

# Australia Post Global eCommerce Solutions (AUST) Pty Limited Terms and Conditions

## Introduction

Unless **Australia Post Global eCommerce Solutions (AUST) PTY Limited ACN 612 954 784 (APG)** and a Client have a separate written agreement setting out the terms and conditions for any Service, the terms and conditions set out below (the **Conditions**) exclusively set out the rights and obligations between APG and the Client in respect of any Services supplied by APG and shall be deemed to be a condition of any agreement between the Client and APG (the **Agreement**). No amendment or variation to these Conditions can be made unless made in writing and duly executed by an executive officer of APG.

## 1. Definitions and Interpretation

For the purposes of these Conditions, unless the context or subject matter otherwise indicates or requires:

- a) **Customer** means the person or entity to whom, or on whose behalf, APG provides the Services.
- b) **Business Day** means a day which is not a Saturday, Sunday or a public holiday in Sydney Australia.
- c) **Client** means the person or entity to whom, or on whose behalf, APG provides the Services.
- d) **Consumer** means an individual who acquires the Services wholly or predominately for personal, domestic or household use or consumption.
- e) **Excluded Goods** means bullion, coins, cash, negotiable instruments of any kind, precious metals, gemstones, jewellery, wrought or unwrought metals, fragile goods valuable papers, antiques, pictures, works of art, securities, living creatures or plants drugs, weapons, human tissue, organs, blood or blood products, perishable items, glass, china, personal effects, household goods, second hand goods, used goods, cigarettes, tobacco and tobacco products, solar panels, large sporting good including but not limited to kayaks, surf skis, long boards (malibus), windsurfers or similar equipment exceeding 3 meters in length.
- f) **Goods** means those products and materials delivered to, stored and distributed by, APG for the Client, or on the Client's behalf, including any packaging, container or pallets supplied by or for the Client that do not include Client to Client shipments which APG does not accept.

## Customer

- g) **'Personal Property Securities Act'** or **'PPSA'** means the Personal Property Securities Act 2009 (Cth).
- h) **Prices** means fees and charges payable for the Services calculated in accordance with these Conditions or as otherwise agreed between APG and the Client.

- i) **Representatives** means officers, employees, agents, sub-contractors and any servant or agent of its subcontractors.
- j) **Related Body Corporate** means a related body corporate as defined in section 50 of the Corporations Act 2011.
- k) **Services** means all services supplied by APG in connection with the Goods, including but not limited to the carriage, storage, transportation, packing and unpacking, and delivery of the Goods.
- l) **Small Business Contract** means a standard form small business contract as defined in section 23(3) of Schedule 2 of the Competition and Consumer Act 2010 (Cth).
- m) A reference to a party includes its Representatives.

## 2. Services

### 2.1. Services

In consideration of the Client's compliance with its obligations under these Conditions, APG will provide the Services to the Client and the Client accepts that should APG agree to carry out any services free of charge, these Conditions will still apply. APG has full liberty to perform some or all of the Services by using contractors, subcontractors or agents. APG has full liberty to sub-contract on any terms it sees fit and full liberty to act as agent or principal. APG will provide proof of acting as agent at the written request of the Client within 5 working days of receipt of the request failing which APG will be deemed to have acted as principal.

### 2.2. Customs

- a) The Services include customs clearance of the Goods through customs of any country to or from which the Goods may be carried. APG will act as a customs broker under Part XI of the Customs Act 1901 for the Client in effecting customs clearance. The Client must complete the customs agency form as required by APG. If the Client is domiciled outside Australia the Client will pay to APG a sum to be agreed to cover potential customs liabilities, penalties and expenses or in the alternative provide a guarantee backed by a first-class bank for such agreed sum. This sum will be increased to the original sum agreed if used or called upon by APG to cover customs liabilities, penalties and expenses. Provided all such sums have been paid by the Client at the end of dealings with APG the agreed sum (or is less the sum) held by APG shall be repaid to the client or the guarantee may be extinguished.
- b) The Client appoints and authorises APG to act as its agent. The Client authorises APG to do all such things, and provide all such instructions, sign all such documents, and incur such disbursements, costs, expenses and charges as are reasonably necessary to enable APG to clear the Goods through customs of any country to or from which the Goods may be carried.
- c) Any disbursements, costs, expenses and charges incurred by APG in connection with clearing the Goods through customs of any country to or from which the Goods may be carried on behalf of the Client is the responsibility of the Client.

