

APG eCommerce Solutions (US) Inc. Standard Supply Terms and Conditions

Introduction

Except to the extent that Australia Post Global eCommerce Solutions (US) Inc. (“APG”) and the Supplier have a separate written agreement setting out the terms and conditions for any Service, the terms and conditions set out below (the **Conditions**) set out the rights and obligations between THE SUPPLIER and the Supplier in respect of any Services supplied by THE SUPPLIER to APG, and shall be deemed to be a condition of any agreement between APG and THE SUPPLIER (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. **Affiliated Company** means, with respect to either party to this Agreement, any entity that controls, is controlled by, or is under common control (directly or indirectly) of the applicable party through the exercise of voting power or otherwise; or any joint venture, whether incorporated or not, or partnership in which the party has a fifty percent or greater ownership interest or any related company which is any company which is a holding company of that company or a subsidiary of that company or of such holding company (and the expression related companies shall be construed accordingly)
- b. **Business Day** means a day which is not a Saturday, Sunday or a federal public holiday in United States.
- c. **Client** means APG .
- d. **Goods** means those products and materials delivered to, stored and distributed by, THE SUPPLIER for APG, or on APG’s behalf, including any packaging, container or pallets supplied by or for APG excluding Postal Services Items.
- f. **Insolvency Event** means the occurrence of any one or more of the following events in relation to any person:
 - i. an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a liquidator or receiver or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;
 - ii. a liquidator or is appointed;
 - iii. an administrator is appointed ;
 - iv. a receiver is appointed to it or any of its assets;
 - v. it enters into a voluntary creditors agreement,;
 - vi. it proposes a winding-up, dissolution or reorganization, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
 - vii. it is insolvent, or states that it is, unable to pay all its debts as and when they become due and payable;

- viii. a writ of execution is levied against it or its property;
 - ix. it ceases to carry on business or threatens to do so; or
 - x. anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.
- g. **Postal Services** means ePacket, ePacket plus, letters and flats
- h. **Postal Service Items** means the contents of any ePacket, ePacket plus, letter or flat
- i. **Prices** means fees and charges payable for the Services calculated in accordance with these Conditions or as otherwise agreed between THE SUPPLIER and APG.
- j. **Pricing Schedule** means the schedule to these Conditions which includes the fees payable to THE SUPPLIER for the Services.
- k. **Representatives** means officers, employees, agents, sub-contractors and any servant or agent of its sub-contractors.
- l. **Services** means all services supplied by THE SUPPLIER in connection with the Goods and Postal Services including but not limited to the provision of storage, transportation, packing and unpacking, and delivery of the Goods and Postal Services Items.
- m. **THE SUPPLIER** means Australia Post Global eCommerce Solutions (US) Inc.
- n. A reference to a party includes its Representatives.

2. Services

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

3. Customs

- a. The Services do not include clearing the Goods or Postal Services Items through customs of any country to or from which the Goods or Postal Services Items may be carried. APG has sole responsibility for clearing the Goods or Postal Services Items through customs of any country to or from which the Goods or Postal Services Items may be carried. On request by APG, THE SUPPLIER will either make reasonable efforts to assist APG to engage a customs broker to arrange for the clearing of the Goods or Postal Services Items through customs of any country to or from which the Goods or Postal Services Items may be carried or will act as agent or Authorized Representative (as defined by regulations) for APG acting as principal in effecting clearance. If either such assistance is provided, APG must complete the customs agency form as required by THE SUPPLIER or the customs broker.

- b. APG appoints and authorizes THE SUPPLIER to act as its agent in respect of APG's dealings with the customs broker engaged by APG to clear the Goods or Postal Services Items through customs of any country to or from which the Goods or Postal Services Items may be carried. APG authorizes THE SUPPLIER 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 the customs broker to clear the Goods or Postal Services Items through customs of any country to or from which the Goods or Postal Services Items may be carried.
- c. Any disbursements, costs, expenses and charges incurred by the customs broker or THE SUPPLIER in connection with clearing the Goods or Postal Services Items through customs of any country to or from which the Goods or Postal Services Items may be carried on behalf of APG is the responsibility of APG.

