

# ON DEMAND TERMS AND CONDITIONS OF CARRIAGE

## 1. Interpretation

1.1 In these terms and conditions, unless the context otherwise indicates or requires:

“Act” means the *Australian Postal Corporation Act 1989* (Cth).

“Administrative Fee” means the fee which may be charged by Australia Post to rectify discrepancies or omissions in Manifests, or other lodgement, packaging or sorting errors.

“Agreement” means the Offer Letter and these terms and conditions.

“Australia Post” means the Australian Postal Corporation trading as ‘StarTrack Courier’ or any other business name.

“Australian Postal Corporation” means a body corporate established pursuant to the *Postal Services Act 1975* (Cth), the existence of which is confirmed by section 12 of the Act.

“Cage” means any ULD, pallet, bag, tray or other container supplied by Australia Post for the loading and transfer of Parcels for the purposes of this Agreement.

“Consignor” means the person or entity requesting the provision of the Services.

“Consumer” means the recipient of Parcels.

“Dangerous Goods” has the same meaning as in Section 23 of the *Civil Aviation Act 1988* (Cth).

“Dead Weight” means the weight of a Parcel as measured by Australia Post or, where the Parcel weight has not been measured by Australia Post, the weight declared by the Consignor.

“Force Majeure” means any cause or event which is not within the reasonable control of a party and which could not reasonably have been prevented by that party which includes acts of God, war, acts of terrorism, extreme weather conditions, floods, earthquakes, fire and industrial disputes.

“Fragile Parcels” means Parcels which contain items which by their nature are fragile, breakable or which require special handling or packing to prevent breakage, including glassware and china.

“Guide” mean the Domestic Parcels Guide and the Dangerous and Prohibited Goods and Packaging Guide, published by Australia Post (and as amended from time to time). A copy of the Guides can be located at [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/domestic-parcels-guide-jan15.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/domestic-parcels-guide-jan15.pdf) and [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/dangerous-and-prohibited-goods-guide-nov2015.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/dangerous-and-prohibited-goods-guide-nov2015.pdf).

“Lodgement Points” means the Consignor’s premises (or such other locations as agreed with Australia Post) where Parcels are collected from.

“Lodgement Times” the times for collection of Parcels by Australia Post as specified in Annexure 2 of the Offer Letter or as otherwise agreed between the parties.

“Manifest” means the electronic record containing details that Australia Post may require in respect of Parcels lodged by the Consignor in a form acceptable to Australia Post.

“Minimum Volume” means, in respect of each Service, the minimum volume of Parcels that must be consigned by the Consignor in the relevant period as specified in the Operational Materials.

“Offer Letter” means the letter from Australia Post offering the Services and countersigned by the Consignor.

“On Demand Now Service” means the “On Demand Now” service specified in Annexure 2 of the Offer Letter.

“Operational Materials” means all documents, materials and instructions, apart from the Guide, provided by Australia Post to the Customer, from time to time, which set out the details and requirements of the Services and which may be in physical or electronic form or via a website.

“Parcel” means anything carried by Australia Post and includes any receptacle, container or packaging.

“Personal Information” has the same meaning set out in the Privacy Act.

“Prescribed Weight and Dimensions” means the following requirements (which Australia Post may vary in its sole discretion from time to time):

(a) the weight of an Parcel must not exceed 25 kilograms; and

(b) the length of the greatest linear dimension of a Parcel must not exceed 50cm.

“Privacy Act” means the *Privacy Act 1988* (Cth).

“Service Fees” means the charges set out in the Offer Letter or as otherwise agreed between the parties pursuant to this Agreement.

“Services” means the on demand services for the collection of Parcels from the Lodgement Points as set out in this Agreement.

“Shortfall” means, where the Minimum Volume has not been satisfied in respect of a Service, the difference between the Minimum Volume and the amount of Parcels actually consigned in the relevant period.

“Shortfall Amount” means, in respect of a Service, an amount equal to the difference in the amount of Service Fees that would have been payable by the Consignor if there was no Shortfall and the amount of Service Fees the Consignor was actually required to pay in the relevant period.

