
- 4.4. **Impact of breach.** If Customer breaches obligations in this clause 4, Qargo may suspend access to the Services with immediate effect. The Customer will continue to be charged for and be liable for all Charges during any period of suspension. Access will be restored as soon as commercially practicable once the underlying issue is resolved.

5. Customer Data

- 5.1. **Ownership of Customer Data.** The Customer owns and retains all right, title, and interest in and to Customer Data, including any intellectual property rights therein. Nothing in this Agreement transfers ownership of Customer Data to Qargo. The Customer is solely responsible for the legality, reliability, integrity, accuracy and quality of the Customer Data, and for the way it is used. For clarity, output generated by the Services (including the AI Features) from Customer Data forms part of the Customer Data and is owned by the Customer.
- 5.2. **Customer license to Qargo.** The Customer grants Qargo a non-exclusive, worldwide, royalty-free license to use, store, process, access and display Customer Data solely for the purposes of (a) providing and supporting the Services, (b) diagnosing and fixing technical issues, and (c) improving service quality (subject to Confidentiality obligations under clause 9).
- 5.3. **No warranty of output.** The Services process Customer Data as the Customer provides it, and Qargo does not validate or correct it. Qargo therefore gives no warranty as to the accuracy, completeness or quality of the Customer Data, or of any output, report, analysis, suggestion or insight that the Services generate from it.
- 5.4. **Reliance on output.** The Customer is solely responsible for checking the accuracy, completeness and suitability of any output of the Services before relying on it. Qargo is not liable for any error or omission in an output, or for any consequence of the Customer relying on an output it has not verified. Clauses 5.3 and 5.4 apply to the accuracy and completeness of Customer Data and of output derived from it, and do not apply where an output is inaccurate or incomplete because the Services have failed to function as warranted under clause 3.3. The AI Addendum sets out the additional terms that apply to output generated by the AI Features.



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- 5.5. **Customer Data infringement.** The Customer shall defend Qargo against any Claim by a third party alleging that the Customer Data, or Qargo's use of it in accordance with this Agreement, infringes the rights of that third party, and shall indemnify and hold Qargo harmless from any damages, costs and reasonable attorneys' fees awarded against Qargo in judgment or agreed in settlement of such Claim, provided that: (a) Qargo notifies the Customer in writing promptly after becoming aware of the Claim (and any delay in notice relieves the Customer of its obligations only to the extent it is materially prejudiced by that delay); (b) Qargo provides the Customer with reasonable cooperation in the defense and settlement of the Claim, at the Customer's expense; and (c) the Customer is given sole authority to defend or settle the Claim, provided that the Customer shall not agree any settlement that imposes any obligation on, or admission by, Qargo without Qargo's prior written consent.

6. Intellectual Property

- 6.1. **Qargo IP ownership.** Qargo or its licensors own all Intellectual Property in (a) the Services and any Modifications, (b) the Qargo name and logo and (c) the Documentation. This Agreement does not grant the Customer any ownership rights in the Services, and the Customer's use of the Services is limited to the rights expressly stated in this Agreement.
- 6.2. **IP infringement indemnity.** Qargo shall indemnify the Customer against any amounts awarded against the Customer in judgment or agreed in settlement of any Claim by a third party alleging that the Services, when used by the Customer in accordance with this Agreement and the Documentation, infringe that third party's Intellectual Property rights, provided that: (a) the Customer notifies Qargo in writing promptly after becoming aware of the Claim; (b) the Customer provides reasonable cooperation to Qargo in the defense and settlement of the Claim, at Qargo's expense; and (c) Qargo is given sole authority to defend or settle the Claim. Qargo shall have no obligation under this clause 6.2 to the extent a Claim arises from: (i) Customer Data or the Customer's Confidential Information; (ii) modification of the Services by anyone other than Qargo; (iii) combination or use of the Services with products, services or data not provided by Qargo, where the Services would not be infringing on their own; (iv) use of the Services other than in accordance with this Agreement and the Documentation; or (v) any output of the AI Features.
- 6.3. **Infringement remedies.** If Qargo reasonably believes the Software could infringe any third party's patent, copyright or registered trademark, Qargo may, at its sole option and expense use commercially reasonable efforts to: (i) modify or replace the Software, or any component or part thereof, to make it non-infringing; or (ii) procure the right for Customer to continue to use the Software. If Qargo determines that neither alternative is commercially practicable, Qargo may terminate this Agreement, in its entirety or with respect to the affected component, by providing written notice to Customer and refunding a prorated portion of the pre-paid, unused Charges paid by Customer corresponding to the unused period of the applicable Subscription Period.