4. Fees and Charges, and Payment Terms

- a. APG agrees to pay THE SUPPLIER the Prices for the performance of the Services, save that if invoices are raised by THE SUPPLIER more than 45 days after provision of Services they will not be paid .
- b. In addition to the Prices, any wharf storage charges, bond charges or charges for cartage to bond, and if the Goods or Postal Services Items are subject to any control by customs or quarantine, all customs duty, excise duty, any taxes, government or quarantine charges and costs, fines or penalties payable or becoming payable or any other costs or expenses whatsoever or howsoever caused in respect of the Goods or Postal Services Items and any documentation relating to the Goods or Postal Services Items pursuant to any applicable laws or regulations), including but not limited to any additional charges levied from time to time by official airline, the International Air Transport Association, and/or sea freight companies becoming payable for any reason whatsoever in respect of the Good or Postal services Items s).
- c. If any of the sums due under 4.b above arise as a result of negligence by THE SUPPLIER, the sums shall not be payable by APG
- d. APG must pay to THE SUPPLIER the full amount invoiced within 45 days from the date of the invoice should there be no disputes to the charges invoiced to APG.. APG may not withhold or reduce or defer any payment of money due to THE SUPPLIER as a result of any claim, counterclaim or set-off.
- e. All charges will be raised by THE SUPPLIER in US Dollars. Any charges specified in a foreign currency appearing in a quote for Prices issued by THE SUPPLIER 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 not be borne by APG.
- f. The Prices and service capability are subject to review and may be changed only by mutual consent between both Parties, APG will be given notice of the new Prices and service changes changed in accordance with this clause at least 60 days beforehand, and APG may terminate this Agreement during that 60 days' notice period by notice in writing to THE SUPPLIER.
- g. THE SUPPLIER will not provide APG with cash on delivery services. Should APG request such services, such request must be expressly made in writing and THE SUPPLIER has sole discretion of acceptance in writing by an officer of the company. If acceptance is provided it is provided on the basis that THE SUPPLIER will only act as

agent for APG in either collecting cash or arranging for a third party to collect the cash for and on APG's behalf. Any liability of THE SUPPLIER in relation to cash on delivery services shall be subject to the limits of liability as set out in clause 14.2.a and 14.2.b

5. Imports

- a. THE SUPPLIER is not the owner of APG's Goods or Postal Services Items that are imported. If THE SUPPLIER is required to arrange the importation of APG's Goods or Postal Services Items, APG will be the importer and/or enterer for home consumption and must provide THE SUPPLIER or its third party sub-contractor with a valid import country Business or VAT or other relevant Number for APG five days prior to the vessel carrying the Goods or Postal Services Items 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. APG has sole liability for any GST, VAT, other import tax and/or customs duty payable in respect of clearing the Goods or Postal Services Items through customs. On occasion, THE SUPPLIER may pay this liability on behalf of APG and be reimbursed accordingly. Any such payment does not form part of the cost of the Services provided by THE SUPPLIER and is payable additional thereto. If APG wishes to use the home country's import deferral or deferment scheme it must notify THE SUPPLIER prior to the Goods or Postal Services Items 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.
- c) Exports If THE SUPPLIER is required to arrange for the export of Goods or Postal Services Items from, it will not be the exporter. As such THE SUPPLIER will not be or become liable for any GST or other tax payable in respect of the export of APG's Goods or Postal Services Items. APG shall have sole responsibility for ensuring all export documentation is received by THE SUPPLIER prior to the Goods or Postal Services Items being delivered for export.