### 3. Fees and Charges, and Payment Terms

- a) The Client agrees to pay APG the Prices for the performance of the Services.
- b) In addition to the Prices, any wharf storage charges, bond charges or charges for cartage to bond, and if the Goods are subject to any control by customs or quarantine, all customs duty, excise duty, any taxes, government or quarantine charges and costs, surcharges, fines or penalties payable or becoming payable or any other costs or expenses whatsoever or howsoever caused in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations), including but not limited to any additional charges levied from time to time by airlines, the International Air Transport Association, and/or sea freight companies becoming payable for any reason whatsoever in respect of the Goods), and any costs incurred by APG for converting Australian dollars to another currency in order to pay its subcontractors, will be paid by the Client, or if paid by APG, are to be reimbursed by the Client.
- c) In the event that any of the sums due under 3(b) above arise as a result of negligence by APG, the sums shall not be payable by the Client.
- d) The Client must pay to APG the full amount invoiced within 30 days from the date of the invoice. The Client may not withhold or reduce or defer any payment of money due to APG as a result of any claim, counterclaim or set-off.
- e) Words and expressions used in this clause 3(e) which have a defined meaning in the A New Tax System (Goods and Services Tax) Act (GST Act) have the same meaning in this clause as in the GST Act. Unless expressly stated otherwise, all consideration to be provided under this contract is expressed as exclusive of GST. If GST is payable by a supplier on any supply made under this contract, the recipient will, upon receiving a tax invoice from the supplier, pay to the supplier an amount equal to the GST payable on the supply without deduction or set off.
- f) All charges will be raised by APG in Australian dollars. Any charges specified in a foreign currency appearing in a quote for Prices issued by APG are subject to conversion at invoicing and will reflect any fluctuations in relevant exchange rates since the date of issue of the quote. The risk of such fluctuations will be borne by the Client, whether in a quote for Prices or not.
- g) The Prices and service capability are subject to review and may be changed by APG at any time at its sole discretion. The Client will be given notice of the new Prices and service changes changed in accordance with this clause at least 30 days beforehand, and the Client may terminate this Agreement during that 30 days' notice period by notice in writing to APG.
- h) APG will not provide the Client with cash on delivery services. Should the Client request such services, such request must be expressly made in writing and APG has sole discretion of acceptance in writing by an officer of APG. If acceptance is provided it is provided on the basis that APG will only act as agent for the Client in either collecting cash or arranging for a third party to collect the cash for and on the

Client's behalf. Any liability of APG in relation to cash on delivery services shall be subject to the limits of liability as set out in clause 13.2(a) and (b).

- i) Unless otherwise specified Prices are exclusive of any fuel surcharge at the time of quoting. Should prices of fuel increase APG reserves the right to apply a surcharge rate based on the monthly average spot prices for kerosene type jet fuel as provided by the U.S. Department of Energy. The full price table is available on request.

#### **4. Imports**

- a) APG is not the owner of the Client's Goods that are imported. If APG is required to arrange the importation of the Client's Goods, the Client will be the importer and/or enterer for home consumption and must provide APG or its third-party sub-contractor with a valid import country Business or GST or other relevant number for the Client five days prior to the vessel carrying the Goods landing in the home country of import. The place of consignment in the home country of import will be the location identified on the transportation document.
- b) The Client has sole liability for any GST, VAT, other import tax and/or customs duty payable in respect of clearing the Goods through customs. On occasion, APG may pay this liability on behalf of the Client and be reimbursed accordingly. Any such payment does not form part of the cost of the Services provided by APG and is payable additional thereto. If the Client wishes to use the home country's import deferral or deferment scheme it must notify APG prior to the Goods arriving in home country of import waters and must also provide all of the necessary information and documentation to facilitate the use of the import deferral or deferment scheme.

