

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

### **Introduction**

Except to the extent that Australia Post Global eCommerce Solutions (US) Inc. ("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**) 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. **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 the person or entity to whom, or on whose behalf, APG provides the Services.
- 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 3 meters in length.
- e. **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 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 right 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.
- j. **Postal Services** means ePacket, ePacket plus, letters and flats
- k. **Postal Service Items** means the contents of any ePacket, ePacket plus, letter or flat
- l. **Prices** means fees and charges payable for the Services calculated in accordance with these Conditions or as otherwise agreed between APG and the Client.
- m. **Pricing Schedule** means the schedule to these Conditions which includes the fees payable to APG for the Services.
- n. **Representatives** means officers, employees, agents, sub-contractors and any servant or agent of its sub-contractors.
- o. **Services** means all services supplied by APG 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.
- p. **APG** means Australia Post Global eCommerce Solutions (US) Inc.
- q. A reference to a party includes its Representatives.

## 2. 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, sub-contractors 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.

## 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. The Client 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 the Client, APG will either make reasonable efforts to assist the Client 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 the Client acting as principal in effecting clearance. If either such assistance is provided, the Client must complete the customs agency form as required by APG or the customs broker.

- b. The Client appoints and authorizes APG to act as its agent in respect of the Client's dealings with the customs broker engaged by the Client 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. The Client authorizes 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 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 APG 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 the Client is the responsibility of the Client.

#### **4. 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 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), and any costs incurred by APG for converting GBP 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. If any of the sums due under 4.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 14 days from the date of the invoice for freight invoices and within 7 days from the date of the invoice for any Duties & Taxes. 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. If the Client fails to pay an amount of money payable under these Conditions on the due date, all sums invoiced to the Client shall become payable immediately whether due or not.

- f. All charges will be raised by APG in US 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.
- g. The Prices may be changed by APG at any time at its sole discretion. The Client will be given notice of the new Prices changed in accordance with this clause at least 30 days beforehand, and the Client may terminate this Agreement during that 30 day 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 the company. 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 14.2.a and

## **5. Imports**

- a. APG is not the owner of the Client's Goods or Postal Services Items that are imported. If APG is required to arrange the importation of the Client's Goods or Postal Services Items, 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 VAT or other relevant Number for the Client 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. The Client 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, 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 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.
6. Exports If APG is required to arrange for the export of Goods or Postal Services Items from, 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 or Postal Services Items. The Client shall have sole responsibility for ensuring all export documentation is received by APG prior to the Goods or Postal Services Items being delivered for export.

## **7. 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, and ensure that the performance of the Services by APG

- is not impeded, delayed or prevented by the Client;
- 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 or Postal Services Items;
  - 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 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 APG 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 the Client agrees to reimburse APG 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 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 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 APG, Goods or Postal Services Items 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 or Postal Services Items for home consumption on behalf of the Client or otherwise obtain customs clearance of the Goods or Postal Services Items 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 authorized in writing by the Client.
- f. Where the Client has declared the gross weight and/or gross mass and/or dimensions of the Goods or Postal Services Items 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 or Postal Services Items 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 or Postal Services Items the Client must promptly provide adequate security in a form accepted by APG or to any party of APG's choosing.
- h. APG is authorized 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.
- 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 authorized to provide the Services by another method.
- j. APG 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.
- k. The Client 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.
- 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.

## **8. 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.

#### **9. 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 or Postal Services Items, and it holds all necessary licenses, permits and consents to enable APG 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 APG are fully and adequately described to APG 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 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 or Postal Services Items ) to enable APG to perform the Services effectively and cost the Services properly;
- d. 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 APG, 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 APG by the Client or the Client'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 APG 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 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. it has complied with all applicable laws and regulations relating to import, export and re-export controls and sanctions, including but not limited to: the Client, the Goods, and any technologies provided are not subject to any applicable sanctions list issued by any government or international authority (such as the United Nations Security Council, the European Union, the Australian Government, or the Government of China), and are not sourced from, destined for, transiting or otherwise connected to any person, entity, or country listed in or subject to any related sanctions, embargoes or restriction lists. The Goods do not contain items or technology (and are not sourced from, based upon or comingled with items or technology) that are controlled under any import, export or re-export control laws and regulations of any applicable jurisdiction.

#### 10. Title and Risk

- a. All right, title and risk in the Goods or Postal Services Items will, at all times, remain with the Client or the Client's customer (as the case may be) as the legal and equitable owner. Except to the extent stated in Clause 9.b, APG 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 APG's possession or control.
- b. To the extent permitted by law, APG shall have a general 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 the Client that are in the possession, custody or control of APG (collectively, **Liened Goods**) are subject to a 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 favor 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.

#### 11. 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).



## **12. Confidentiality**

- a. Each Party (which term throughout when applied to the Service Provider includes the Affiliates) undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other Party belongs, except as permitted by clause 11.2
- b. Each Party may disclose the other Party's confidential information:
  - to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 9; and
  - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
  - no Party shall use any other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## **13. Intellectual Property**

- a. Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other Party belongs, except as permitted by clause 11.2.
- b. 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);
- c. Client warrants that it owns or is licensed to use all Client Background IP ("Client Background IP" means IP owned or licensed by Client which is in existence prior to the performance of this Agreement and excludes the Contract IP and the APG and/or Affiliates 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 the APG and/or Affiliates the licenses referred to in this Clause. For the avoidance of doubt, Client Background IP remains the property of the Client.
- d. APG and/or Affiliates warrant that they owns or are licensed to use all APG and/or Affiliates' Background IP ("APG and/or Affiliates Background IP" means IP owned or licensed by the APG and/or Affiliates prior to the date of this Agreement and which IP is provided to the Client 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 the APG and/or Affiliates the licenses referred to in this Clause. For the avoidance of doubt, APG and/or Affiliates' Background IP remains the property of the APG and/or Affiliates.