6. Client's Obligations and THE SUPPLIER's Rights

- a. APG must:
 - i. provide THE SUPPLIER with all assistance, particulars, documents and other materials that are necessary to enable THE SUPPLIER to perform the Services, and ensure that the performance of the Services by THE SUPPLIER is not impeded, delayed or prevented by APG;
 - ii. permit THE SUPPLIER and its Representatives to enter into any premises that are owned, occupied or leased by APG 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 or Postal Services Items;
 - iv. ensure that THE SUPPLIER is kept fully informed at all times and in a timely manner of all matters of which APG is, or should be, aware, and which, if not made known to THE SUPPLIER, could adversely impact on the safe and efficient performance of the Services, including, without limitation, keeping THE SUPPLIER fully informed of the nature, type and contents of all Goods or Postal Services Items, including, without limitation, providing full and adequate descriptions of the Goods or Postal Services Items 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 THE SUPPLIER with clear direction with respect to the destination of, and care required for, all Goods or Postal Services Items , and with all necessary documentation, and/or information necessary to prepare the documentation, required to transport each consignment of Goods or Postal Services Items; and
 - vi. ensure that the Goods or Postal Services Items are packed in a manner adequate to withstand the ordinary risks of carriage, storage and handling having regard to their nature, and that all containers, packaging or pallets conform with the requirements of any person entitled to delivery of the Goods or Postal Services Items and APG agrees to reimburse THE SUPPLIER for any expenses that it may incur arising from any failure to so conform.
 - vii. Ensure that any transport unit used or supplied by them with the Goods or Postal Services Items therein for collection by THE SUPPLIER are in good condition and are fit for purpose of intended carriage and that where THE SUPPLIER supplies the transport unit for APG to load the Goods or Postal Services Items 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 specific conditions under a bill of lading, waybill, consignment note or other transport document, the terms and conditions of most favourable to Service Provider shall 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 to the extent that these conditions are not inconsistent with such legislation.
- d. Pending forwarding and delivery, if necessary and through no fault of THE SUPPLIER, Goods or Postal Services Items may be warehoused or otherwise held at any place or places at THE SUPPLIER's sole discretion at APG's risk and expense.
- e. APG will do all such things, and provide all such instructions, and sign all such documents as are reasonably necessary to enable THE SUPPLIER to enter the Goods or Postal Services Items for home consumption on behalf of APG or otherwise obtain customs clearance of the Goods or Postal Services Items on APG's behalf. THE SUPPLIER may act as APG's agent to provide any such documents and information as it considers necessary to a third party customs agent authorized in writing by APG.
- f. Where APG has declared the gross weight and/or gross mass and/or dimensions of the Goods or Postal Services Items and THE SUPPLIER has relied upon that in making arrangements for transportation, and the actual gross weight and/or gross mass and/or dimensions of the Goods or Postal Services Items differs from the declared gross weight and/or gross mass and/or dimensions, then APG is responsible for all extra costs and liabilities incurred by THE SUPPLIER resulting from the difference in the declared gross weight and/or gross mass and/or dimensions.
- g. If APG expressly or impliedly instructs THE SUPPLIER to use or it is expressly or impliedly agreed that THE SUPPLIER will use a particular method of providing the Services, THE SUPPLIER will give priority to that method and the adoption of this method will be agreed by both Supplier and APG before execution.

- h. THE SUPPLIER is entitled to open any document, wrapping, package or other container in which the Goods or Postal Services Items are placed or carried to inspect the Goods or Postal Services Items 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, subject to agreement by APG.
 - i. APG must ensure that any container or other packaging of the Goods or Postal Services Items , and/or pallets which are delivered with the Goods or Postal Services Items , which are required to be returned to the owner (or its nominee), are returned within the required time.
 - j. THE SUPPLIER should conduct a surface survey of the container upon receipt and report any findings to APG.
 - k. THE SUPPLIER 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, lock-outs, labor 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

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

- a. it has full right, power and authority to contract with THE SUPPLIER and deal with the Goods or Postal Services Items, and it holds all necessary licenses, permits and consents to enable THE SUPPLIER to provide the Services, and that it either owns the Goods or Postal Services Items or has the authority of the Owner to bind them to these conditions for and on their behalf;
- b. all Goods or Postal Services Items provided to THE SUPPLIER are fully and adequately described to THE SUPPLIER including the name, nature, type, contents and value of all Goods or Postal Services Items, 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 or Postal Services Items and all expenses and charges relating to that compliance have been or will be paid by APG;

