



Putting the **PERSONAL** back into personal shopping

## Customer Agreement (9-1-2020)

Carried Out, LLC is a New Mexico **Limited Liability Company** and registered to do business in New Mexico and Kansas.

We put the **personal** back into personal shopping and are dedicated to providing you with our *Concierge Level* customer service.

However, first we need to set some ground rules (You probably have seen and/or agreed to some of these rules before if you ever ordered groceries or takeout food from another delivery service. If not, welcome to the world of personal shopping, pickup and delivery).

### **When requesting our fulfilment services, you agree that:**

- You are over 18 and also of **legal age** to purchase the items ordered (**No illegal drinking here**).
- You are not requesting us or your assigned Personal Shopper to purchase, pick up and/or transport any illegal items (Can't have us smuggling drugs).
- You acknowledge and agree to the collection, use, disclosure and retention of your personal information in accordance with our Customer Information Collection, Privacy and Retention Policy.
- You agree that we can communicate with you by voice, text and email. From time to time, we may email or text you between orders with promotional material about us, special promotions or alerting you to any changes in Our Customer Agreement or Customer Information Collection Privacy and Retention Policy. You may opt out of our promotional messages at any time.
- You agree (i) to provide us with a valid credit card which we will keep on file and (ii) that, after delivery and as payment, we are authorized to charge your on file credit card for any goods purchased on your behalf plus any applicable Carried Out fees, taxes and/or tips (No need to hoard cash at home except maybe to reward your Personal Shopper with a tip. They keep 100% of it.).

Unfortunately we are unable to accept a fulfilment order without a valid credit card being on file with us. We ask that you update the card information whenever your card is about to expire or you want to use a different card.

- The fulfilment fees that you agree to pay us are those listed on our customer portal at the time you placed a fulfilment order for any service that we have provided to you.

- You understand and agree that, when you use our service to purchase or pick up a product on your behalf, Carried Out and your Personal Shopper are acting only as your agents in picking, packing and/or delivering the product and are not the seller of the product to you. **Except as set forth in the subsequent paragraph concerning the liability of Carried Out and your Personal Shopper , this means** that any claims including product liability which you might have arising out of the purchase of a product by you or on your behalf shall be against the retailer and/or, if applicable, the supplier, processor, and manufacturer of the product and not against Carried Out or your Personal Shopper.

You agree that (i) your purchase is being made from the retailer you have selected and that such retailer is the merchant of record and (ii) title to any goods passes to you when they are purchased at such retailer's store.

- As to Carried Out's and your Personal Shopper's liability, you agree that product replacement or cost refund are your only remedies whatsoever available to you if an item purchased or picked up on your behalf is (i) by visual inspection without opening up sealed bags or items, not fresh (unless requested otherwise), out dated, damaged or otherwise unsafe or (ii) during transport to you, thawing, melting, damaged or otherwise rendered unsafe (We hope that this never happens). **YOU WAIVE ALL OTHER REMEDIES IN LAW AND EQUITY.**
- You agree to declare the value of any item to be transported when requesting a home to home pickup and delivery (You probably will know the value better than we will). If there is a dispute over the cost of a transported item, the value of such item agreed upon in mediation or set by arbitration shall not exceed your declared value.
- You agree to the following liability limitations when we are providing home to home pickup and delivery services on your behalf: Unless otherwise agreed upon by us at our sole discretion, a monetary payment in an amount not to exceed your declared value is the only remedy whatsoever available to you if an item transported on your behalf is, during transport, lost, damaged or otherwise rendered unsafe (We hope that this never happens). You waive all other remedies in law and equity.
- **You agree when requesting us to pick up alcohol that:**
  - ✓ You will comply with all applicable laws and not cause Carried Out or your Personal Shopper to contravene any applicable laws.
  - ✓ You are of legal drinking age for purchasing, possessing, and consuming alcohol (i.e., **21 years of age or older**).
  - ✓ **You will drink responsibly and not drink and drive.**
  - ✓ **You will not be intoxicated upon delivery.**
  - ✓ If you order alcohol, you understand and acknowledge that neither Carried Out nor a Personal Shopper can pay for your order and that the order may only be delivered if the retailer accepts your order and you have paid for it in advance.