“ULD” means the Cage used in the provision of the Services known as a Unit Load Device.

“Valuable Parcels” means Parcels which contain cash (including coins), gold, jewelry, precious stones or other similar valuables.

1.2 In this Agreement, unless the contrary intention appears:

(a) a reference to a party includes its employees, agents, representatives and sub-contractors;

(b) a reference to the singular includes the plural and vice versa; and

(c) any attachments or schedules form part of this Agreement.

## 2. Scope and Term of the Agreement

2.1 In consideration of Australia Post providing the Services, the Consignor must pay Australia Post the Service Fees, any Shortfall Payment and any fuel or other surcharge charged by Australia Post from time to time.

2.2 This Agreement begins on the date the Consignor countersigns the Offer Letter and continues until terminated pursuant to clause 20.

2.3 The Service Fees may be adjusted by Australia Post at any time. Australia Post must provide at least 30 days’ prior written notice to the Consignor of any changes to the Service Fees. If the Consignor does not agree to the new Service Fees, the Consignor may terminate this Agreement by giving written notice to Australia Post at least seven days before the adjustment in the Service Fees is due to take effect. If the Consignor does not terminate this Agreement at least seven days before the adjustment in the Service Fees is due to take effect, the Consignor will be deemed to have accepted the adjusted Service Fees and Australia Post will continue to provide the Services.

2.4 In addition to clause 2.3, Australia Post may from time to time increase the Service Fees for the Services for certain specified periods of time when Australia Post reasonably expects additional demand for the Services provided to the Consignor and other consignors (“Surge Periods”). Australia Post must provide at least fourteen days prior written notice to the Consignor of the duration and the increase in Service Fees of the applicable Surge Period. The Consignor may suspend the Services during any Surge Period by giving written notice to Australia Post at least seven days before the Surge Period is due to take effect. If the Consignor does not provide notice to Australia Post to suspend the Services at least seven days before the Surge Period is due to take effect, the Consignor will be deemed to have accepted the increased Service Fees during the Surge Period. If the Consignor elects to suspend the Services at least seven days before the Surge Period is due to take effect, the Services will be suspended during the Surge Period and will resume on the date that the Surge Period expires.

2.5 The Consignor must consign the Minimum Volume in the relevant period and, in respect of any Service where there is a Shortfall, pay the Shortfall Amount to Australia Post.

2.6 The Consignor will be liable for any other reasonable charges or expenses incurred by Australia Post as a direct consequence of the provision of Services.

## 3. Consignor’s Obligations

3.1 The Consignor must not consign Parcels which constitute Fragile Parcels or Valuable Parcels or contain Dangerous Goods (unless otherwise approved by Australia Post under clause 13).

3.2 The Consignor must advise Australia Post, at the time it requests any of the Services, of any variation in:

(a) the weight or dimension of a Parcel from the Prescribed Weight and Dimensions; and

(b) any change to any of the Services including, but not limited to, cancellation, change of address or other particular, or addition to, any Services, so that, if Australia Post elects in its sole and absolute discretion to accept such variation in the Services, Australia Post can make special arrangements for collection and delivery.

## 4. Consignor Warranties

4.1 The Consignor warrants that in agreeing to this Agreement it is or has the authority of and is the agent of, the person or persons owning or having any interest in the Parcel or any part of it.

4.2 The Consignor warrants that it has complied with all state, territorial and federal laws and regulations relating to the consigning, labelling, packaging, carriage, storage and delivery of Parcels. In particular, the Consignor acknowledges its responsibility in respect of each applicable Parcel to complete and affix a Dangerous Goods Declaration in accordance with the civil aviation safety regulations. Further, the Consignor acknowledges that the Act and the regulations made under the Act apply to this Agreement.

4.3 The Consignor warrants that all information provided to Australia Post, whether orally, in writing or electronically, is accurate and complete.