- c. it has sufficiently informed THE SUPPLIER about its requirements for the Services (including without limitation, informing THE SUPPLIER of any regulatory requirements relevant to the storage, carriage or handling of the Goods or Postal Services Items) to enable THE SUPPLIER to perform the Services effectively and cost the Services properly;
- d. unless mentioned otherwise, the Goods or Postal Services Items are not noxious, dangerous, hazardous, inflammable, explosive or likely to cause damage in any manner whatsoever;
- e. the person delivering or assigning any Goods or Postal Services Items to THE SUPPLIER, or authorizing any work, is properly authorized to do so;
- f. all descriptions, values and other particulars of Goods or Postal Services Items including but not limited to gross weight, gross mass and dimensions provided to THE SUPPLIER by APG or APG's Representatives under this Agreement (including, without limitation, descriptions, values and other particulars of Goods or Postal Services Items provided for customs, consular and other purposes) is complete, accurate and up to date in all respects;
- g. That any transport equipment used by them to deliver the Goods or Postal Services Items into the hands of THE SUPPLIER is fit for purpose;
- h. That they or the Goods or Postal Services Items are not in any way embargoed or sanctioned from moving Goods or Postal Services Items or being moved under the Services; and
- i. That they accept that any advice given by THE SUPPLIER is for them alone and that they will not pass any advice given to them by THE SUPPLIER onto any third parties and in the event that they do so that they shall indemnify THE SUPPLIER for all and any loss and expense arising from such action.

9. Title and Risk

- a. All right, title and risk in the Goods or Postal Services Items will, at all times, remain with APG or APG's customer (as the case may be) as the legal and equitable owner. Except to the extent stated in Clause 9.b, THE SUPPLIER acknowledges that it does not have ownership of, or property, right, title or interest in, any of the Goods or Postal Services Items while they are in THE SUPPLIER's possession or control.
- b. THE SUPPLIER shall have no right of lien for all and any sums due and owing to it on the Goods or Postal Services Items and any other Goods or Postal Services Items and any related documents owned by APG that are in the possession, custody or control of THE SUPPLIER..
- c. Any law, legislation or regulations relating to warehousemen's or carrier freight liens will not apply unless it is mandatorily applicable.

10. Relationship of the Parties

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

11. Confidentiality

- 11.1** For purposes of this paragraph, APG's information means all information (oral or written) and documents (in any medium) that have been furnished to the Supplier by APG, or that has been developed by the Supplier in connection with the Services. APG is willing to disclose APG's information only with the understanding that the Supplier will maintain its confidentiality. The Supplier acknowledges that APG's information is being disclosed to the Supplier for the sole purpose of permitting the Supplier to perform the Services and agrees that it will not use APG's information for any other purpose. In addition, the Supplier agrees that it will not disclose, disseminate or otherwise make available APG's information to anyone, other than those who have a need to know it in order for the Supplier to fulfil its obligations under this Agreement, without the prior written consent of the APG. The Supplier's employees, and any other person consented to by APG, to whom APG's information is made available, shall sign an agreement containing obligations similar to those contained in this paragraph.
- 11.2** The Supplier shall provide for the physical, managerial and electronic security of APG's information such that APG's information is professionally maintained and secured, ensuring it is safe from unauthorised access or use during utilization, transmission and storage. Should any unauthorised breach occur, the Supplier shall notify APG as soon as reasonably possible, but not later than twenty-four (24) hours after the Supplier becomes aware of such breach.
- 11.3** At APG's request or upon completion of Supplier's use of APG's information, Supplier will return all copies of APG's information to APG or, at APG's request, will destroy APG's information and certify such destruction to APG. Supplier may retain a copy of APG's information, for archival purposes only, subject to Supplier's continuing obligations under this section.
- 11.4** Supplier further agrees to indemnify and hold APG harmless from any liabilities, damages, fines, penalties, costs, claims, demands, and expenses, arising out of the disclosure or improper use of APG's information by Supplier, Supplier's employees, or any other person to whom Supplier disclosed APG's information. Supplier will immediately notify APG upon learning of any unauthorised use or disclosure of any APG's information
- 11.5** The Supplier recognises that the disclosure of APG's information may give rise to irreparable injury and acknowledges that remedies other than injunctive relief may not be adequate. Accordingly, APG has the right to seek equitable and injunctive relief to prevent the unauthorised disclosure of any APG's information, as well as such damages or other relief as is occasioned by such unauthorised use or disclosure.
- 11.6** In the event the Supplier is required to disclose APG's information in connection with any judicial proceeding or government investigation, the Provider shall promptly notify APG and allow reasonable time for APG to seek a protective order from the appropriate court or government agency. Thereafter, the Supplier may disclose APG's information to the extent required by law, subject to any applicable protective order.