#### **5. Exports**

If APG is required to arrange for the export of the Client's Goods to another country, it will not be the exporter. As such APG will not be or become liable for any GST or other tax payable in respect of the export of the Client's Goods. The Client shall have sole responsibility for ensuring all export documentation is received by APG prior to the Goods being delivered for export.

#### **6. Client's Obligations and APG's Rights**

- a) The Client must:
  - i. provide APG with all assistance, particulars, documents and other materials that are necessary to enable APG to perform the Services to include but not limited to a comprehensive manifest by data file with full and accurate details of the Goods including their description, nature, size, weight, dimensions and number of packages using one line per consignee, and ensure that the performance of the Services by APG is not impeded, delayed or prevented by the Client which may lead to additional charges, penalties and/or fines;
  - ii. permit APG and its Representatives to enter into any premises that are owned, occupied or leased by the Client for the purposes of performing the Services;

- iii. comply with all applicable laws and regulations relating to the nature, condition, notification, description, consignment and packaging of the Goods;
  - iv. ensure that APG is kept fully informed at all times and in a timely manner of all matters of which the Client is, or should be, aware, and which, if not made known to APG, could adversely impact on the safe and efficient performance of the Services, including, without limitation, keeping APG fully informed of the nature, type and contents of all Goods, including, without limitation, providing full and adequate descriptions of the Goods in any relevant consignment note, and specific transport, storage, handling, health and safety precautions or other requirements as are necessary or prudent to be followed or complied with in respect of the performance of the Services;
  - v. provide APG with clear direction with respect to the destination of, and care required for, all Goods, and with all necessary documentation, and/or information necessary to prepare the documentation, required to transport each consignment of Goods;
  - vi. ensure that the Goods are packed in a manner adequate to withstand the ordinary risks of carriage, storage and handling having regard to their nature, are labelled and sorted correctly by destination country, and that all containers, packaging or pallets conform with the requirements of any person entitled to delivery of the Goods and the Client agrees to reimburse APG for any expenses that it may incur arising from any failure to so conform; and ensure that any transport unit used or supplied by them with the Goods therein for collection by APG are in good condition and are fit for purpose of intended carriage and that where APG supplies the transport unit for the Client to load the Goods that the transport unit is in good condition and fit for purpose on intended carriage.
- b) Subject to 6(c) below, the provision of the Services is subject to any specific terms and conditions applicable to each particular Service (such as contained in bills of lading, waybills, consignment notes or other transport documents), each of which shall be deemed to be incorporated in and to be a condition of these Conditions. In the event of, and to the extent of, any inconsistency between these Conditions and the conditions incorporated into this Agreement under a bill of lading, waybill, consignment note or other transport document, the terms and conditions of these Conditions prevail.
- c) If any legislation, to include regulations and directives, is compulsorily applicable to the Services then these conditions shall be read as being subject to such legislation but only so far as these conditions are repugnant to such legislation.
- d) Pending forwarding and delivery, if necessary and through no fault of APG, Goods may be warehoused or otherwise held at any place or places at APG's sole discretion at the Client's risk and expense.
- e) The Client will do all such things, and provide all such instructions, and sign all such documents as are reasonably necessary to enable APG to enter the Goods for

home consumption on behalf of the Client or otherwise obtain customs clearance of the Goods on the Client's behalf. APG may act as the Client's agent to provide any such documents and information as it considers necessary to a third party customs agent authorised in writing by the Client.

