

XPO TERMS AND CONDITIONS

We are XPO App Ltd (Company No: 11261011) with registered office at 384 Linthorpe Road, Middlesbrough, TS5 6HA (hereafter “**XPO**”, “**we**” or “**us**”). We are a mobile app which provides invoice finance services for content creators, allowing such content creators to get paid more quickly (such invoice finance services being the “**Services**”). These terms and conditions set out the terms on which we enable you to access and use the Services via our App.

We may update these terms and conditions from time to time for legal or regulatory reasons. Any changes will be notified here on this page of our website or for any material changes, and assuming you have an account, we will e-mail you. The changes will apply to your access and use of the Services via the App after we have given notice. If you do not wish to accept the new terms and conditions you should not continue to access and use the Services via our App. If you continue to access and use the Services via our App after the date on which the change comes into effect, your access and use of the Services via our App shall be deemed to indicate your agreement to be bound by the updated terms and conditions.

I. **App registration and account creation**

- I.1 **How to create an account:** When you first access the App, you will be required to enter your phone number. We will then send you a text message with an authentication code which, if inputted, will take you to the account registration page. You will then be prompted to enter certain details including your name, e-mail address and date of birth. You will also be asked to agree to these terms and conditions and our privacy policy. In creating an account and agreeing to our terms and conditions and privacy policy you: (a) accept and agree to be legally bound to these terms and conditions and our privacy and cookies policy; (b) confirm that you have provided us with information that is true, accurate, and up-to-date; (c) confirm that you are over 13 and, where you are over 13 but under 18 that you have obtained your parent/guardian’s permission to create and account and access the App; and (d) confirm that you have not previously had access to our App denied by us.
- I.2 **Your personal data:** You agree that we are a data controller in respect of any personal data that we collect from you and process in conjunction with you registering with us and using the App (with the terms “data controller”, “personal data” and “process” all having the meanings as set out in applicable data protection legislation, including the GDPR). Further details on our data handling practices are available in our privacy policy.
- I.3 **Authentication:** In addition to us sending you a text message with an authentication code when you first access the App, we will send you a code each time you access the App. This is important in order for us to verify you as an account holder and ensure account security. You must therefore ensure your phone number is up-to-date via the Settings section of the App to allow this process to take place.
- I.4 **Responsibility for access:** It is your responsibility to ensure that you have appropriate technical requirements in place to access and participate in the Services via the App, including sufficient internet bandwidth to upload any invoice details and/or contracts between you and any brand owner. We are not required to maintain anything other than the current version of the App and you will, for example, be required to ensure that your phone operating system matches our current App requirements.

1.5 **Individual Use:** The rights granted to you to access and use the Services via the App are to be used for your individual purposes only. You shall, once you have registered and verified your account, keep your account details confidential and not disclose them to any third party. If you discover that the App is being accessed and used by any third-party you agree to inform us immediately and if we discover that you have provided your account details to anyone else we reserve the right to terminate your access to the App immediately.

1.6 **Problems:** If you are having problems accessing the App, please contact us at lotts@xpo-app.com.

2. The Services

2.1 **Uploading an invoice:** Once you have logged into the App you will be able to create an invoice. By clicking “Create an invoice” you will be asked which brand you are working with, either from the pre-populated list or by adding the details of the brand yourself. You will then be asked to provide the details of the individual that you are working with at that brand, before then confirming: (a) which social media profile this invoice relates to; (b) whether or not you are registered for VAT; and (c) the amount of the invoice. You will also be asked to log-in to your social media profile so that we can verify that is your genuine social media account. If you are creating an invoice for the first time, you will also be asked to provide your sort code and account number for payment so that we have the correct details to pay you.

2.2 **Information summary:** Following completion of the process set out in 2.1 above, you will then be provided with a summary of this information and we will ask you to confirm whether this information is correct. You will then be asked how long it will take you to get paid by the brand owner in connection with this invoice (with you being able to manually input the number of days accordingly). Once this information is inputted you will be asked if you want to be paid tomorrow and provided with two options: (a) yes; and (b) no.

2.2.1 **If you click yes:** If you click yes, the invoice will be categorised as a “VOLTS” invoice. We will then ask you to upload the contract that you have in place between you and the applicable brand as well as provide us with a URL for one post related to that contract and this invoice. We will then provide this information, together with your own details and all information provided to us during this invoice upload process to our finance partner – Sonovate. Sonovate will then run its own checks on this information and confirm to us whether or not they are happy to underwrite this invoice with the brand as a debtor. It is important to note that we have no control over, and shall not be liable for, any decision that Sonovate makes and, in particular, shall not be liable for any losses suffered by you arising out of a negative decision that Sonovate gives. If Sonovate approves the invoice then the invoice status will change to “EXPECTED” and we will initiate transfer of the funds via our payment provider – UNIPaaS, with the invoice status changing to “PAID” once the funds are transferred. If Sonovate does not approve the invoice then we will notify you by e-mail and text message and the invoice will be re-categorised as a “BASIC” invoice.