12. Intellectual Property

- 12.1** Intellectual Property (or “IP”) means any intellectual or industrial property right including, without limitation, inventions, patents, copyright, trademarks, trade secrets, designs, circuit layout rights and Confidential Information, and including the Contract IP (as defined later in this Agreement);
- 12.2** The Supplier warrants that it owns or is licensed to use all Provider Background IP (“Provider Background IP” means IP owned or licensed by Provider which is in existence prior to the performance of this Agreement and excludes the Contract IP and the APG Background IP) subsisting in or required to be used to provide the Services, and where any such Intellectual Property is owned by third parties, it has the requisite permission from such third parties to grant to APG the licenses referred to in this Clause. For the avoidance of doubt, the Supplier Background IP remains the property of the Supplier.
- 12.3** APG warrants that it owns or is licensed to use all APG Background IP (“APG Background IP” means IP owned or licensed by APG prior to the date of this Agreement and which IP is provided to Provider for the sole purpose of supplying the Services in accordance with the terms of this Agreement) subsisting in or required to be used to provide the Services, and where any such Intellectual Property is owned by third parties, it has the requisite permission from such third parties to grant to APG the licenses referred to in this Clause. For the avoidance of doubt, APG Background IP remains the property of APG.
- 12.4** APG grants the Supplier a non-exclusive, royalty free non-perpetual licence in the USA to use the APG Background IP (“APG Background IP” means IP owned or licensed by APG prior to the date of this Agreement and which IP is provided to the Supplier for the sole purpose of supplying the Services in accordance with the terms of this Agreement) solely for the purpose of the provision of Services to APG.
- 12.5** The Supplier acknowledges and agrees that all Intellectual Property created in the provision of the Services vests immediately on its creation in and remains the property of APG (“Contract IP”).

13. Non-Solicitation and Non-Competition

The Supplier shall not approach any of APG’s customers to offer the Services in this Agreement or disclose any information relating to APG’s customers to any external party and Provider shall not approach any of APG’s staff to offer them employment, and in doing so will be deemed as a breach of this Agreement which could lead to termination of this Agreement. Furthermore, if the either Party breaches the terms of this Clause it agrees to indemnify the other for any associated claims or losses. The terms of this clause will apply during the currency of this Agreement and for one year after termination.

14. Dangerous Goods including Postal Services Items and Limitations on Certain Other Goods or Postal Services Items

14.1 Acceptance of Dangerous Goods including Postal services Items

- a. Except with the express written consent of THE SUPPLIER, THE SUPPLIER will not accept or deal with any noxious, dangerous, hazardous, inflammable or explosive Goods or Postal Services Items, likely to harbor or encourage vermin or other pests or any Goods or Postal Services Items likely to otherwise cause damage in any manner whatsoever (**Dangerous Goods**). APG is liable for all and any loss or damage or expense to the Goods or Postal Services Items and to THE SUPPLIER arising in connection with Dangerous Goods that have been delivered to THE SUPPLIER by or on behalf of APG without express written consent or knowledge of THE SUPPLIER and for all and any loss and expense arising from the inherent nature of the Dangerous Goods.
- b. If the Goods or Postal Services Items are or include Dangerous Goods, APG must comply with all applicable laws and regulations in relation to the Goods or Postal Services Items, including, without limitation keeping THE SUPPLIER fully informed of the nature, type and contents of all such Goods or Postal Services Items in respect of which Services may be performed, and providing full and adequate descriptions of the relevant Goods or Postal Services Items in any relevant consignment note.
- d. If, in THE SUPPLIER's opinion, the Goods or Postal Services Items, either by themselves or in combination with other Goods or Postal Services Items, 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 Postal Services Items or property, the Goods or Postal Services Items may be retained, destroyed, disposed of, abandoned, removed or rendered harmless by THE SUPPLIER without prior notice or compensation to APG.