7. Third Party Integrations and Modifications

- 7.1. **Requested work.** Where the Customer requires Professional Services from Qargo to assist with integration of Third Party Software or to make Modifications to the Qargo TMS, such agreed Services and related Charges will be set out in an Order Form.



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- 7.2. **No liability for Third Party Software.** For the avoidance of doubt, Qargo shall not be liable to the Customer for the failure of any Third Party Software integrated to Qargo TMS, that is not directly related to the act or omission of Qargo, its employees, contractors or agents, or for third-party availability, API changes, data inaccuracies, customer systems, third-party terms, or third-party fees. Customer is responsible for maintaining third-party accounts and permissions.

8. Charges & Payments

- 8.1. **Obligation to pay.** The Customer shall pay the Charges due under this Agreement. All Charges are exclusive of all federal, state, local and foreign sales, use, excise, value-added, goods and services, gross receipts and similar taxes, duties and levies ("Taxes"), which shall be added to the invoice and paid by the Customer, other than taxes based on Qargo's net income. If the Customer claims exemption from any Taxes, it must provide Qargo with a valid exemption certificate or other documentation required by the relevant taxing authority; otherwise Qargo will invoice, and the Customer shall pay, the applicable Taxes.
- 8.2. **Invoicing & payment terms.** Qargo will issue invoices electronically to the email address provided by the Customer in the Order Form or as otherwise updated by the Customer in writing. Payment is due and payable within thirty (30) days of invoice date, in the currency set out in the Order Form (or, if none is stated, in US dollars) and in full without set-off, deduction or counterclaim.
- 8.3. **Cleared funds.** No payment shall be deemed to have been made until Qargo has received such payment in cleared funds from the Customer.
- 8.4. **Initial Term Charges:**
- 8.4.1. **Pre-payment Charge.** Upon signing the Order Form and as a prerequisite to commencing the Onboarding Period, the Customer shall pay the Pre-payment Charge specified in the Order Form. This Pre-payment Charge is non-refundable.
- 8.4.2. **Balance on Go-Live.** Following the completion of the Onboarding Period and the passing of the Go Live Date, the Customer will be invoiced for the remaining Subscription Charges.
- 8.5. **Price increase:** Qargo reserves the right to increase its pricing by 4.5% once every twelve (12) month period, on at least sixty (60) days' prior written notice. This increase would take effect at the next Renewal.
- 8.6. **Invoice disputes.** If the Customer disputes an invoice, they must notify Qargo in writing within fourteen (14) days of invoice date. They shall pay the undisputed amount in full pending resolution of the dispute. Upon resolution, any necessary adjustments will be made within thirty (30) days.
- 8.7. **If payment is late.** If the Customer fails to pay Qargo any Charges due pursuant to this agreement and remains in default for 7 days after the provision of written notice, then without prejudice to its other rights and remedies, Qargo shall be entitled to (a) suspend access to the Services until such time as any outstanding invoices have been settled in full, whereupon the access will be reinstated, (b) charge interest on the outstanding undisputed amount at the rate permitted by law from time to time, accruing on a daily basis from the due date until the outstanding amount is paid in full, and (c) recover from the Customer its reasonable costs of collection, including reasonable attorneys' fees.



9. Confidentiality

- 9.1. **Confidentiality obligation.** Each party undertakes to the other that during the Subscription Period and for three (3) years after it ends (and, in respect of any trade secret, for so long as it remains a trade secret under applicable law) it shall not, without the prior written consent of the other party, disclose to any third party any Confidential Information disclosed to the recipient party by such other party in connection with this Agreement, and shall protect it to at least the standard it applies to its own confidential information, which must be at least reasonable.
- 9.2. **Permitted disclosure.** A receiving party may disclose Confidential Information (a) to its group companies, employees, representatives or advisers (provided they are made aware of the confidentiality obligations and comply with this clause 9) or (b) where required by law, provided the Receiving Party gives reasonable advance notice of disclosure (where lawful to do so).
- 9.3. **Equitable relief.** Each party acknowledges that any unauthorized use or disclosure of the other party's Confidential Information may cause the other party irreparable harm for which damages would not be an adequate remedy. Accordingly, in addition to any other remedies, the non-breaching party may seek injunctive or other equitable relief, without the need to post a bond or other security.

