

SCHEDULE 20A – EMS INTERNATIONAL COURIER GUARANTEED TERMS AND CONDITIONS

1 Introduction

- 1.1 These special service terms and conditions are supplementary to the Australia Post terms and conditions and to the extent that any aspect of this special service is not expressly included herein, the Australia Post terms and conditions apply.
- 1.2 These special service terms and conditions apply when:
- 1.2.1 a customer makes a written application to use the special service in or on a form prescribed by Australia Post for that purpose;
 - 1.2.2 Australia Post accepts that application; and
 - 1.2.3 the customer pays the fee, charge, premium, rate or price charged by Australia Post for the special service.

2 Interpretation

- 2.1 Except as where expressly defined, all words and phrases used in this Agreement shall have the same meaning if any, given to them in the Australian Postal Corporation Act 1989 and in the Australia Post Terms and Conditions provided, however, that where there is any inconsistency, the meaning shall be as defined in this Agreement to the extent of that inconsistency.
- 2.2 In this Agreement unless the contrary intention appears:
- 2.2.1 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
 - 2.2.2 words importing a gender include any other gender; and
 - 2.2.3 words in the singular number include the plural and words in the plural number include the singular.
- 2.3 "**agreement**" means an agreement between Australia Post and a customer pursuant to clause 1.2.
- 2.4 "**Australia Post**" includes the postal authority at the place of the destination of the article.
- 2.5 "**Consignor**" shall mean any person, company or corporation who –
- 2.5.1 delivers articles, or on whose behalf the articles are delivered to Australia Post for the provision of services; or
 - 2.5.2 has or claims to have an interest of any kind in the article;
- and the person signing this Agreement shall be deemed to be, or be, the authorised agent of the Consignor.
- 2.6 "**Extra Cover Service**" means the service provided by Australia Post under Schedule 1 of the Australia Post Terms and Conditions;
- 2.7 "**Service**" means the EMS International Courier Guaranteed Service which is a special service providing priority, door-to-door international courier delivery for letters and

documents where the name and/or the signature of the person to whom it is delivered is obtained.

3 Australia Post is not a Common Carrier

- 3.1 Australia Post is not, and shall not be liable as, a Common Carrier. The services provided pursuant to this Agreement are subject to the terms and conditions contained herein which are not negotiable. Australia Post reserves the right to refuse to provide services to any person, company or corporation or to accept articles of any particular class, character or nature whatsoever at its sole discretion.

4 Consignor's obligations and acknowledgments

- 4.1 The Consignor warrants that in agreeing to the terms and conditions of carriage it is, or has the authority of, and is the agent of, the person or persons owning or having any interest in the article or any part thereof.
- 4.2 Without prejudice to the generality of clause 4.1, the Consignor undertakes to indemnify Australia Post against any liability whatsoever arising in respect of the article to any person (other than the Consignor) who claims to have, who has or who may hereafter have any interest in the article or any part thereof.
- 4.3 The Consignor warrants that it has complied with all laws and regulations, both state and federal, relating to the consigning, labelling, packaging, carriage, storage and delivery of the article and that the article contains letters and/or documents only.
- 4.4 The Consignor warrants that all applicable customs, import, export and other laws and regulations of all countries to, from, through or over which the consignment may pass, have been complied with. Australia Post is authorised, but is under no obligation, to complete on the Consignor's behalf any documents required to comply with such laws and regulations, and to act as the Consignor's forwarding agent for customs and export control purposes. The Consignor certifies that all information provided to Australia Post orally, or set forth in this Air Bill and any other documents, is accurate and complete.
- 4.5 The Consignor acknowledges that an article will only be carried by the service where;
- 4.5.1 the article is lodged at the counter of an office; or
- 4.5.2 the article is handed to an agent of Australia Post authorised to accept the article; and
- 4.5.3 the article is unsealed and the contents of which are able to be inspected and /or examined; and
- 4.5.4 the article is addressed to a person other than at a Post Office.
- 4.6 The Consignor acknowledges that Australia Post may:
- 4.6.1 inspect any article to determine their nature, value, origin, destination or any other matter reasonably necessary for the effective provision of services by Australia Post; and

- 4.6.2 abandon and/or release any item consigned by the Consignor to Australia Post which Australia Post has declared to be unacceptable or which the Consignor has undervalued for customs purposes or misdescribed, whether intentionally or otherwise, without incurring any liability whatsoever to the Consignor and the Consignor will indemnify Australia Post against all claims, damages, fines and expenses arising therefrom.
- 4.7 The Consignor shall be liable, and indemnify Australia Post, for any costs, expenses, damage or loss arising from:
- 4.7.1 non-compliance by the Consignor with all or any of the laws referred to in clause 4.3 and 4.4;
- 4.7.2 the carriage of articles of the nature described in clause 5.1;
- 4.7.3 any customs duty, excise duty or other costs which may be imposed by Customs in respect of the article; and
- 4.7.4 compliance by Australia Post with any order or requirement imposed by any railway, shipping, customs warehouse, harbour, dock or any other authority;
- and any other necessary or incidental charges or expenses arising from the provision of services by Australia Post which are not included in the rates charged by Australia Post.

