

1. Interpretation

1.1 Definitions

For the purposes of this Agreement, unless the contrary intention appears:

"Act" means the Australian Postal Corporation Act 1989 (Cth) (as amended from time to time).

"Article" has the same meaning as in the Act, and includes any receptacle, container, packaging material, pallet or other item attached to or delivered with the Articles for the provision of the Services by Post.

"Attachment" means an Attachment annexed to this Agreement.

"Australia Post Terms and Conditions" means the terms and conditions made under section 32 of the Act (as amended from time to time).

"Customer" means the person or entity identified as the customer in this Agreement, and includes any person or entity who:

- (a) lodges Articles, or on whose behalf the Articles are lodged, with Post for the provision of the Services under this Agreement; or
- (b) has or claims to have an interest of any kind in the Articles lodged with Post for carriage under this Agreement,

and the person signing this Agreement shall be deemed to be, or be the authorised agent of, the Customer.

"Extra Cover Service" means the Extra Cover Service specified in Schedule 1 of the Australia Post Terms and Conditions.

"Mailing Statement" means a written statement in a form prescribed by Post and containing such details about a lodgment of Articles under this Agreement as Post may require from time to time.

"Minimum Revenue" means the revenue per annum specified on the cover page of this Agreement.

"Post" means the Australian Postal Corporation.

"Postage" means the charges set out in Attachment B.

"Regular International Customer" means a person approved by Australia Post as such pursuant to the Air Navigation Regulations (Cth).

"Services" means the whole of the operations of Post in relation to the international carriage of the Articles, including but not limited to the acceptance, carriage, transportation, storage and/or delivery of the Articles.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words and expressions in this Agreement have the same meaning given to them in the Act and in any Regulations or Australia Post Terms and Conditions;
- (b) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a party includes its employees, agents, representatives and sub-contractors and any servant or agent of its sub-contractors; and
- (e) the Attachments form part of this Agreement.

2. Term of Agreement

This Agreement begins on the commencement date stated in this Agreement and remains in force, unless terminated in accordance with clause 18.

3. Common carrier

Post is not and will not be liable as a common carrier. The Services provided under this Agreement are subject to the terms and conditions contained herein.

4. Service terms and conditions

4.1 International carriage of Articles

Post will provide the Services for Articles lodged by the Customer in accordance with, and on the terms and conditions of, this Agreement.

4.2 Lodgment documentation

- (a) A duly completed Mailing Statement must accompany all lodgments of Articles. If the Mailing Statement contains terms and conditions, those terms and conditions shall, to the extent that they are not inconsistent with anything contained in this Agreement, form part of this Agreement.
- (b) If there is a discrepancy between the details of the actual lodgment (inclusive of, but not restricted to the number, weight, dimensions or cubic measurements of Articles) pursuant to this Agreement and the details shown on the accompanying Mailing Statement, Post may, at its discretion, either:
 - (i) charge the appropriate rates or fees indicated in the current determination of postage charges made pursuant to section 32 of the Act for all Articles in the lodgment; or
 - (ii) refuse to accept that lodgment until such time as an accurate Mailing Statement is provided.

4.3 Preparation and sorting of Articles

Articles must be prepared and sorted by the Customer in the manner specified in this Agreement.

5. Postage and other charges

5.1 Postage and payment

- (a) Postage will be payable in respect of Articles lodged for carriage pursuant to this Agreement in accordance with the charges specified in Attachment A. Where Australia Post agrees to collect Articles to be lodged under this Agreement at a place other than the lodgment points specified in this

Agreement, the Customer shall also pay the Pick-up Fee set out in Attachment A for each such collection of Articles by Australia Post.

- (b) Subject to clause 5.2, the Postage will be payable monthly in arrears and otherwise upon the terms and conditions applicable to Post's charge account customers, as amended from time to time. The Customer must apply for a charge account prior to the Commencement Date.
- (c) Postage will be debited to the Customer's charge account at least once each month during the term of this Agreement.