- f) Where the Client has declared the gross weight and/or gross mass and/or dimensions of the Goods and APG has relied upon that in making arrangements for transportation, and the actual gross weight and/or gross mass and/or dimensions of the Goods differs from the declared gross weight and/or gross mass and/or dimensions, then the Client is responsible for all extra costs and liabilities incurred by APG resulting from the difference in the declared gross weight and/or gross mass and/or dimensions.
- g) In the event of liability for claims arising of a general average nature in connection with the Goods the Client must promptly provide adequate security in a form accepted by APG.
- h) APG is authorised to deviate in any way from the usual manner in which the Services are provided which may in its absolute discretion be deemed reasonable or necessary in the circumstances and has full liberty as to means, route and procedure to be followed in performance of the Services.
- i) If the Client expressly or impliedly instructs APG to use or it is expressly or impliedly agreed that APG will use a particular method of providing the Services, APG will give priority to that method but its adoption remains at the sole discretion of APG and APG is authorised to provide the Services by another method.
- j) APG is entitled to open any document, wrapping, package or other container in which the Goods are placed or carried to inspect the Goods to determine their nature or condition, or determine the ownership or destination, where any relevant consignment note or identifying document or mark is lost, damaged, destroyed or defaced.
- k) The Client must ensure that any container or other packaging of the Goods, and/or pallets which are delivered with the Goods, which are required to be returned to the owner (or its nominee), are returned within the required time. Without limiting any other remedies that may be available to APG if a container or pallet provided by APG (or its agent) is not returned or misused, damaged, stolen or lost whilst in the possession or control of the Client, the Client is liable to pay, and will indemnify APG for, the full costs of repair or replacement of the container or pallet.
- l) APG is not required to inspect the contents of any container sealed by tape, wrapping, shipping container seal or similar device at the time of receipt of such container.
- m) APG may retain all and any allowances or commissions or other remuneration customarily paid to them by third party providers.

## **7. Force Majeure**

Neither party shall be liable to the other, or be in default under the terms of this Agreement, for any failure to perform or delay in performing its obligations under this Agreement (other

than an obligation to pay money), if that failure or delay is due to any reason or cause which could not with reasonable diligence

- (i) be controlled or avoided by the party in question; and
- (ii) the consequences of which could not be avoided including, without limitation, strikes, lockouts, labour disputes, acts of God, acts of nature, acts of governments, fires, floods, storms, riots, power shortages or power failure, war, sabotage or inability to obtain sufficient raw material, fuel, utilities, provided that:
  - a) the party relying on the provisions of this clause will promptly give to the other party, notice of the relevant event causing the inability to observe or perform the provisions of this Agreement and the reasons therefore; and
  - b) the duty to act with reasonable diligence to control or prevent an incident of force majeure shall not oblige a party to settle or compromise any industrial dispute on terms other than it, in its absolute discretion, deems fit.

#### **8. Client's Warranties**

The Client warrants that each time that it requests that Services be provided by APG to it under these Conditions that:

- a) it has full right, power and authority to contract with APG and deal with the Goods, and it holds all necessary licences, permits and consents to enable APG to provide the Services, and that it either owns the Goods or has the authority of the Owner to bind them to these conditions for and on their behalf;
- b) all Goods provided to APG are fully and adequately described to APG including the name, nature, type, contents and value of all Goods, are adequately packaged so as to withstand the ordinary risks of carriage, handling and storage having regard to their nature, and comply with any relevant legislation or regulations relating to the nature, condition and packaging of the Goods and all expenses and charges relating to that compliance have been or will be paid by the Client;
- c) it has sufficiently informed APG about its requirements for the Services (including without limitation, informing APG of any regulatory requirements relevant to the storage, carriage or handling of the Goods) to enable APG to perform the Services effectively and cost the Services properly;
- d) the Goods are not noxious, dangerous, hazardous, inflammable, explosive or likely to cause damage in any manner whatsoever;
- e) the person delivering or assigning any Goods to APG, or authorising any work, is properly authorised to do so;
- f) all descriptions, values and other particulars of Goods including but not limited to gross weight, gross mass and dimensions provided to APG by the Client or the Client's Representatives under this Agreement (including, without limitation, descriptions, values and other particulars of Goods provided for customs, consular and other purposes) is complete, accurate and up to date in all respects;