5 Dangerous Goods

- 5.1 Where the article is, or may become, dangerous, noxious, inflammable, offensive in or any manner liable to cause injury or damage to any person or property, the Consignor shall ensure that a full description of the article in writing is given to Australia Post prior to the provision of services, disclosing the nature and value of the article and stating that the article is safely and adequately packed in view of such nature and the risks ordinarily associated with the carriage and storage of such articles.
- 5.2 Australia Post reserves the right to refuse to carry such article in accordance with clause 3, but if, in its sole discretion, Australia Post decides to carry such article, then Australia Post may -
- 5.2.1 require such article to be repacked to comply with requirements set out in the Australia Post Terms and Conditions;
- 5.2.2 impose additional charges for the carriage of the article of the nature referred to in clause 5.1; and
- 5.2.3 destroy, dispose of, abandon or render harmless without compensation to the Consignor any article which, in the opinion of Australia Post:
- (i) are, or are liable to become during carriage, of a dangerous, inflammable, explosive, volatile, offensive or damaging nature; or
 - (ii) have not been declared and or packed in accordance with clause 5.1 or repacked in accordance with clause 5.2.1.

6 Extra Cover

- 6.1 In conjunction with this service, Australia Post may offer the Extra Cover Service to the Consignor, up to a maximum amount of \$5000 (Australian currency). Australia

Post shall be liable to the Consignor only for any loss or damage to the articles resulting from the provision of services to the limit of such cover.

7 Limitation of liability - Warsaw Convention

- 7.1 Where the article is not carried under the service and the carriage involves an ultimate destination or stop in a country (other than the country of departure) and the Warsaw Convention is applicable by law to the carriage, then the carriage is subject to the rules relating to liability established by the Convention (which limits the liability of Australia Post in respect of loss or damage to the article). The Convention is set out in the *Civil Aviation (Liability of Carriers) Act 1959 (Cth)*.

8 Limitation of liability — where Warsaw Convention does not apply

- 8.1 Subject to clauses 6, 13 and 19, in relation to carriage to which the Warsaw Convention does not apply, Australia Post shall not be liable to the Consignor nor to any other person, company or corporation for any amount for any loss or damage whatsoever suffered, or that may be suffered, in relation to the provision of the services pursuant to this Agreement.

9 Liabilities not assumed in any event

- 9.1 Australia Post shall not be liable to any person for:
- 9.1.1 failure to observe or perform any or all of its services or any of the terms and conditions of this Agreement for any reason or cause which could not with reasonable diligence be controlled or prevented by Australia Post including without limitation, strikes, lock-outs, labour disputes, acts of God, acts of nature, acts of governments or their agencies, fire, flood, storm, riots, power shortages or power failure, war, sabotage, or inability to obtain sufficient labour, raw materials, fuel or utilities;
 - 9.1.2 any consequential or special damage or other indirect loss howsoever arising, including but not limited to, loss of profits, interest, income, utility or loss of market opportunities;
 - 9.1.3 any loss or damage caused by the act, default or omission of the Consignor, receiver or any other party including customs, government officials or any third party;
 - 9.1.4 any electrical or magnetic injury, erasure or other such damage to electronic or photographic images or recordings in any form; or
 - 9.1.5 any loss or damage caused by the nature of the articles or any defect or characteristic thereof, whether inherent or otherwise.

10 Applicability

- 10.1 Any clause of this Agreement which excludes or limits the liability of Australia Post in respect of the provision of services shall extend to protect Australia Post's employees, agents and sub-contractors and any or all of the services to be performed pursuant to this Agreement. For the purposes of, and to give effect to, this clause:

10.1.1 Australia Post shall hold the benefit of these conditions for its employees and agents and for any sub-contractor and its employees; and

10.1.2 all such employees and agents and sub-contractors shall be deemed to be parties to this Agreement.

11 Charges

11.1 The charges imposed by Australia Post for provision of the services shall be deemed to be payable at the time the articles are delivered into the possession of Australia Post by the Consignor and whether the articles are delivered to the Consignee or not. The charges are refundable only at the sole discretion of Australia Post.

12 Sub-contractors

12.1 Australia Post reserves the right to sub-contract all or any of the services to be performed hereunder to a sub-contractor or independent contractor at its sole discretion.

12.2 Carriage or storage of articles may be effected in any manner whatsoever Australia Post shall decide notwithstanding any instructions to the contrary, expressed or implied, by the Consignor.

12.3 Australia Post reserves the right to deviate from the usual route of carriage where it is deemed necessary or desirable in the circumstances.