5.2 Price review

Postage may be changed by Post annually on the anniversary of the commencement date of this Agreement, or at any other time on 30 days notice in writing to the Customer, on such basis as determined by Post. The Customer will be given notice of the new Postage changed in accordance with this clause 5.2 at least 30 days beforehand, and the Customer may terminate this Agreement during that 30-day notice period by notice in writing to Post.

5.3 Suspension or cancellation of charge account

If Post denies credit to the Customer, or for any reason the Customer's charge account is suspended or cancelled, payment shall be required at the time of lodgment and no lodgments of Articles will be accepted until any previous indebtedness incurred by the Customer is paid.

5.4 Extra Cover Service

The Customer may request at the time of lodgment that the Articles be covered by the Extra Cover Service. If the Extra Cover Service is provided by Post on those Articles, such service will be subject to the terms and conditions of the Extra Cover Service, which are set out in Schedule 1 of the Australia Post Terms and Conditions. The charges for the Extra Cover Service are in addition to those charges referred to in clauses 5.1(a) and 5.2.

6. Required level of business

6.1 Minimum Revenue

The Customer must lodge Articles to the value of the Minimum Revenue each year during the term of this Agreement in consideration of Post charging the Postage.

6.2 Payment for failure to lodge Minimum Revenue

If, at the termination of this Agreement (other than termination due to the default of Post) the Customer fails to lodge Articles to the value of the Minimum Revenue, Post may, by notice in writing, require the Customer to pay (within 14 days of the date of receipt of the notice), in addition to the Postage and other charges payable pursuant to clause 5, for each 10% shortfall (or part thereof) between the value of Articles actually lodged and the agreed Minimum Revenue, a charge of an amount equal to 1.5% of the total Postage levied under this Agreement.

6.3 Arrangements during service disruption

In the event of an industrial dispute or ban preventing the collection of Articles by Post pursuant to this Agreement, the Customer, may at its expense and with prior written notification to Post, arrange for the carriage and lodgment of the Articles other than in accordance with this Agreement. Where this occurs, the Minimum Revenue will be reduced by the value of Articles which would otherwise have been carried by Post pursuant to this Agreement for the duration of the industrial dispute or ban.

7. GST

7.1 Interpretation

Unless the contrary intention appears, words or expressions used in this clause 7 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have that same meaning.

7.2 GST- exclusive prices and consideration

All stated prices and amounts payable as consideration under this Agreement have been calculated without including an amount for any applicable GST (unless GST-inclusive amounts have been specified). In addition to any GST-exclusive amount payable the recipient must pay an amount equivalent to the GST payable by the supplier in respect of a taxable supply (the **"GST Amount"**). The GST Amount is to be calculated by multiplying the GST-exclusive amount by the GST rate applicable to the supply at the time that supply is made. Subject to the operation of clause 7.5, the GST Amount shall be paid to the supplier at the same time and in the same manner as the relevant consideration is otherwise required to be paid or provided.

7.3 GST Rate changes

If after the commencement date of this Agreement the GST rate changes the parties agree to vary the GST-amount relating to any taxable supply made under this Agreement to which the new GST rate applies.

7.4 Tax Invoices

The supplier of a taxable supply under this Agreement must issue a compliant tax invoice to the recipient.

7.5 Supply is or becomes a taxable supply

If a supply made under this Agreement is treated as not subject to GST but is or becomes a taxable supply the supplier may charge and recover from the recipient in addition to any other consideration paid or payable, the GST amount equivalent to the GST payable in respect of that taxable supply.

7.6 Adjustments

If in relation to a supply made under this Agreement an adjustment event occurs that gives rise to an adjustment, then the price of that supply (including any GST

Amount) will alter accordingly and where necessary a payment will be made to reflect the price adjustment.

7.7 Entitlement to input tax credits for acquisitions made from third parties

If any party is required to pay, reimburse or contribute to the other party an amount paid or payable in respect of an acquisition from a third party, the GST-exclusive amount for payment, reimbursement or contribution to the other party shall be the acquisition price paid by the acquiring party, less any input tax credit it is entitled to claim.