14.2 Valuable Goods including Postal services Items

Except with the express written consent of THE SUPPLIER, THE SUPPLIER will not accept bullion, coins, stones, jewellery, valuables, antiques, pictures, living creatures or plants. If APG delivers such Valuable Goods to THE SUPPLIER without the knowledge of THE SUPPLIER, APG will be responsible for all loss and damage and expense to the Goods or Postal Services Items and to THE SUPPLIER arising in connection with the Valuable Goods that have been delivered to THE SUPPLIER.

14.3 Non-deliverable Goods including Postal Services Items

Any Goods and Postal Services Items that cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by APG or the addressee within a reasonable time THE SUPPLIER's should provide APG with written notice at the earliest opportunity with failed delivery events regardless of the reason/s

A communication from any Representatives of THE SUPPLIER to the effect that the Goods or Postal Services Items cannot be delivered for any reason shall be conclusive evidence of the fact.

15. Liability

15.1 Client enters THE SUPPLIER's premises at own risk

If Representatives of APG enter on to any of THE SUPPLIER's premises, they do so at their

own risk. It is APG's responsibility to make its Representatives aware that they enter on to any of THE SUPPLIER's premises at their own risk.

15.2 Limited liability of THE SUPPLIER

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

- a. THE SUPPLIER agrees to provide the Services using a reasonable degree of skill and care.
- b. THE SUPPLIER will be liable to APG for or in respect of any loss or damage of any kind whatsoever arising directly or indirectly from any act or omission subject to clause 14.2 a) above on the part of THE SUPPLIER 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 THE SUPPLIER to APG 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.
 - e.
- c. Subject to clause 14.2(a) THE SUPPLIER will be liable to APG for or in respect of any loss or damage of any kind whatsoever arising directly or indirectly from any act or omission on the part of THE SUPPLIER in connection with, arising out of or otherwise relating to, the provision of the Postal Services, or these Conditions in relation to the Postal Services, including (without limitation) any delay in the collection of, or loss or damage to, or deterioration of, the Postal Service Items, mistaken delivery or failure to deliver or delay in delivery of the Postal Service Items, 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 THE SUPPLIER to APG 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 contents or any Postal Services item whatsoever
- 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) THE SUPPLIER reserves the right to accept liability in excess of the limits set out above in clause 14.2.b and clause 14.2.c provided they receive from an authorized representative of APG express instructions in writing including a declaration of the

Goods or Postal Services Items concerned and their value

- f) THE SUPPLIER is liable for any failure to adhere to agreed departure and arrival dates of Goods or Postal Services Items unless agreed in writing between an Officer of THE SUPPLIER and APG

15.3 Liability of Client

APG will be liable for and indemnify THE SUPPLIER and its Representatives, and keep THE SUPPLIER and its Representatives 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 willful act or omission, by APG in connection with the Goods or Postal Services Items or services;
- b) the illness, injury or death of any of APG'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 or Postal Services Items unless arising from the negligence of THE SUPPLIER;
 - ii. THE SUPPLIER acting as agent under this Agreement unless THE SUPPLIER acts in contravention of APG's instructions; and
 - iii. any claim or demand by, or liability to, any person who has, may have or claims to have an interest in the Goods or Postal Services Items which exceeds the liability of THE SUPPLIER to APG as provided for in clause 14.2.b above.
- d) Any liability of APG under this clause 14.3 shall be limited to USD 100.

15.4 Benefit

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

15.5 Not a common carrier

THE SUPPLIER is not a common carrier and accepts no liability as a common carrier, and reserves the right to refuse to carry any Goods or Postal Services Items.