## 5. Australia Post is not a Common Carrier

Parcels provided to Australia Post by the Consignor pursuant to this Agreement are subject to these terms and conditions. Australia Post is not, and will not be liable as, a common carrier.

## 6. Insurance

Australia Post neither offers nor arranges insurance for any damage, loss or delay to any Parcel. The Consignor acknowledges that the Service Fees have been agreed taking into account that Australia Post does not offer or arrange such insurance. Any insurance required by the Consignor for any Parcel is to be arranged by the Consignor independently of this Agreement.

## 7. Limitation of Liability and Indemnity

7.1 Subject to clause 8, Australia Post will not be liable to the Consignor nor to any other person, company or corporation for any loss or damage (including for consequential or indirect loss) whatsoever suffered or that may be suffered (whether in contract or in tort) as a result of any act or omission, by or on behalf of Australia Post in relation to the provision of the Services, except to the extent that the loss or damage causes death or personal injury or is a direct result of the fraud or wilful misconduct of Australia Post.

7.2 Australia Post will be discharged from all liability whatsoever in respect of a Parcel:

- (a) where notice in writing of a claim has not been given to Australia Post within twenty one days of the date of delivery or where delivery has not been made, within twenty one days of the date when delivery ought to have or would have been made, in the ordinary course of business, been effected; or
- (b) where suit is not brought within twelve months of the date of delivery, or where delivery has not been made, within twelve months of the date when delivery ought to have or would have been made, in the ordinary course of business, been effected.

7.3 The Consignor agrees to indemnify Australia Post against any loss or damage which Australia Post may suffer directly as a result of any action proceeding, claim, demand or prosecution arising from the Services or any failure by the Consignor to comply with the requirements of this Agreement.

## 8. Nature of the Services

Clause 7 is to be read subject to any implied terms, conditions or warranties imposed by the *Competition and Consumer Act 2010* (Cth) ("CCA") and, to the extent that such legislation or the law permits, Australia Post expressly disclaims all conditions and warranties, express or implied in respect of the Services. If any condition or warranty is implied into this Agreement pursuant to any legislation (including, without limitation, the CCA) and the applicable legislation voids or prohibits provisions in this Agreement excluding or modifying the application of, exercise of or liability under such condition or warranty, that condition or warranty will be deemed to be included in this Agreement, provided that the liability of Australia Post for breach of the condition or warranty will, to the extent such legislation permits, be limited, at its discretion and provided it is reasonable to do so, to:

- (a) the resupply of the Service; or
- (b) the cost of resupply of the Service,

in respect of which Service the breach occurred, and otherwise will be limited to the maximum extent permitted by law.

## 9. Benefit of Limitation

Any clause of this Agreement which excludes or limits the liability of Australia Post in respect of the provision of the Services will extend to protect Australia Post's employees, directors, agents and sub-contractors and any other person in respect of the provision of any or all of the Services to be performed pursuant to this Agreement.

## 10. Provision of the Services

Australia Post reserves the right, in the exercise of its reasonable business judgement in respect of the provision of the Services, to:

- (a) sub-contract all or any of the Services to appropriately qualified sub-contractors;
- (b) carry or store Parcels in such a manner that it reasonably considers necessary; and
- (c) deviate from the usual route of carriage where Australia Post considers it necessary or desirable in the circumstances.

## 11. Confidential Information

Each party acknowledges and agrees that:

- (a) unless otherwise specified, any information disclosed to it by the other party in connection with this Agreement or the provision of the Services ("*Information*") is disclosed in confidence and it will maintain that Information in confidence; and
- (b) it will not use or disclose such Information other than for the purposes of this Agreement.

## 12. Privacy

12.1 Australia Post's obligations relating to the handling of Personal Information are contained in the Act, the Privacy Act and the Australia Post Privacy Policy (<http://auspost.com.au>).

12.2 If Australia Post's obligations under this Agreement are inconsistent with those set out in clause 12.1 in respect of the same subject matter, the obligations under the Act, the Privacy Act or the Australia Post Privacy Policy (as the case may be) will prevail.