7.8 Non-monetary consideration

Any non-monetary consideration given under this Agreement is GST-inclusive (unless GST-exclusive amounts are specified). If non-monetary consideration is given for a taxable supply under this Agreement and the GST-inclusive market value of that consideration is not clearly identifiable, the parties must discuss and mutually agree on the GST-inclusive market value of that non-monetary consideration using GSTR 2001/6 as a guide.

7.9 Survival

Sub-clauses 7.5 and 7.6 of this Agreement survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

7.10 Definitions

Unless the contrary intention appears, words or expressions used in this clause 7 that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning.

8. Delivery conditions

Post will endeavour to provide delivery in accordance with the published delivery timetables for the Services, but shall not be liable for any delay in collection, transportation or delivery of Articles regardless of the cause of such delay.

9. Sub-contractors

9.1 Sub-contractors

Post reserves the right to sub-contract all or any of the Services to be performed hereunder to a sub-contractor at its sole discretion. Any clause of this Agreement which excludes or limits the liability of Post in respect of the provision of Services extends to protect Post's employees, agents and sub-contractors and any servant or agent or the sub-contractor and any other person or persons providing any or all of the services to be performed pursuant to this Agreement. For the purposes of, and to give effect to, this clause:

- (a) Post will hold the benefit of these conditions for its employees and agents and for any sub-contractor and its employees; and
- (b) all such employees, agents and sub-contractors shall be deemed to be parties to this Agreement.

9.2 Method of carriage

Carriage or storage of Articles may be effected in any manner whatsoever Post shall decide notwithstanding any instructions, expressed or implied, to the contrary by the Customer. Post reserves the right to deviate from the usual route of carriage where it is deemed necessary or desirable in the circumstances.

10. Customer's obligations and acknowledgments

10.1 Warranties

The Customer warrants that:

- (a) in agreeing to these terms and conditions of carriage, it is or has the authority of or is the agent of, the person or persons owning or having any interest in the Articles or any part thereof;
- (b) it has complied with:
 - (i) all relevant State and Federal laws and regulations, relating to the consigning, labelling, packaging, carriage, storage and delivery of the Articles; and
 - (ii) all applicable customs, import, export and other laws and regulations of all countries to, from, through or over which the Articles may pass;
- (c) it is a Regular International Customer;
- (d) all information provided to Post (including, in particular, for the purposes of clause 10.2(a)) whether orally, or set forth in this Agreement and any other documents, is accurate and complete.

10.2 Acknowledgments

The Customer acknowledges that:

- (a) Post is authorised, but is under no obligation, to complete on the Customer's behalf any documents required to comply with the laws and regulations specified under clause 10.1(b), or to act as the Customer's forwarding agent for customs and export control purposes;
- (b) Post may abandon and/or release any Article consigned by the Customer to Post:
 - (i) which Post considers unacceptable;
 - (ii) where the Customer has not complied with clause 10.1;
 - (iii) which the Customer has undervalued for customs purposes or misdescribed, whether intentionally or otherwise;
 - (iv) upon which customs or duties are payable and the Article is refused by the Addressee; or
 - (v) which is undeliverable to the Addressee,without incurring any liability whatsoever to the Customer and the Customer will indemnify Post against all claims, damages, fines and expenses arising therefrom.

10.3 Indemnity

- (a) Without prejudice to the generality of clause 10.1(a), the Customer indemnifies, and keeps indemnified, Post against any liability whatsoever arising in respect of the Articles to any person (other than the Customer) who claims to have, who has or who may hereafter have, any interest in the Articles or any part thereof.
- (b) The Customer indemnifies, and keeps indemnified, Post for any liability, costs, expenses, damage or loss whatsoever arising in respect of:
 - (i) non-compliance by the Customer with all or any of the laws referred to in clause 10.1(b);
 - (ii) the carriage of Articles of the nature described in clause 11.1;
 - (iii) any customs duty, excise duty or other costs which may be imposed by Customs or other authority or body in respect of the Articles;
 - (iv) any return carriage of an Article to Australia; and
 - (v) compliance by Post with any order or requirement imposed by any railway, shipping, customs warehouse, harbour, dock or any other authority,and for any other necessary or incidental charges or expenses arising from the provision of the Services by Post which are not included in the Postage charged by Post.