10. Limitations On Liability

- 10.1. **Definition.** This clause 10 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and subcontractors) to the other party arising under or in connection with this Agreement, including in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2. **Excluded losses.** SUBJECT TO CLAUSE 10.8, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, MISREPRESENTATION, RESTITUTION OR OTHERWISE, FOR ANY LOSS OF PROFITS, REVENUE, BUSINESS, GOODWILL OR ANTICIPATED SAVINGS, ANY LOSS OR CORRUPTION OF DATA OR INFORMATION, OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- 10.3. **Liability limit.** SUBJECT TO CLAUSE 10.8, EACH PARTY'S TOTAL AGGREGATE AND MAXIMUM LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, MISREPRESENTATION, RESTITUTION OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL SUBSCRIPTION CHARGES PAYABLE BY THE CUSTOMER TO QARGO DURING THE TWELVE (12) CONTINUOUS MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE.



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- 10.4. **INDEMNITY SUPER-CAP.** NOTWITHSTANDING THE CLAUSE 10.3 HEADED “LIABILITY LIMIT”, BUT SUBJECT TO THE CLAUSE 10.8 HEADED “LIABILITIES THAT AREN’T LIMITED”, EACH PARTY’S TOTAL AGGREGATE LIABILITY UNDER THE INDEMNITIES IN THIS AGREEMENT (INCLUDING THE CUSTOMER DATA INDEMNITY AND THE IP INFRINGEMENT INDEMNITY) AND QARGO’S AGGREGATE LIABILITY FOR BREACH OF ITS CONFIDENTIALITY, DATA PROTECTION OR SECURITY OBLIGATIONS, WILL NOT EXCEED TWO (2) TIMES THE TOTAL SUBSCRIPTION CHARGES PAID OR PAYABLE BY THE CUSTOMER TO QARGO IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
- 10.5. **Services provided as-is.** EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, THE DOCUMENTATION, THE SERVICES AND ANYTHING ELSE SUPPLIED OR PROVIDED BY QARGO UNDER THIS AGREEMENT ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. THE CUSTOMER ACKNOWLEDGES THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF INTERNET-BASED SERVICES.
- 10.6. **Disclaimer of warranties.** EXCEPT FOR THE EXPRESS WARRANTIES SET OUT IN THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, QARGO DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. QARGO DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.
- 10.7. **No breach for other party’s acts.** Neither party shall be in breach of any of its obligations under this Agreement which arise or occur due to the act, omission, and default of the other party or the Customer’s failure to comply with any of its obligations under this Agreement.
- 10.8. **Liabilities that aren’t limited.** Nothing in this agreement limits or excludes (a) your obligation to pay the Charges, (b) liability for death or bodily injury caused by negligence, (c) liability for fraud or fraudulent misrepresentation, or (d) any other liability that cannot be limited or excluded under applicable law.

11. Notices

- 11.1. **Notices by email only.** Any notice given under this Agreement shall be in writing, in English and sent by email: (a) for notices to Qargo: legal@qargo.com; and (b) for notices to Customer: The email specified for legal notices in the Order Form. If this is not present, notice will be sent either to (i) an email as otherwise specified by the Customer or (ii) the emails of Administrators of the Customer’s Qargo TMS account.
- 11.2. **Notice for disputes.** This clause 11 does not apply to the service of proceedings in any legal action or dispute resolution.

