

# APG Supplier Terms and Conditions

## Introduction

Unless Australia Post Global eCommerce Solutions (USA) 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**) exclusively set out the rights and obligations between THE SUPPLIER and APG in respect of any Services supplied by THE SUPPLIER 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 THE SUPPLIER.

### 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 public holiday in United Kingdom.
- c) **Client** means APG.
- d) **Excluded Goods and Postal Services Items** means bullion, coins, cash, negotiable instruments of any kind, precious metals, gemstones, jewellery, wrought or unwrought metals, fragile Goods and Postal Services Items 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 and Postal Services Items, second hand Goods and Postal Services Items, used Goods and Postal Services Items, 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 1.6 meters in length.
- e) **Goods and Postal Services Items** 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 that do not include Client to Client shipments which THE SUPPLIER does not accept excluding Postal Service 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 reorganisation, 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, ePacket Express, letters and flats
- h) **Postal service items** means the contents of any ePacket, ePacket Plus, ePacket Express, 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) **Representatives** means officers, employees, agents, sub-contractors and any servant or agent of its subcontractors.
- k) **Services** means all services supplied by THE SUPPLIER in connection with the Goods and Postal Services Items, including but not limited to the carriage, storage, transportation, packing and unpacking, and delivery of the Goods and Postal Services Items.
- l) A reference to a party includes its Representatives.

## 2. Services

### 2.1. Services

In consideration of APG's compliance with its obligations under these Conditions, THE SUPPLIER will provide the Services to APG and there is no minimum volume commitment and service volumes are subject to change. The SUPPLIER accepts the risk of such volume fluctuations.

## **2.2. Customs**

- a) The Services include customs clearance of the Goods and Postal Services Items through customs of any country to or from which the Goods and Postal Services Items may be carried. THE SUPPLIER will act as agent or Direct Agent (as defined by the Taxation (Cross-border Trade) Act 2018) for APG acting as principal in effecting customs clearance. APG must complete the customs agency form as required by THE SUPPLIER.
- b) APG appoints and authorises THE SUPPLIER to act as its agent. APG authorises 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 SUPPLIER to clear the Goods and Postal Services Items through customs of any country to or from which the Goods and Postal Services Items may be carried.

## **3. 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) APG will pay to THE SUPPLIER the full amount invoiced within 60 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.
- c) All charges will be raised by THE SUPPLIER in USD\$. 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, whether in a quote for Prices or not.
- d) 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.
- e) Unless otherwise specified Prices are inclusive of any fuel surcharge at the time of quoting and, in cases of last-mile deliveries, any residential surcharge.

## **4. Shipping Documents**

- a) Commitments for specific services may be made through the issuance of a shipping document as applicable (e.g. shipping order, delivery note) in either written or electronic form, in accordance with all applicable laws and APG's established procedures.
- b) Shipping documents will include the correct identification of all goods shipped in accordance with APG's instructions and THE SUPPLIER's requirements. Invoices that may be issued for the purpose of customs clearance are not intended as routing documents.

THE SUPPLIER shall carry all shipping documents required by the applicable laws in force in which the THE SUPPLIER provides services.

- c) In the event that there is conflict between the provisions of this Agreement and any terms and conditions on a shipping document, the provision of this Agreement will take precedence. All shipping documents issued will be subject to the terms and conditions of this Agreement.

#### **5. Import and Export Control**

This Agreement shall be subject to, and THE SUPPLIER shall comply with, all import and export control laws, statutes, regulations, rules, orders, licences, requirements, and governmental requests applicable to imports, exports and/or transactions pursuant to or in connection with this Agreement, where applicable.

#### **6. Hazardous Material**

Typically, APG, along with its customers, shall identify the content of the goods/shipment and properly pack, package, label, and mark the goods in accordance with all applicable dangerous goods and hazardous material laws before tendering to THE SUPPLIER.

#### **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. Title and Risk**

- a) All right, title and risk in the Goods and 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. THE SUPPLIER acknowledges that it does not have ownership of, or property, right, title or interest in, any of the Goods and Postal Services Items while they are in THE SUPPLIER's possession or control.
- b) THE SUPPLIER shall have no right of lien whatsoever on any of APG's Goods and postal Services Items and any 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 mandatorily applicable .

#### **9. Relationship of the Parties**

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

#### **10. Confidentiality**

- a) 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.
- b) 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.
- c) 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.
- d) 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
- e) 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.
- f) In the event the Supplier is required to disclose APG's information in connection with any judicial proceeding or government investigation, the THE SUPPLIER 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.

## 11. Intellectual Property

- a) 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);
- b) The Supplier warrants that it owns or is licensed to use all THE SUPPLIER Background IP ("THE SUPPLIER Background IP" means IP owned or licensed by THE SUPPLIER 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.
- c) 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 THE SUPPLIER 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.
- d) APG grants the Supplier a non-exclusive, royalty free non-perpetual licence in the United Kingdom 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.
- e) 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").

## 12. 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 THE SUPPLIER 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.