- e. APG and/or Affiliates grant the Client a non-exclusive, royalty free non-perpetual licence in the USA to use the APG and/or Affiliates' Background IP solely for the purpose of the provision of Services to the Client.
- f. The Client 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 the APG and/or Affiliates ("Contract IP").

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

##### **Acceptance of Dangerous Goods including Postal services Items**

- a. Except with the express written consent of APG, APG 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**). The Client is liable for all and any loss or damage or expense to the Goods or Postal Services Items 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 or Postal Services Items are or include Dangerous Goods, the Client must comply with all applicable laws and regulations in relation to the Goods or Postal Services Items, including, without limitation keeping APG 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 APG'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 APG without prior notice or compensation to the Client.

##### **2. Valuable and/or Excluded Goods including Postal services Items**

Except with the express written consent of APG, the client will not consign Valuable and/or Excluded Goods as per the above Definitions and Interpretation. If the Client delivers such Valuable and /or Excluded Goods to APG without the express written consent of APG, the client will indemnify and hold harmless APG in respect of any loss or damage, including any charges, costs, expenses, fines, taxes, duties or similar incurred or suffered by APG in connection with such Valuable Goods and/or Excluded Goods.

##### **3. Non-deliverable Goods including Postal Services Items**

- a. Any Goods or Postal Services Items 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 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 or Postal Services Items before the expiration of 28 Business Days from the provision of the notice referred to above, APG may sell the Goods or Postal Services Items. All charges and expenses arising in connection with the sale and/or return of those Goods or Postal Services Items shall be paid by the Client or sender.
- c. APG may apply the proceeds of Goods or Postal Services Items sold under clause 13.3.b, less the costs of the sale and/or return of the Goods or Postal Services Items, 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 or Postal Services Items and any monies owing by the Client to APG.
- d. A communication from any Representatives of APG 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**

### **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.

### **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 authorized representative of both APG and the Client APG.

- a. APG agrees to provide the Services using a reasonable degree of skill and care.
- b. 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 (i) the market value or declared value of such loss and (ii) AUD\$50 per shipment 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) Irrespective of clause 15.2(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 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 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 contents or any Postal Services item whatsoever
- d) At APG's sole discretion, instead of providing compensation under clause 15.2.b above it may either re supply the Services or pay the cost of the supply of the Services.
- e) 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.
- f) APG reserves the right to accept liability in excess of the limits set out above in clause 15.2.b and clause 15.2.c provided they receive from an authorized representative of the Client express instructions in writing including a declaration of the Goods or Postal Services Items concerned and their value and agree to pay APG's additional charges for accepting such increased level of liability (including, but not limited to, the cost of insurance) and APG agrees to the same in writing through an officer of the company
- g) APG is not 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 APG and the Client

#### **Liability of Client**

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

- c. 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 the Client in connection with the Goods or Postal Services Items or services;
- d. the illness, injury or death of any of the Client's Representatives in connection with the provision of the Services;
- e. 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 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 or Postal Services Items (and whether or not occurring whilst the Goods or Postal Services Items or Postal services Items 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
- f. 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 APG to the Client as provided for in clause 15.2.b above.

#### **Benefit**

Every exemption, limitation, defense, 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.

#### **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 or Postal Services Items.

#### **Notice of claims**

- g. If the Client becomes aware of any matter or circumstance that may give rise to a claim under these Conditions, the Client must give written notice of the claim to the authorized office of APG within 30 days of becoming aware of the matter or circumstance that may give rise to the claim.
- h. A claim will not be enforceable by the Client against APG and is to be taken for all purposes to have been withdrawn unless any legal proceedings in connection with the claim are commenced within nine months after the earlier of written notice of the claim is served on APG in accordance with clause 15.6.a, or the expiry or termination of the provision of the Services under these Conditions.

#### **16. Insurance**

- a. Subject to clause 16.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 Postal Services Items or the Services.
- c. If the Client wishes APG to arrange Goods or Postal Services Items insurance for and on its behalf, APG will only provide this if it agrees in writing in response to an express request in writing from the Client. All such insurance

will be subject to the usual exceptions and conditions of the policies of the insurers or underwriters accepting the risk. APG need not issue a separate policy unless specifically required to do so by the Client in its written request and accepted in writing by APG and it may declare the Client's interest on any open or general policy held by APG. In arranging such insurance APG agrees only to act as agent for the Client and in the event of failure to insure as agreed in writing the limit of liability in clause 15.2.b shall not apply

#### **17. Conditions of Carriage**

- a. Any written instructions published by APG shall apply to the carriage of any Goods or Postal Services Items under these Conditions. Subject to clause 17.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.
- b. For any Goods or Postal Services Items, if the provisions referred to clause 17.a are inconsistent with any provision of these Conditions, the provisions referred to in clause 17.a prevail.

#### **18. General**

##### **18.1 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.

##### **18.2 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 18.2.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 Affiliated Company.

##### **18.3 Enforceability and severance**

- c. 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.
- d. 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 APG or any other person entitled to the benefit of such provisions.

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

- e. 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 the Client's documents) relating to the Services or these Conditions are excluded to the full extent permitted by law.

#### **18.5 Governing law**

- f. 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
- g. Notwithstanding Clause 18.5, APG 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 the Client to require the Client 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 \_\_\_\_\_

**[NAME]**

**[POSITION]**

(DATE)