12. General



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- 12.1. **Entire agreement.** The Agreement is the entire agreement between the parties relating to its subject matter and replaces anything previously discussed relevant to that subject matter. Each party acknowledges that, in entering the Agreement, it has not relied on, and expressly disclaims reliance on, any statement, representation, warranty or understanding that is not expressly set out in the Agreement, provided that nothing in this clause 12.1 limits or excludes liability for fraud. For the avoidance of doubt, any terms or conditions printed on, attached to, or referenced within any Customer purchase order, order acknowledgment, supplier portal, or vendor intake form shall be null and void and of no legal effect, even if signed or acknowledged by Qargo after the Effective Date.
- 12.2. **Force Majeure.** Neither Party is in breach if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by one or more Force Majeure Events provided that, to the extent reasonably possible, the non-affected Party is notified of such and the expected duration.
- 12.3. **No partnership or agency.** This Agreement is not intended to create any partnership or joint venture relationship between the Parties. Neither Party has the authority to act on behalf of, or bind the other.
- 12.4. **Marketing.** Customer authorizes Qargo to reference Customer and use Customer's name and logo in marketing and promotional materials.
- 12.5. **Third party rights.** There are no third-party beneficiaries of this Agreement, and nothing in this Agreement is intended to confer any enforceable rights or benefits on anyone other than the Parties to this Agreement.
- 12.6. **Changes to this Agreement.** Qargo will not vary the terms of this Agreement during the Initial Term or the then-current Renewal Term, except: (a) where the parties agree in writing or (b) where reasonably necessary to comply with applicable law or regulation or to protect the security of the Services - for which Qargo will give as much notice as is reasonably practicable and which takes effect on the date notified. Otherwise, Qargo may update these terms on at least 30 days' email notice, with changes taking effect from the Customer's next Renewal Term; the Customer accepts by renewing, or may object within the notice period and end this Agreement at the end of the current term.
- 12.7. **Assignment.** This Agreement applies to both parties and their successors and assigns. Except in the case of a merger, corporate reorganization or change of control, neither party may assign, transfer or otherwise dispose of any of its rights under this Agreement, without prior written consent of the other party.
- 12.8. **Severability.** If any provision of this Agreement is deemed invalid, illegal or unenforceable, it will be enforced to the maximum extent permissible and the validity of the remaining provisions contained in this Agreement will not be affected. Both parties will work together to replace the invalid provision with a new provision that is legally permissible and has the same effect.
- 12.9. **Waiver.** A waiver by any party of any of the terms or conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof. No waiver of any right shall constitute a waiver of any other right or be effective unless made in writing and signed by an authorized signatory of the party making the waiver.



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- 12.10. **Counterparts and electronic signatures.** This Agreement and any Order Form may be executed in counterparts and by electronic signature, each of which is deemed an original and all of which together constitute one and the same agreement.
- 12.11. **Insurance.** During the Subscription Period, Qargo shall maintain, at its own cost and with reputable insurers, insurance of the types and in the amounts customary for a provider of software-as-a-service of Qargo's size and industry, including commercial general liability, technology errors and omissions (professional liability) and cyber liability insurance. On the Customer's reasonable written request, not more than once in any twelve (12) month period, Qargo shall provide a certificate of insurance evidencing such coverage.
- 12.12. **Export control, sanctions and anti-corruption.** Each party shall comply with all applicable anti-corruption laws (including the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010) and all applicable export-control and economic-sanctions laws (including the U.S. Export Administration Regulations and the sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC)). The Customer represents that neither it nor any of its Authorized Users is located in, organized under the laws of or ordinarily resident in any country or territory subject to comprehensive U.S. sanctions, or is identified on any U.S. government restricted-party list, and the Customer shall not use or permit the use of the Services in violation of any export-control or sanctions law.
- 12.13. **Governing law and jurisdiction.** This Agreement, and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter, is governed by the laws of the State of Delaware, without regard to its conflict-of-laws principles. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (as enacted in any jurisdiction) do not apply to this Agreement. Each party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in New Castle County, Delaware, and waives any objection to venue in those courts, including on the grounds of inconvenient forum.
- 12.14. **Waiver of jury trial.** EACH PARTY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER.
- 12.15. **Attorneys' fees.** In any action or proceeding to enforce this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs.
- 12.16. **Agreement language.** This Agreement is entered into in the English language. Any and all translations of this Agreement are provided for convenience only. In the event of any conflict or inconsistency between the English version and any translated version of this Agreement, the English language version shall prevail.