2.2.2 **If you click no:** If you click no, the invoice will be categorised as a “BASIC” invoice and funds will be paid in line with the invoice terms, directly from the brand owner.

- 2.3 **Payment:** We will use reasonable endeavours to ensure that for any VOLTS invoices which are approved by Sonovate, payment is made to you within 48 hours of invoice upload. However, there may be circumstances in which a delay is caused to this process, including circumstances outside our control such as in relation to your account provider, Sonovate's decision making time and so forth. We shall not be liable for any losses suffered by you arising out of such delay.
- 2.4 **Changing payment details:** Should you need to make any changes to your bank account details you can do this at any point via the Settings part of the App. You are solely responsible for ensuring that your account details are accurate and up-to-date and we shall not be liable for any losses suffered by you arising out of failure to comply with this provision.
- 2.5 **Third party payment providers:** We are not a payment provider or a 'merchant' for payment and may use third party payment providers such as UNIPaaS in connection with the provision of our Services. In such instances, we are not party to any agreement between you and the payment provider and are not liable for any claim or liability in relation to payment provision services. You may be bound by the payment provider's terms which may be different to these terms and conditions. Payment providers may decide whether you are suitable to use their services and we are not liable for such decisions. In particular, in connection with our use of UNIPaaS, by creating an account with us you also agree to the [UNIPaaS Sponsored Merchant Services Terms of Use](#) which allows you to accept money from XPO to your bank account.

3. Suspension and Termination

- 3.1 **Suspension of your App access:** We may, at our sole discretion, without liability, suspend your access to the App, and hence your ability to access and use the Services if in our reasonable opinion, you have breached (or we suspect you may have breached) the provisions of these terms and conditions. Suspension is not a waiver of any right of termination which we may have under these terms and conditions.
- 3.2 **XPO terminating your App access:** We may terminate your access to and use of the App without liability:
- 3.2.1 at our absolute discretion at any time whether with or without notice; or
 - 3.2.2 immediately if, in our reasonable opinion, you have breached (or we suspect you may have breached) the provisions of these terms and conditions.
- 3.3 In the circumstances listed in clause 3.2.1 above, we may, in our discretion, ensure you are paid in respect of any outstanding VOLTS invoices uploaded and approved by Sonovate but not yet paid as at the date of termination, all other invoices, however, shall remain payable by the brand owner. In the circumstances listed in clause 3.2.2 we shall not be under any obligation to make such payments.
- 3.4 **Effect of Cancellation/Termination:** The termination of your right to access and use the App, for whatever reason, shall:
- 3.4.1 immediately end all licences granted under these terms and conditions to access and use the App in order to receive the Services;

- 3.4.2 not affect any of your rights, remedies, obligations or liabilities that have accrued during the term of our contract, including the right to claim damages in respect of any breach of these terms and conditions by us; and
- 3.4.3 not affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.

4. The Services and our IP

- 4.1 **No Implied Terms:** We exclude, to the fullest extent permitted by law, any conditions, warranties, terms and undertakings which would otherwise be implied into any contract (whether by statute or otherwise) relating to your access and use of the Services via our App.
- 4.2 **App Access:** It is possible that your access to the App may be occasionally restricted to allow for repairs, maintenance or the introduction of new Services. In such cases we will notify you and attempt to restore the App as soon as we reasonably can.
- 4.3 **Our website:** Our website and its content (including all articles, blog posts, videos, podcasts, photographs, images, text, fonts, the XPO name and logo, and designs) are owned by us (or our licensors) and are protected by intellectual property rights (including copyright, design rights, database rights and trade mark rights) and are made available for you to peruse and determine whether or not you wish to access and use the Services via our App. If you wish to reproduce any element of our website other than for your own personal and individual use you require our permission to do so.
- 4.4 **Our App:** We own (or have a licence to use) all intellectual property rights (including all copyright, design rights, database rights and trade mark rights) subsisting in our App (including all articles, videos, photographs, images, text, fonts and designs) ("**App IP**"). All right, title and interest to the App IP remains with us or our licensor(s)(as the case may be).
- 4.5 **Licence to use App to access the Services:** Subject to your compliance with these terms and conditions we will grant you a non-exclusive, non-transferable, revocable, personal licence to access and use the Services via the App. This licence is personal to you and should we establish or reasonably suspect that you are using anyone else's account details we shall have the right to suspend and/or terminate your access to the App until this issue is resolved.
- 4.6 **Restrictions:** You may not, in relation to accessing and using the Services via the App and/or when browsing our Website:
 - 4.6.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, distribute, alter, reverse engineer, decompile, disassemble or otherwise reduce to human perceivable form all or any part of our Website and/or the App except to the extent that the foregoing restrictions are not prohibited by applicable law;
 - 4.6.2 attempt to obtain, access, alter, or destroy all or any part of our website and/or the App (including any App IP);

- 4.6.3 access, transmit, create or store any virus, worm, trojan horse, bot or other destructive or contaminating program when browsing our website and/or accessing and using the Services via our App; or
- 4.6.4 deploy, when browsing our website and/or accessing and using the Services via our App, any bot, spider, web crawler or other automated query program at any time for any reason. We prohibit scraping, crawling, caching or otherwise accessing any content on our website and/or App. The use of automated systems or software to extract data from our website and/or App for commercial purposes, ('screen scraping') is prohibited unless you have a written licence agreement with us which permits you to do so.

