

SCHEDULE 28 – PROMO POST SERVICE 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 an 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 these terms and conditions 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 "**customer**" means a person who from time to time is approved by Australia Post as a customer of the Service and any permitted transferee in respect thereof;
- 2.5 "**Insolvency Event**" means for any corporation, the liquidation, administration, official management, compromise, arrangement, amalgamation, reconstruction, winding up or dissolution or analogous occurrence of that corporation, and for a natural person means an assignment for the benefit of creditors, an arrangement or composition with creditors, bankruptcy, incapacity to deal with one's affairs, gaoling, death or analogous occurrence;
- 2.6 "**Presort Service Guide**" means the PreSort Service Guide 8833700;
- 2.7 "**Promotional Letters**" has the same meaning as set out in the PreSort Service Guide;
- 2.8 "**Mailing Conditions**" means the conditions set out in the PreSort Service Guide or equivalent publication published by Australia Post from time to time; and
- 2.9 "**Service**" means the Promo Post Service which is a special service available to Presort Letter Service customers who lodge Promotional Letters in accordance with the Mailing Conditions and providing the customer with reduced postage rates.

3 Rates and charges

- 3.1 The customer shall pay to Australia Post the postal charges for the provision of the Service as determined by Australia Post.
- 3.2 The charges referred to in clause 3.1 shall be customer charged to the customer's Charge Account.
- 3.3 Notwithstanding any termination of this Agreement, a person shall remain liable to pay to Australia Post any charges, fees or postage due for articles carried pursuant to these terms and conditions.

4 Customer's Warranty

- 4.1 The customer warrants and agrees that:
 - 4.1.1 it has obtained the approval of Australia Post to use the Service at the approved lodgement point/s; and
 - 4.1.2 at lodgement two unsealed samples of Promotional Letters will be provided for inspection that are representative of the contents of the accompanying batch of Promotional Letters to ensure the sample and accompanying Promotional Letters satisfy the Mailing Conditions. Any samples provided to Australia Post will not be returned and may be destroyed; and
 - 4.1.3 all Promotional Letters comply with the requirements set out in the Mailing Conditions current as at the date of lodgement of such Promotional Letters.
- 4.2 To the extent permitted by law, the customer shall indemnify Australia Post against any loss or damage arising from a breach of any of the warranties in clause 4.1.

5 Discretionary Carriage and Lodgement

- 5.1 Australia Post may, in its sole and absolute discretion:
 - 5.1.1 refuse to carry; or
 - 5.1.2 charge the customer postage at ordinary post rates or Presort Letter Service rates, in respect of Articles lodged contrary to clause 4.1 subject to the applicable Australia Post Terms and Conditions.
- 5.2 The customer agrees that the Presort Letter Service Terms and Conditions will apply to an Article that is not a Promotional Letter but otherwise satisfies the requirements of the Presort Letter Service.
- 5.3 Australia Post may, in its sole and absolute discretion, direct a customer to Lodge Promotional Letters at any Australia Post lodgement facility.

6 No other service

- 6.1 The Service cannot be used in conjunction with any other Australia Post services except as otherwise provided under a separate written agreement between a customer and Australia Post.

7 Right of Inspection

- 7.1 Where so required, a person lodging Promotional Mail for delivery by the service shall permit Australia Post to open articles of a Lodgement, at the time of Lodgement, to ensure the contents are in accordance with any Mailing Conditions and any other written instructions advised by Australia Post to the customer from time to time.

8 Applicability

- 8.1 This Agreement shall not be transferred without the prior written consent of Australia Post. Any purported transfer without such consent shall be void and of no effect.
- 8.2 Where the customer, being a partnership, is reconstituted by the retirement or addition of partners, the reconstituted partnership is deemed to be the customer.