- g) any transport equipment used by the Client to deliver the Goods into the hands of APG is fit for purpose;
- h) they or the Goods are not in any way embargoed or sanctioned from moving Goods or being moved under the Services; and
- i) they accept that any advice given by APG is for them alone and that they will not pass any advice given to them by APG onto any third parties and in the event that they do so that they shall indemnify APG for all and any loss and expense arising from such action.
- j) The Goods will be delivered to the APG destination hub in the country of origin unless otherwise agreed in writing by authorised officers of the Client and APG.
- k) The Goods will not exceed the dimensions stated in the relevant APG Country Fact Sheet available on request and in the event that the maximum dimensions are exceeded the Client shall be liable for any additional costs.

## 9. Title and Risk

- a) All right, title and risk in the Goods will, at all times, remain with the Client or the Client's customer (as the case may be) as the legal and equitable owner. Subject to clause 9(b), APG acknowledges that it does not have ownership of, or property, right, title or interest in, any of the Goods while they are in APG's possession or control.
- b) APG shall have a particular and general lien for all and any sums due and owing to it on the Goods and any other goods and any related documents owned by the Client that are in the possession, custody or control of APG, and any related documents (**Liened Goods**) are subject to a particular and general lien for all amounts payable by the Client to APG. On provision of 30 day's written notice APG has the right to sell some or all Liened Goods if those sums due are not paid within the periods specified in these Conditions and to apply the proceeds of such sale, less the costs of sale and any accrued storage which continues in favour of APG whilst the Liened Goods held under lien and any other expenses arising from exercising the lien in reduction of monies owing to APG. If the sums due are not covered by the proceeds of sale the Client shall remain liable for any balance due. If the sale proceeds exceed the sums due APG shall account to the Client for the balance.
- c) Nothing in this Agreement restricts any rights conferred on APG by any law, legislation or regulations relating to warehousemen's or carrier freight liens.
- d) Without limitation to other rights of the APG, from the time the Goods are in possession of the APG or a subcontractor, the Goods are subject to a continuing security interest in favour of the APG for payment of all amounts due and owing by the Client under these Standard Terms and Conditions of Contract. To the extent permitted by law, the Client and the APG agree pursuant to section 115 of the PPSA to contract out of sections 96 and 120 of the PPSA and that the Client irrevocably waives any right it has to receive notices under sections 95, 118,



121(4), 124(4), 125, 130, 132(3)(d), 132(4), and 135 of the PPSA, redeem the Goods under section 142 of the PPSA, reinstate these Standard Terms and Conditions of Contract under section 153 of the PPSA and receive a verification statement under section 157 of the PPSA. The Client will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.

#### **10. Relationship of the Parties**

The parties acknowledge that APG is an independent contractor and is not an employee of the Client or (except where specifically provided in this Agreement).

#### **11. Confidentiality**

The parties will treat as confidential, and will not disclose other than internally to its own employees, consultants, contractors and advisers (and only where it is reasonably necessary for those employees, consultants, contractors and advisers to receive and be aware of the information for either the purposes of providing the Services, or for internal management purposes) any information that comes into their possession pursuant to, as a result of entering into, or from the performance of, the Services except as required for performing their obligations and enforcing their rights under these Conditions. This obligation of confidentiality will not apply to information which comes lawfully into the public domain, is known to either party prior to the entry into an Agreement for the provision of the Services, is required to be disclosed by law, or relates to the affairs of a person and that person gives permission in writing for the disclosure of that information.