5. Liability

- 5.1 **Restriction on Limitations and Exclusions:** Notwithstanding the other provisions in these terms and conditions, none of the exclusions or limitations in these terms and conditions shall exclude or restrict our liability for death or personal injury caused by our negligence or for any fraudulent misrepresentation or for any other liability that we cannot exclude or limit under any applicable law.
- 5.2 **Our liability:** Subject to clause 5.1, we shall not be liable to you in contract, tort (including negligence) or otherwise for any: (a) loss of actual or potential profits, contracts or customers; (b) loss of data and undertaking data or other restoration; (c) loss of reputation; (d) loss of goodwill; (e) loss of business opportunities; and (f) indirect or consequential loss whether arising from negligence, breach of contract or howsoever.
- 5.3 **Limitation of Liability:** Subject to clause 5.1 and 5.2, our total liability to you in contract, tort (including negligence or breach of statutory duty, misrepresentation or otherwise) or for any other common law or statutory cause of action or otherwise arising by reason of or in connection with these terms and conditions shall be limited to the total amounts paid by us to you in the 6 months prior to the event giving rise to the breach.
- 5.4 **Force Majeure:** We shall not be responsible for any breach of these terms and conditions caused by circumstances beyond our reasonable control.

6. Other important terms

- 6.1 **Confidentiality.** Neither of us shall divulge or allow to be divulged by any other person any confidential information relating to these terms and conditions or their subject-matter that is reasonably apparent is confidential ("**Confidential Information**") unless the other first agrees to this in writing. Notwithstanding this, we may make reference to your engagement in our PR and marketing materials (including our on-line marketing materials).
- 6.2 **We may transfer this contract to someone else.** We may transfer our rights and obligations under these terms and conditions to another organisation.
- 6.3 **You need our consent to transfer your rights to someone else.** You may only transfer your rights or your obligations under these terms and conditions to another person if we agree to this in writing.

- 6.4 **Further Assurances:** Both of us undertake to do all such things and sign and execute all such documentation and deeds as may be reasonably required or desirable in order to perfect, protect or enforce any of the rights granted to the other under these terms and conditions.
- 6.5 **Waiver of Remedies:** No forbearance, delay or indulgence by either of us in exercising or enforcing any part of these terms and conditions shall prejudice or restrict the rights (whether provided by these terms and conditions or by law) of that party, nor shall any waiver of a party's rights operate as a waiver of any subsequent breach, and no right, power or remedy herein conferred upon or reserved for either of us or available by law is exclusive of any other right, power or remedy available to that party (whether under these terms and conditions or at law) and each such right, power or remedy shall be cumulative.
- 6.6 **Entire Agreement:** These terms and conditions shall represent the entire understanding and constitute the entire agreement between us in relation to its subject matter and supersede any previous agreement between us as to such subject matter. Each of us acknowledges and agrees that in entering into these terms and conditions it has not relied on any representation or warranty or undertaking other than those expressly set out in these terms and conditions and, except in relation to any liability for fraudulent misrepresentation, neither of us shall be under any liability or shall have any remedy in respect of misrepresentation or untrue statement unless and to the extent that a claim lies under these terms and conditions.
- 6.7 **Severability:** If these terms and conditions, in whole or in part, are held by a court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable under any enactment or rule of law then that provision or part thereof shall to that extent be deemed not to form part of these terms and conditions and the enforceability and validity of the remainder of these terms and conditions shall not be affected.
- 6.8 **Relationship:** Each of us shall be an independent contractor with respect to each other and nothing in these terms and conditions shall create any association, partnership, joint venture or agency relationship between us.
- 6.9 **Rights of Third Parties:** For the purposes of the Contracts (Rights of Third Parties) Act 1999, and notwithstanding any other provision of these terms and conditions, these terms and conditions are not intended to, and do not, give any person who is not a party to them any right to enforce any of their provisions.
- 6.10 **Governing Law and Jurisdiction:** These terms and conditions shall be governed by and construed in accordance the laws of England and Wales. Any dispute (including any dispute or claim of whatever nature arising under or in connection with this Agreement) shall be subject to the exclusive jurisdiction of the courts of England and Wales.