11. Dangerous Articles

11.1 Notification

Where in the opinion of Post an Article is, or may become, dangerous, noxious, inflammable, offensive or any manner liable to cause injury or damage to any person or property, the Customer shall ensure that a full description of the Article in writing is given to Post, prior to lodgment, disclosing the nature and value of the Article and stating that the Article is safely and adequately packed in view of such nature and the risks ordinarily associated with the carriage and storage of such Articles.

11.2 Carriage of Dangerous Articles

Post reserves the right to refuse to carry Articles of the nature described in clause 11.1 in accordance with clause 3, but if, in its discretion solely, Post decides to carry such Articles, then Post may:

- (a) require such goods to be repacked to comply with requirements set out in the Australia Post Terms and Conditions;
- (b) impose additional requirements and/or Postage or other charges for the carriage of the Articles of the nature described in clause 11.1;
- (c) open and inspect any document, parcel, package, container or other receptacle in which the Article is placed to determine their nature, value, origin, destination or any other matter reasonably necessary for the effective provision of the Services by Post; and / or
- (d) destroy, dispose of, abandon or render harmless without compensation to the Customer any Article which, in the opinion of Post:
 - (i) is or is liable to become during carriage of a dangerous, inflammable, explosive, volatile, offensive or damaging nature; or
 - (ii) has not been declared and/or packed in accordance with clause 11.1 or repacked in accordance with clause 11.2(a).

12. Liability

12.1 Limitation

Subject to clause 13, which is paramount, Post is not liable for any delay, loss, damage, cost or expense of any kind (whether direct or consequential) incurred by any person (including the Customer), whether based in tort (including negligence), contract, bailment or otherwise, that arises in whole or in part from, or in connection with, any services provided by Post under this Agreement or in any way arising out of Post being party to this Agreement.

12.2 Limitation - Warsaw Convention

Notwithstanding anything in this Agreement, where the carriage of the Article involves an ultimate destination or stop in a country (other than the country of departure) and the Warsaw Convention is applicable by law to the carriage, then the carriage is subject to the rules relating to liability established by the Convention (which, in most cases, limits the liability of Post in respect of loss or damage to the Articles). The Convention is set out in the Civil Aviation (Liability of Carriers) Act 1959 (Cth).

12.3 Indemnity

Without limiting clause 10.3, the Customer releases Post from and indemnifies Post against any claim, demand, action or proceeding by any person in tort (including negligence), contract, bailment or otherwise for loss or damage to any property, injury to or death of any person, or any other loss or damage of any kind (whether direct or consequential) arising out of:

- (a) any acts or omissions of Post (including without limitation misdelivery, delayed delivery or failure to deliver) or in any way arising out of Post being a party to this Agreement; or
- (b) any breach by the Customer of its obligations under, or a representation or warranty made by it, in this Agreement.

12.4 Limitation of actions

Post shall be discharged from all liability whatsoever in respect of an Article unless suit is brought within six (6) months of the date of delivery, or where delivery has not been made, within six (6) months of the date when delivery ought to have or would have in the course of business been effected.

13. Exclusion of conditions and warranties

Except as provided in this Agreement, Post expressly disclaims all conditions and warranties, express or implied, in respect of the carriage of Articles pursuant to this Agreement. If any condition or warranty is implied into these terms and conditions pursuant to any legislation (including, without limitation, the Trade Practices Act 1974 (Cth)) and the legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or liability under such condition or warranty, the condition or warranty shall be deemed to be included in these terms and conditions provided that Post's liability for breach of the condition or warranty shall, if the legislation so permits, be limited (at Post's option) to either resupplying the Service, or paying the cost of resupplying the Service, in respect of which the breach occurred and otherwise shall be limited to the maximum extent permitted by law.

14. Lien

Post shall have a general lien for all charges due or falling due to it by the Customer over the Articles the subject of this agreement or any Article of the Customer which subsequently came into the possession of Post for the provision of the Services. Post shall have the right as the holder of the lien to sell the Article for any amount it deems acceptable and apply the proceeds thereof towards discharge of the lien and the cost of the sale without incurring liability to any person for any loss or damage thereby incurred.