#### **12. Intellectual Property**

Any system, process, or any other property, or intellectual property, developed by or on behalf of APG in connection with the provision of the Services to the Client shall be the sole and unencumbered property of APG.

#### **13. Dangerous Goods and Limitations on Certain Other Goods**

##### **13.1 Acceptance of Dangerous Goods**

- a) Except with the express written consent of APG, APG will not accept or deal with any noxious, dangerous, hazardous, inflammable or explosive goods, goods likely to harbour or encourage vermin or other pests or any goods likely to otherwise cause damage in any manner whatsoever (**Dangerous Goods**). The Client is liable for all and any loss or damage or expense to the Goods and to APG arising in connection with Dangerous Goods that have been delivered to APG by or on behalf of the Client without express written consent or knowledge of APG and for all and any loss and expense arising from the inherent nature of the Dangerous Goods.
- b) If the Goods are or include Dangerous Goods, the Client must comply with all applicable laws and regulations in relation to the Goods, including, without limitation keeping APG fully informed of the nature, type and contents of all such Goods in respect of which Services may be performed, and providing full and adequate descriptions of the relevant Goods in any relevant consignment note.

- c) If, in APG's opinion, the Goods, either by themselves or in combination with other Goods, are likely for any reason (including, but not limited to, fire, explosion, seepage or any form of contamination) to cause injury to persons or damage to the environment, other goods or property, the Goods may be retained, destroyed, disposed of, abandoned, removed or rendered harmless by APG without prior notice or compensation to the Client.

### **13.2 Excluded Goods**

Except with the express written consent of APG, APG will not accept Excluded Goods. If the Client delivers such Excluded Goods to APG without the knowledge of APG, the Client will be responsible for all loss and damage to the Excluded Goods and expense to APG arising in connection with the Excluded Goods.

### **13.3 Non-deliverable Goods**

- a) Any Goods that cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Client or the addressee within a reasonable time may be returned at APG's option, and APG's will provide notice in writing to the Client of such non-delivery and the reason for such non-delivery within a reasonable time.
- b) If APG does not receive further instructions from the Client in respect of the non-delivered Goods before the expiration of 28 Business Days from the provision of the notice referred to above, APG may dispose of or sell the Goods. All charges and expenses arising in connection with the disposal or sale and/or return of those Goods shall be paid by the Client or sender.
- c) APG may apply the proceeds of Goods sold under clause 13.3(b), less the costs of the sale and/or return of the Goods, in reduction of monies owing by the Client to APG. The Client is entitled to any surplus remaining, after payment of the costs of the sale and/or return of the Goods and any monies owing by the Client to APG.
- d) A communication from any Representatives of APG to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of the fact.

## **14. Liability**

### **14.1 Client enters APG's premises at own risk**

If Representatives of the Client enter on to any of APG's premises, they do so at their own risk. It is the Client's responsibility to make its Representatives aware that they enter on to any of APG's premises at their own risk.

### **14.2 Limited liability of APG**

No written, oral or implied condition, warranty or term of any description whether under statute as a default right or by implication of law, custom or usage relating to the subject matter of these Conditions is any part of these Conditions or any Agreement to provide the Services or will have any operation or affect

APG's rights unless that condition, warranty or term is recorded and accepted in writing, and signed by an authorised representative of both APG and the Client APG.