16 Notice of claims

- 16.1** If APG becomes aware of any matter or circumstance that may give rise to a claim under these Conditions, APG must give written notice of the claim to the authorized office of THE SUPPLIER within 60 days of becoming aware of the matter or circumstance that may give rise to the claim.

17 Insurance

- a. Subject to clause 15.b, APG is solely responsible (at APG'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 APG by THE SUPPLIER and APG's obligations under these

Conditions.

- b. Nothing in these Conditions requires either THE SUPPLIER or APG to take out or keep current any insurance policies in connection with the Goods or Postal Services Items or the Services.
- c. If APG wishes THE SUPPLIER to arrange Goods or Postal Services Items insurance for and on its behalf, THE SUPPLIER will only provide this if it agrees in writing in response to an express request in writing from APG. All such insurance will be subject to the usual exceptions and conditions of the policies of the insurers or underwriters accepting the risk. THE SUPPLIER need not issue a separate policy unless specifically required to do so by APG in its written request and accepted in writing by THE SUPPLIER and it may declare APG's interest on any open or general policy held by THE SUPPLIER. In arranging such insurance THE SUPPLIER agrees only to act as agent for APG and in the event of failure to insure as agreed in writing the limit of liability in clause 14.2.b shall not apply

18 Conditions of Carriage

- d. Any written instructions published by THE SUPPLIER shall apply to the carriage of any Goods or Postal Services Items 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 provision that is most favourable to Service Provider shall prevail.
- e. For any Goods or Postal Services Items , if the provisions referred to clause 16.a are inconsistent with any provision of these Conditions, the provisions referred in clause 16.a prevail.

19. General

19.1 Notice

Notices served pursuant to these Conditions may be delivered by hand, by registered or signed for post, or by e-mail or facsimile to the proper 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 authorized employee, agent or representative of the receiving party, or in the case of e-mail or facsimile, upon completion of a successful transmission as evidenced by an automatically-generated transmission report.

19.2 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, THE SUPPLIER may assign or novate this Agreement (or any of its rights and obligations under this Agreement) without the other party's consent to any Affiliated Company.

19.3 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 breach of these Conditions by THE SUPPLIER or any other person entitled to the benefit of such provisions.

19.4 Exclusion of terms, conditions, representations, warranties and undertakings

Except as otherwise provided for in these Conditions, all terms, conditions, representations, warranties and undertakings (whether express, implied, statutory or otherwise, including any terms on any of APG's documents) relating to the Services or these Conditions are excluded to the full extent permitted by law.

20 Governing law

- a) This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of New York (except for its rules on conflicts of law) and any dispute under this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts located in New York County, New York, subject to Service Provider's right to elect in favor of arbitration in New York

- b) Notwithstanding Clause 17.5 a) above, THE SUPPLIER has sole discretion to choose to determine any dispute or claim by binding, confidential arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect, by commencing arbitration or writing to APG to require APG to commence any claim by arbitration. Any claim under \$100,000 excluding interest in value shall be dealt with by a sole arbitrator. Any claim above \$100,000 excluding interest and less than \$500,000 excluding interest in value shall be dealt with by three arbitrators. Any claim above \$500,000 excluding interest shall be dealt with pursuant to the procedures for Large, Complex Commercial Disputes applicable at the time the arbitration is due to commence and be dealt with by three arbitrators. AAA will select the arbitrator(s), who must be qualified as knowledgeable on international transportation law and practice regarding the subject matter of the dispute or claim. Each party to the arbitration must bear its own costs; provided, however, that if the arbitration decision holds that a party's claim(s) or defense(s) is or are substantially frivolous, unreasonable or groundless, then the substantially prevailing party has the right to have its costs (including reasonable attorneys' fees) reimbursed by the substantially non-prevailing party as part of the arbitration decision. The arbitration decision is enforceable pursuant to the United States Arbitration Act.

Signed: _____

For and on behalf of _____

Australia Post Global eCommerce Solutions

[NAME]

[POSITION]

(DATE)

Signed: _____

For and on behalf of _____

[NAME]

[POSITION]

(DATE)