## 13. Compliance with Laws; Forced Labour

- a) THE SUPPLIER, and any Services supplied by THE SUPPLIER, shall comply with all applicable laws, rules, regulations, order, conventions, ordinances, or standards of the country where Services are provided or that relate to the provision, licensing, approval, or certification of the Services, including, but not limited to, those relating to environmental matters, data protection, anti-slavery and anti-bribery and privacy, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health and safety, and motor safety, including any certification required in connection with any domestic or cross

border transport of goods within the European Union. The Parties shall comply with APG's anti-slavery policy and anti-bribery policy at [www.apgecommerece.com](http://www.apgecommerece.com) which may be updated from time to time and it is the THE SUPPLIER's duty to check these terms for any updates.

- b) THE SUPPLIER shall be responsible for obtaining and maintaining any approvals, permits and licences required under national, county, and local laws, ordinances, regulations and rules that are applicable to the performance of Services.
- c) THE SUPPLIER presents that it and any carrier, or other third party hired by THE SUPPLIER as a subcontractor will only use employees in possession of the necessary work permits or proof of right to work in the respective country where Services are provided. Any employees performing transport services under this Agreement will carry the originals of the relevant documentation (such as driving licenses) at all times.
- d) At APG's request, THE SUPPLIER shall certify in writing its compliance with the foregoing, and/or immediately submit all original licences, permits or other required documentation at any time to APG for inspection.
- e) THE SUPPLIER represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labour or are engaged in abusive employment practices or corrupt business practices in the provision of Services.
- f) THE SUPPLIER shall indemnify and hold APG harmless from and against any liability, claims, demands or expenses arising from or relating to THE SUPPLIER's noncompliance with the aforementioned provisions.

#### **14. Indemnification**

The Supplier shall indemnify and hold APG harmless from and against the following liabilities:

- 1) Any liability, claims, demands or expenses for damages to the property of or injuries (including death) to APG, its employees or any other person, arising from or in connection with THE SUPPLIER's performance of Services or use of APG's property, except for such liability, claim, or demand arising out of the sole negligence of the APG.
- 2) Any and all claims made against, by, or on behalf of Supplier's employees, agents, or subcontractors for salary or other compensation or payments resulting or claimed to have resulted, in whole or in part, from Services performed by Supplier or its agents or subcontractors.
- 3) Any and all penalties or fines of any nature which may be sought to be enforced against APG by reason of an alleged violation by Supplier, its agents or subcontractors of any laws or regulations.
- 4) Any penalties, financial or otherwise, imposed by a third-party provider for the failure to deliver timely or at all, as per provided shipping instructions.

## **15. Insurance**

THE SUPPLIER shall ensure they have adequate insurance cover in place in respect of their respective liabilities under this Agreement and/or as required by law. Evidence of such insurance coverage must be provided to APG on demand. By requiring THE SUPPLIER to obtain insurance coverage, APG does not represent that coverage and limits will be adequate to protect THE SUPPLIER. The purchase of the required insurance coverage by THE SUPPLIER will not release THE SUPPLIER from its respective obligations or liabilities.

## **16. Loss and Damage**

It is THE SUPPLIER'S obligation to reduce damage and loss of APG's shipments whilst being handled and transported and under THE SUPPLIER'S control. THE SUPPLIER shall indemnify APG for and against any loss or damage arising directly or indirectly as a result of THE SUPPLIER'S performance of the Services.

## **17. Claims Procedure**

Should there be any loss or damage to APG's shipments that are under the control of THE SUPPLIER or its permitted subcontractor, APG shall file claim as per APG's claim process.

## **18. Conditions of Carriage**

- a) Any written instructions published by THE SUPPLIER shall apply to the carriage of any Goods and Postal Services Items under these Conditions. 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 and Postal Services Items carried by post, if the provisions referred to are inconsistent with any provision of these Conditions, the provisions referred above prevail.

## **19. General**

Notices served pursuant to these Conditions may be delivered by hand, by registered or signed for address of each party notified from time to time. Notice will be deemed given in the case of hand registered post, upon written acknowledgment of receipt by an officer or other duly authorised person or representative of the receiving party.

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.

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. 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.

These Conditions and any dispute thereunder are exclusively governed by and will be construed in accordance with the law in force in State of New York from time to time and the exclusive jurisdiction of the State of New York courts subject to clause below.



APG has sole discretion to choose to determine any dispute by arbitration under the applicable London Maritime Arbitrator's Association (LMAA) rules by commencing arbitration or writing to THE SUPPLIER to require them to commence any claim by arbitration. Any claim under £100,000 excluding interest in value shall be dealt with pursuant to the small claims rules of the LMAA and be dealt with by a sole arbitrator. Any claim above £100,000 excluding interest and less than £400,000 excluding interest in value shall be dealt with pursuant to the intermediate claims rules of the LMAA and be dealt with by three arbitrators. Any claim above £400,000 excluding interest shall be dealt with pursuant to the LMAA rules applicable at the time the arbitration is due to commence and be dealt with by three arbitrators.

Signed: \_\_\_\_\_

For and on behalf of \_\_\_\_\_

**[NAME]**

**[POSITION]**

(DATE)