- a) APG agrees to provide the Services using a reasonable degree of skill and care.
- b) Subject to clause 14.2(a), APG will not be liable to the Client for or in respect of any loss or damage of any kind whatsoever arising directly or indirectly from any act or omission (whether negligent or otherwise) on the part of APG in connection with, arising out of or otherwise relating to, the provision of the Services, or these Conditions, including (without limitation) any delay in the collection of, or loss or damage to, or deterioration of, the Goods, mistaken delivery or failure to deliver or delay in delivery of the Goods either in transit or in storage, or any loss or damage arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of APG to the Client or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever above the value of such loss or AUD\$50 per consignment of Goods, whichever is the lower. For all and any other claims the limitation of APG's liability shall be the value of such claim or series of related claims or AUD\$1000 whichever is the lower. If a series of related claims is made the said limit of liability shall apply to such claims in the aggregate in any one trading year commencing from the date the first claim arose.
- c) At APG's sole discretion, instead of providing compensation under clause 14.2(b) above it may either re supply the Services or pay the cost of the supply of the Services.
- d) Neither party will be liable to the other party under this Agreement for any damages or losses which are not direct or do not flow naturally from the relevant breach of this Agreement, even if those damages or losses may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Agreement, special loss or damage, or economic loss, including loss of revenue, loss of production, loss of profit, economic loss, loss of income, loss of reputation, loss of business opportunity, loss or impairment of goodwill, increased cost, or the cost of defending and settling any claim, demand or proceeding brought against a party by any third party.
- e) APG reserves the right to accept liability in excess of the limits set out above in clause 13.2(b) and (c) provided they receive from an authorised representative of the Client express instructions in writing including a declaration of the Goods concerned and their value and agree to pay APG's additional charges for accepting such increased level of liability and APG agrees to the same in writing through an officer of Customer APG.

- f) APG is not liable for any failure to adhere to agreed departure and arrival dates of Goods unless agreed in writing between an Officer of APG and the Client.

#### **14.3 Liability of Client**

The Client will be liable for and indemnify APG and its Representatives, and keep APG and its Representative indemnified from and against, any loss or damage of any kind arising directly or indirectly from:

- a) any breach of any of the terms or conditions of, or a warranty given under, these Conditions, or any negligence or wilful act or omission, by the Client in connection with the Goods or services;
- b) the illness, injury or death of any of the Client's Representatives in connection with the provision of the Services;
- c) any claim by any person in respect of or arising out of or in connection with:
  - i. loss of or damage to, or deterioration, mistaken delivery, failure or delay in delivery of, the Goods unless arising from the negligence of APG;
  - ii. loss or damage arising out of or in connection with any personal injury, illness or death to any person, damage to any property or any other loss or damage of any kind (including financial loss) caused or contributed to by the Services and/or Goods (and whether or not occurring whilst the Goods are in the possession of APG) unless arising from the negligence of APG; or
  - iii. APG acting as agent under this Agreement unless APG acts in contravention of the Client's instructions; and
- d) any claim or demand by, or liability to, any person who has, may have or claims to have an interest in the Goods which exceeds the liability of APG to the Client as provided for in clause 14.2(b) above.

#### **14.4 Benefit**

Every exemption, limitation, defence, immunity or other benefit contained in these Conditions to which APG is entitled will also be held by APG for the benefit of, and will extend to protect, each of APG's Representatives.

#### **14.5 Not a common carrier**

APG is not a common carrier and accepts no liability as a common carrier and reserves the right to refuse to carry any goods.

#### **14.6 Notice of claims**

Any claim for loss of or damage to the Goods or relating to the provision of the Services under this contract must be notified in writing to APG within seven (7) days of delivery of the goods or the date by which the goods should have been delivered

or completion of the Services or when the Services should have been completed, failing receipt of which notice APG shall be forever discharged from any and all liability to any person (including the Customer) in respect of the Goods and/or the Services under this contract. In any event whatsoever, APG shall be discharged from any and all liability whatsoever unless suit is brought within nine (9) months of delivery of the Goods or the date by which the Goods should have been delivered or completion of the Services or when the Services should have been completed, whichever is the earlier.

## **15. Insurance**

- a) Subject to clause 15(b), the Client is solely responsible (at the Client's cost) for taking out, and keeping current, all such insurances as are reasonable and prudent in light of the nature and form of the Services being provided to the Client by APG and the Client's obligations under these Conditions.
- b) Nothing in these Conditions requires either APG or the Client to take out or keep current any insurance policies in connection with the Goods or the Services.