## 13. Dangerous Goods and alcohol

13.1 The Consignor must not consign Dangerous Goods unless Australia Post has specifically agreed in writing beforehand that such Dangerous Goods may be consigned. Nothing in this clause 13 will be construed as imposing any obligation on Australia Post to agree to carry Dangerous Goods.

13.2 Provided that clause 13.1 has been complied with, if the Consignor wishes to consign Dangerous Goods, the Consignor must:

- (a) within a reasonable period of time before it intends sending such Dangerous Goods, advise Australia Post in writing of:
  - i. a full description of those Dangerous Goods including the nature, value and quantity of those Dangerous Goods; and
  - ii. the packing arrangements proposed by the Consignor to ensure safe and adequate packing, taking into account the nature and risks ordinarily associated with the carriage and storage of such Dangerous Goods;
- (b) comply with:

- i. any applicable laws, regulations or requirements relating to the packing, storing or transportation of Dangerous Goods; and

- ii. any special instructions by Australia Post in respect of those Dangerous Goods; and

(c) pay any additional charges reasonably incurred by Australia Post on behalf of the Consignor in respect of the consignment of those Dangerous Goods.

13.3 If, in Australia Post's reasonable opinion, a Parcel containing Dangerous Goods:

- (a) presents, or is likely to present, an immediate danger or an unacceptable risk of danger to any person, property or the environment; or
- (b) is or is likely to become dangerous, inflammable, explosive, volatile, offensive or damaging during carriage,

the Consignor authorises Australia Post to destroy, dispose of, abandon or render harmless the Parcel without any liability or obligations to compensation the Consignor.

13.4 The Consignor indemnifies Australia Post against all claims, losses, damages or expenses arising as a consequence of the consignments of Dangerous Goods.

13.5 The Consignor must not consign alcohol where possession or carriage of alcohol by post or courier services is prohibited by federal, state or territory law.

## 14. Locations, nature and scope of Services

The locations (including where Parcels are available to be collected from and delivered to) may be amended by Australia Post from time to time at the website specified in Annexure 1 of the Offer Letter provided that the amendment is published on that website at least 30 days before the changes take effect.

## 15. Authority to leave Parcels

15.1 Where the Consignor has requested the Services, the Consignor must provide Australia Post with:

- (a) authorisation (in such form prescribed by Australia Post) to collect Parcels on behalf of the Consumer;
- (b) authorisation (in such form as prescribed by Australia Post) from the Consumer to leave Parcels on the Consumer's premises (the address of such premises as nominated by the Consignor); and
- (c) the Consumer's email address or telephone number.

15.2 The Consignor acknowledges and agrees that the delivery of Parcels is deemed to have taken place where Parcels are delivered to the Consumer or left at the Consumer's nominated address.

## 16. Increased volume

16.1 At times when the Consignor reasonably considers it is likely there will be an increase in volume, above its ordinary trading levels, of consignments through the Services ("*Increased Volume*"), the Consignor must provide at least seven days' prior written notice to Australia Post (or such short period agreed by Australia Post) of the Increased Volume ("*Increased Volume Notice*"). Any Increased Volume

Notice must include a reasonable estimate of the expected volume of Parcels sent through the Services in any such periods of Increased Volume.

16.2 For the purposes of clause 16.1 and without limitation, an Increased Volume Notice must be provided to Australia Post when the Consignor offers free delivery of Parcels through the Services or offers sales or discounts to Consumers when there is a reasonable likelihood that it will lead to an increase in volume of Parcels being consigned through the Services.

## 17. Service Performance Acknowledgment

The Consignor acknowledges that the delivery and performance of the Services by Australia Post will not affect or otherwise be included in the calculation of minimum performance obligations (if any) in respect of other services provided by Australia Post, the Australia Postal Corporation or any of its related entities.

## 18. Service Requirements

18.1 The Consignor must lodge Parcels at the Lodgement Points and at the Lodgement Times and, subject to the terms of this Agreement, Australia Post must collect Parcels that the Consignor wishes to lodge pursuant to this Agreement.