9 Limitation of Liability Release and Indemnity

- 9.1 Subject to clause 9.2 and the Australia Post Terms and Conditions, Australia Post shall not be liable to any person (whether in contract, tort or otherwise) for any loss or damage suffered, or that may be suffered, as a result of any act or omission, whether negligent or otherwise, by or on behalf of Australia Post in relation to the provision of the service, or any other matter or thing relating to this Agreement.
- 9.2 To the extent permitted by law, Australia Post expressly disclaims all conditions and warranties, express or implied, in respect of the Service and the carriage of Promotional Letters pursuant to this Agreement. Where the law precludes such exclusion and implies certain conditions and warranties into this Agreement, the liability of Australia Post for breach of such condition or warranty shall be limited, if legally permissible, to:
- 9.2.1 supplying the Service again; or
 - 9.2.2 payment of the cost of having the Service supplied again.
- 9.3 To the extent permitted by law, the customer shall liaise and indemnify Australia Post against any loss or damage whatsoever which Australia Post may suffer as a result of any action, proceeding, claim, demand or prosecution arising from the provision of the Service, or any other matter or thing arising as a result of this Agreement, including loss or damage arising from the negligent acts or omissions of Australia Post, pursuant to this Agreement.

10 Force Majeure

- 10.1 Australia Post shall not be in default under the terms of this Agreement nor liable for failure to observe or perform in accordance with any provision of this Agreement for any reason or cause which could not with reasonable diligence be controlled or prevented by it, including without limitation, war, insurrection, riot, civil commotion, strikes, lock-outs, labour or industrial disputes, acts of God, acts of Governments or flood, storm, tempest, power shortages or power failure, inability to obtain sufficient labour, raw materials, fuel or utilities. During the period of an incident or incidents of "Force Majeure" this Agreement shall be suspended and delivery will recommence after the incident or incidents of "Force Majeure" end.

11 Merger

- 11.1 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.

12 Termination

- 12.1 Australia Post may, in its sole and absolute discretion, terminate this Agreement and/or any approval granted to a customer to use the Service, effective immediately, on written notice to the customer where:
- 12.1.1 the customer breaches or otherwise acts in a manner contrary to the Act, Regulations, Australia Post Terms and Conditions, Mailing Conditions or other written instructions published by Australia Post;
 - 12.1.2 the customer fails, refuses, neglects or otherwise omits to properly discharge and perform any of its obligations under this Agreement;
 - 12.1.3 the customer fails, refuses, neglects or otherwise omits to remedy any breach of this Agreement as and when required to do so by Australia Post; or
 - 12.1.4 an insolvency event occurs in relation to the customer.
- 12.2 Australia Post may, without cause, in its sole and absolute discretion, terminate this Agreement and/or any approval granted to a customer to use the service on fourteen days written notice to the customer.
- 12.3 If Australia Post terminates this Agreement pursuant to clause 12.1.1, then it may refuse future availability of this Service to the customer.

13 Variation

- 13.1 These terms and conditions may be varied or added to from time to time by Australia Post giving reasonable notice in writing, or as agreed in writing by the parties.

14 Notice

- 14.1 Any notice required to be served by or under these terms and conditions shall be sufficiently given to the Customer if left at or sent by post addressed to the customer at its last known or usual place of address and to Australia Post if sent by post to the appropriate State Administration at its current address.

15 Conditions of Carriage

- 15.1 This Agreement shall not constitute or imply any agreement between Australia Post and the customer (or any undertaking or obligation whatsoever on the part of Australia Post) with respect of the carriage of any postal article. The Australian Postal Corporation Act 1989, the Regulations and the Australia Post Terms and Conditions and other written instructions published by Australia Post from time to time shall apply to the carriage of Articles issued pursuant to the Service except to the extent that they are inconsistent with this Agreement.

16 Law

- 16.1 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 a dispute.

17 Whole Agreement

- 17.1 Subject to clause 1.1 this Agreement contains the whole of the agreement between the parties in relation to 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.

18 Severance

- 18.1 Part or all of any term and condition of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement will continue in force.