- ✓ Prior to receiving delivery of any alcohol, you agree to present currently valid government issued identification proving your identification and age and the credit card used to purchase the alcohol (credit card on file) to the Personal Shopper delivering the alcohol.
- ✓ Prior to receiving delivery of any alcohol, you agree and **attest that the alcohol has not been purchased with the intent to resell the alcohol or provide the alcohol to someone who is not of legal drinking age.**
- ✓ **You agree that Carried Out reserves the right to cancel the alcohol portion of any order if:**
  - **You appear intoxicated at the time of delivery**
  - **You fail to comply with the legal requirements for the delivery of alcohol or any alcohol related provisions of this Agreement.**
  - **There are discrepancies in your identification and age**
  - **You provide inaccurate information concerning your identification, age or the intended use of the alcohol.**
  - **The credit card presented to the Personal Shopper does not have your name on it and/or is not the credit card used to purchase the alcohol.**
- ✓ You agree that you **will not be entitled to any refund from Carried Out or the merchant** if the alcohol portion of any order is cancelled pursuant to the previous paragraph and, if not part of a larger order, you will be **charged the minimum delivery fee for our inconvenience.**
- You agree to resolve any and all unresolved disputes with us arising out of your placing a fulfillment order with us and our fulfilling your order, your participation in our Concierge Membership Program or enforcement of this Agreement through the mandatory mediation and arbitration process set forth below (this will probably mean that you feel we have failed to provide you with our *Concierge Level* customer service).

We also agree to be bound by the same mediation and arbitration process as you are (seems only fair).

#### Mandatory Mediation and Arbitration

The Customer and Carried Out shall resolve any and all disputes between them individually (**class action mediations and arbitrations are prohibited**) without litigation, utilizing the alternate dispute resolution procedures as set forth below (Dispute resolution ought to be simple and not a big hit on one's pocketbook.).

Individual (non class action) Mediation. The parties shall first attempt to mediate the dispute through the selection of a mutually agreeable mediator who shall conduct such mediation in confidence. The terms and procedure for mediation shall be arranged by the parties to the dispute.

Individual (non class action) Arbitration. If good-faith mediation of a dispute proves impossible or if an agreed-upon mediation outcome cannot be obtained by the parties, the dispute may be submitted to arbitration in accordance with ground rules as agreed upon by the parties.

Any party may commence arbitration of the dispute by sending a written request for arbitration to all other parties to the dispute. The request shall state the nature of the dispute to be resolved by arbitration, and, arbitration shall be commenced as soon as practical after such parties receive a copy of the written request.

**Fees of Arbitrators and Mediators, Attorney Fees.** The parties shall share equally the expenses of mediation and/or arbitration, including the fees of the mediator and/or arbitrator, and each party shall bear such party's respective attorneys' fees and *related* costs incurred in connection with mediation and/or arbitration.

**Venue.** All mediations and arbitrations shall be held (i) at a site mutually agreed upon by the parties or (ii) electronically if requested by one of the parties.

**Legally Binding on the Parties.** All mediation agreements (signed) and arbitration decisions shall be final, binding and conclusive on the parties, and legal judgment may be entered based upon such agreement or decision in accordance with applicable law.

If a responding party refuses to participate in the arbitration process, the commencing party may, in lieu of using the arbitration process, file an individual (non class action) court action to resolve the matter.

- **New Mexico** - You agree that, if your order was initiated in New Mexico or its destination was to a New Mexico address, the venue for any legal judgement filed or legal action brought pursuant to this agreement shall be the New Mexico District Court located in Albuquerque, New Mexico which shall have jurisdiction over the parties and the matter. The parties waive any other venue/jurisdiction to which a party might be entitled by domicile or otherwise.
- **Kansas** - You agree that, if your order was initiated in Kansas or its destination was to a Kansas address, the venue for any legal judgement filed or legal action brought pursuant to this agreement shall be the Kansas District Court located in Lawrence, KS which shall have jurisdiction over the parties and the matter. The parties waive any other venue/jurisdiction to which a party might be entitled by domicile or otherwise.
- You agree that, if we waive or fail to enforce any provisions of this Agreement, such waiver or failure does not constitute a waiver of our right to do so in the future with respect to that provision, any other provision or this Agreement as a whole.

**We reserve the right to amend this Agreement from time to time.** However, if we do, we will inform you of the amended or additional provisions and give you 10 days advance notice. If you do not request us to delete your Customer Account within such time frame, the revised Agreement will govern our relationship whenever you place a fulfilment order or purchase a membership with us after such date.

**Just remember**, that, if you don't close your account within the 10 day notice period, you agree to be bound by the terms of our current Agreement (even though you might not have read it the first time or when it was amended).

**Congratulations, you have reached the end of our Customer Agreement and hopefully have read it in its entirety (Hey, it was only just about 4 pages long).**

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**Now, it's time to complete your signup if you have not already done so, become a member and/or place your first/next your order with us!**