## **16. Conditions of Carriage**

- a) Any written instructions published by APG shall apply to the carriage of any Goods under these Conditions. Subject to clause 16(b), if the instructions referred to in this clause are inconsistent with a provision of these Conditions, the provisions of these Conditions prevail to the extent of the inconsistency.
- b) For any Goods carried by post, if the provisions referred to clause 16(a) are inconsistent with any provision of these Conditions, the provisions referred in clause 14(a) prevail.

## **17. General**

### **17.1 Notice**

Notices served pursuant to these Conditions may be delivered by hand, by registered or signed for post, or by facsimile to the address of each party notified from time to time. Notice will be deemed given in the case of hand delivery or registered post, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party, or in the case of facsimile, upon completion of a successful transmission as evidenced by the transmission report.

### **17.2 Assignment**

- a) A party may not assign, novate or otherwise deal with this Agreement except with the prior written consent of the other party. A party is not required to give consent or to justify the withholding of consent.
- b) Notwithstanding clause 17.2(a), APG may assign or novate this Agreement (or any of its rights and obligations under this Agreement)

without the other party's consent to any Customer Related Body Corporate.

### **17.3 Enforceability and severance**

- a) All provisions of these Conditions are severable. No provision hereof will be affected by the invalidity of any other provision except to the extent that such invalidity also renders such other provisions invalid and in the event of the invalidity of any provision, these Conditions will be interpreted and enforced as if such invalid provisions were not contained in these Conditions.
- b) All the rights, immunities and limitations of liability in these Conditions will continue to have their full force and effect in all circumstances and notwithstanding any reach of these Conditions by APG or any other person entitled to the benefit of such provisions.

### **17.4 Exclusion of terms, conditions, representations, warranties and undertakings**

- a) APG does not exclude or limit the application of any laws, including Schedule 2 of the Competition and Consumer Act 2010 (Cth), where to do so would contravene those laws or cause any part of these conditions to be void.
- b) The APG excludes from these Terms and Conditions, all conditions, warranties, terms and consumer guarantees implied by laws, general law or custom except any the exclusion of which would contravene any laws or cause this condition to be void ('Non-Excludable Condition').

### **17.5 Governing law**

- a) These Conditions and any dispute thereunder are exclusively governed by and will be construed in accordance with the law in force in New South Wales, Australia from time to time and the exclusive jurisdiction of the courts of New South Wales.

## **18. Consumer/Small Business**

If the Client is a Consumer, or these Terms and Conditions qualify as a Small Business Contract:

- a) Clause 8 is modified so that the Client is not required to indemnify APG to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by APG or its employees, agents and subcontractors.
- b) Clause 9(b) is modified so that APG may only exercise its right of sale under a lien over Goods after APG has given 21 days' notice in writing to the Customer of its intention to do so.
- c) Clauses 14.2(b) is modified so that APG's liability is not excluded to the extent that the loss or damage was directly caused by or in connection with a grossly negligent, unlawful, or wilful act or omission by APG or its employees, agents and subcontractors.

- d) Clause 14.2(d) is modified to the extent that APG will not be liable for any consequential or indirect loss or damage, unless APG had actual knowledge that such loss might be incurred. .
- e) Clause 14.6 does not apply, and without limitation to any other clause in these Terms and Conditions, APG will be discharged from liability in relation to any claim:
  - i. where the loss to the Customer results from the act of a subcontractor; and
    - 1. APG's right to make a claim against that subcontractor is subject to time limitations; and
    - 2. the Customer does not make its claim against APG within a period reasonably sufficient to allow APG to make a corresponding claim against the subcontractor within any applicable time limitation period, or
  - ii. in all other cases, where the Customer does not make its claim within 1 year from the earlier of the delivery of the Goods, if the Goods are not delivered, the date the Goods should have been delivered or where the claim does not relate to loss or damage to Goods, the time of the event giving rise to the claim.