13 Delivery Guarantee

13.1 Australia Post guarantees

13.1.1 delivery of EMS International Courier Guaranteed articles within a specified time between specified places and when the article is lodged in Australia by the specified times as notified by Australia Post from time to time; and

13.1.2 Australia Post shall obtain the name of and/or a signature from the person to whom an EMS International Courier Guaranteed article is delivered.

13.2 An article that is lodged for carriage by the EMS International Courier Guaranteed service between places where either or both of which have not been specified in accordance with clause 13.1, shall receive priority handling throughout its carriage but shall not be guaranteed delivery within a specified time.

13.3 Delivery shall not be guaranteed by Australia Post under clause 13.1 or clause 13.2 where non-delivery or delivery outside the specified time has been caused by events beyond the control of Australia Post including, without limitation, strikes, industrial disputes, labour unrest, natural disasters, Acts of God, floods, fires, weather conditions, war, civil unrest, customs/border clearance procedures, an incorrectly addressed article or the premises are unattended or there is no person present to whom the article can be delivered in accordance with these terms and conditions.

13.4 Subject to clause 13.7, where an EMS International Courier Guaranteed article is not delivered within a time specified by Australia Post for that delivery or where the name of and/or a signature has not been obtained, and the provisions of 13.5 and 13.6 have been satisfied, postage paid on the carriage of the article will be refunded to the person who paid it.

- 13.5 A customer wishing to claim an entitlement under clause 13.4 must produce to an office the Sender's Copy of Air Bill together with the postmarked copy of the receipt for the Service.
- 13.6 Australia Post is not liable for the guarantee under clause 13.4 unless:
- 13.6.1 The sender has provided a telephone number at which Australia Post can contact the addressee;
 - 13.6.2 postage has been paid for the carriage of an article by the service;
 - 13.6.3 the article was lodged by the specified posting time in accordance with the specified lodgment conditions;
 - 13.6.4 the article is not excluded from guaranteed delivery by clause 13.2;
 - 13.6.5 the failure to deliver the article within the specified time was not caused by events beyond the control of Australia Post as set out in clause 13.3; and
 - 13.6.6 the sender was not alerted to the possibility that the article might not be delivered as guaranteed by either:
 - (i) a notice displayed at the office at which the article was lodged;
 - (ii) an officer or agent of Australia Post; orsuch other public announcement or advertisement given to the public at large or to those members of the public potentially affected.
- 13.7 The provision of a refund of postage on an EMS International Courier Guaranteed article shall be not be additional to any compensation which may otherwise have been payable under the Australia Post Terms and Conditions for lost or damaged articles.

14 Lien

- 14.1 Australia Post shall have a general lien for all charges due or falling due to it by the Consignor over the articles which are the subject of this Agreement or any articles of the Consignor which subsequently come into the possession of Australia Post for the provision of services. Australia Post shall have the right as the holder of the lien to sell the articles for any amount it deems acceptable and apply the proceeds thereof towards discharge of the lien and the cost of the sale without incurring liability to any person for any loss or damage thereby incurred.

15 Notification of claims

- 15.1 In circumstances where it is alleged that Australia Post is liable for any loss or damage to the articles, no compensation for such loss or damage shall be payable unless notice in writing has been given to Australia Post within 30 days of the date of delivery or of the date when delivery ought to have, or would have in the course of business, been effected.

16 Limitation of actions

- 16.1 Subject to clause 7 which shall be paramount, Australia Post shall be discharged from all liability whatsoever in respect of the articles unless suit is brought within six

months of the date of delivery, or where delivery has not been made, within six months of the date when delivery ought to have, or would have in the course of business, been effected.

17 Severance

17.1 All the terms and conditions of this Agreement shall be severable and no provision shall be affected by the invalidity of any provision except to the extent that such invalidity also renders such other provision invalid, and in the event of the invalidity of any provision this Agreement shall be interpreted and enforced as if the invalid provision was not contained in this Agreement.

18 Law

18.1 This Agreement is governed by, and shall be construed in accordance with, the laws in force in the State of Victoria and the courts and registries of courts in that State shall have jurisdiction in the event of any dispute.

19 Trade Practices Act

19.1 Notwithstanding the above terms and conditions, the provisions of this Agreement shall be read subject to any implied terms, conditions or warranties imposed by the Trade Practices Act 1974 of the Commonwealth of Australia or any other applicable Commonwealth or State legislation and, to the extent that such legislation permits a supplier to limit its liability for breach thereof, the liability of Australia Post is limited at its discretion to the re-supply of the service or the cost of re-supplying the service.

20 Merger

20.1 All the rights, immunities and limitations of liability in this Agreement shall continue to have their full force and effect in all circumstances notwithstanding any breach of contract or of any conditions hereof by Australia Post.

21 Whole of Agreement

21.1 Subject to clause 1.1 this Agreement contains the whole of the Agreement between the parties in relation the special service and any representation or warranty made by either party prior to entering into this Agreement shall have no force or effect unless otherwise stated herein.