15. Confidentiality

The parties to this Agreement may not disclose to a third party any information of a commercial, operational, technical or marketing nature contained in or relating to this Agreement (including, without limitation, the rates of Postage) or any negotiations made prior to the entering into of this Agreement, unless written consent is obtained from the other party.

16. Application of postal legislation

The Customer is deemed to have knowledge of the contents of the Act, the Regulations and the Australia Post Terms and Conditions, and their provisions shall apply to this Agreement unless, in the case of the Australia Post Terms and Conditions, excluded expressly or by necessary implication.

17. Force majeure

Neither party will be liable to the other, nor be in default under the terms of this Agreement, for failure to observe or perform any provision of this Agreement for any reason or cause which could not with reasonable diligence be controlled or prevented by the party in question provided that the party relying on the provisions of this clause shall forthwith give to the other notice of its inability to observe or perform the provisions of this Agreement and the reasons therefore.

18. Termination

18.1 Termination on default

Upon any default set out under clause 18.2, Post or the Customer may, at its option, terminate this Agreement by giving notice to the defaulting party of that termination. The date of termination will be the date upon which such notice is received by the defaulting party or such other date expressly appearing in the notice.

18.2 Default

Any of the following acts shall constitute default for the purposes of clause 18.1:

- (a) if either party fails to observe or perform any term, covenant or obligation contained in this Agreement and such default (in the case of a default which is remediable) is not remedied within 14 days after notice thereof has been given by the party alleging default;
- (b) if the Customer enters, or threatens or proposes to enter, into any form of insolvency administration, including a voluntary administration as referred to in the Corporations Act 2001 (Cth);
- (c) if the Customer passes a resolution or a court makes an order that the Customer shall be wound up;

- (d) if a receiver or manager on behalf of a creditor shall be appointed to the Customer or if circumstances shall arise which entitle a court or a creditor to appoint a receiver or manager; or
- (e) the Customer ceases to be a Regular International Customer in accordance with clause 10.1(c).

18.3 Termination without cause

Without limiting its rights in clause 18.1, either party may terminate this Agreement for any reason by giving the other party not less than 30 days notice in writing.

18.4 Accrued rights and remedies

Termination of this Agreement does not affect any accrued rights or remedies of a party. Upon the termination of this Agreement, the Customer shall pay to Post forthwith all amounts owing hereunder for the period to the date of termination.

19. General

19.1 Notice

Notices under this Agreement may be delivered by hand, by Registered Post or by facsimile to the parties at its address set out in this Agreement. Notice is deemed given:

- (a) in the case of hand delivery or Registered Post on written acknowledgment of receipt by a duly authorised employee, agent or representative of the receiving party; or
- (b) in the case of facsimile, on completion of a successful transmission as evidenced by the transmission report.

19.2 Severance

Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement continue in force.

19.3 Variations

With the exception of clause 5.2, neither party will be bound by any variation or addition to these conditions, except if agreed by both parties in writing and signed on their behalf.

19.4 Waiver

Waiver of any provision of or right under this Agreement must be in writing signed by the party entitled to the benefit of that provision or right, and is effective only to the extent set out in any written waiver.

19.5 Whole agreement

The parties acknowledge that this Agreement contains the whole of the agreement between the parties and any representation or warranty made by either party prior to the signing of this Agreement will have no force or effect unless otherwise stated here.

19.6 Governing law

This Agreement is governed by, and will be construed in accordance with the law in force in State in which this Agreement is entered into, and the courts and registries of courts in that State have jurisdiction in the event of any dispute.

19.7 Assignment

This Agreement may not be assigned without the written consent of Post, and any change of ownership or change in the structure or control of the Customer will be deemed to be an assignment.

19.8 Arbitration

Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the parties or their representatives shall be submitted to arbitration in accordance with the laws of arbitration of the State in which this agreement is entered into.

19.9 Special conditions

The parties agree to be bound by the special conditions set out on the cover page of this Agreement, and in the event of any inconsistencies between such special conditions and the items and conditions in the body of this Agreement, such special conditions shall prevail.