18.2 The Consignor must provide an accurate and completed Manifest simultaneously with all lodgements of Parcels. If the Consignor integrates with Australia Post's lodgement systems for the printing of postage labels and the preparation and communication of Manifests using either one of Australia Post's tools or third party systems for this purpose, the integration will be covered by separate terms and conditions.

18.3 All user account information, log-in details and passwords used in connection with integration with Australia Post's lodgement systems are Information for the purposes of clause 11 and must not be disclosed to any third party.

18.4 The Consignor must prepare and sort Parcels in accordance with the following requirements:

- (a) having regard to the nature of their content, all Parcels must be safely and adequately packed so as to avoid being damaged or causing damage to other Parcels;
- (b) all Parcels must bear postage and service indicators and any sorting barcode or other barcode in such form and manner as prescribed by Australia Post from time to time;
- (c) all Parcels must bear a postal address (including a postcode) in accordance with Australia Post's addressing specifications and which is complete, concise and clearly written or printed. The address should be applied to the opposite face to the largest flattest face of the Parcel;
- (d) where a single Parcel exceeds 16 kilograms in Dead Weight, the words "Exceeds 16kg" must be prominently stamped immediately above or to the left of the address and on the reverse side of the Parcel. A "Heavy Parcel" label should also be applied to the front and rear of the Parcel;

(e) Where required by Australia Post, Parcels must be placed in a Cage. Parcels must not protrude outside the confines of a Cage. The total weight of the Parcels contained within an Australia Post ULD must not exceed 500kgs in weight inclusive of the weight of the ULD itself. The Consignor must indicate the net weight of each loaded Cage on the label accompanying the Cage;

(f) the Consignor must apply routing barcodes to Parcels and ensure that a routing barcode bears an accurate representation of the delivery postcode and a unique delivery point identifier allocated to each address by Australia Post and that routing barcode must be applied on or adjacent to the address label of each Parcel lodged. The routing barcode must be in the format specified by Australia Post from time to time;

(g) the Consignor must sort and lodge Parcels under this Agreement separately from any other Parcels carried by Australia Post or any of its related bodies corporate; and

(h) for the On Demand Now Service, Parcels must be sorted by postcodes as specified by Australia Post.

18.5 Where the Consignor loads Parcels into an Australia Post vehicle, it must do so in accordance with the safety standards as notified by Australia Post.

18.6 Australia Post must:

(a) consult with the Consignor about the type and quantity of Cages (if any) required by the Consignor in connection with the provision of the Services; and

(b) provide the Consignor with the appropriate number and type of Cages in good serviceable condition.

18.7 The Consignor must:

(a) use ULDs in preference to other forms of Cage for the transportation of Parcels unless otherwise agreed by Australia Post for particular consignments;

(b) use Cages solely for facilitating the carriage of Parcels by Australia Post;

(c) maintain Cages in good serviceable condition and use them only in a proper and safe manner and strictly in accordance with any instructions provided by Australia Post;

(d) ensure all Cages are kept secure when not in use and are not transported to, or removed from, the premises at which the Consignor received those Cages unless such removal is by Australia Post;

(e) maintain an inventory of all Cages which are ULDs, on the Consignor's premises and, where requested by Australia Post, report on this inventory; and

(f) return all Cages to Australia Post in good condition (fair wear and tear excepted) immediately when requested, or at the termination of this Agreement.

18.8 If a Cage is misused, damaged, stolen or lost whilst in the possession or control of the Consignor, the Consignor is liable for the repair or the replacement cost of the Cage.

18.9 Australia Post is not obliged to collect any Parcels that do not comply with the requirements in this clause 18 and may charge an Administrative Fee in relation to any Parcel which does not meet the requirements of this clause 18.

#### **19. Compliance with the Guides and Operational Materials**

19.1 The Consignor must comply with the Guide. If there are any terms in the Guide which are inconsistent with this Agreement, this Agreement will prevail to the extent of the inconsistency.

19.2 The Consignor must comply with any Operational Materials provided to it from time to time. If there are any terms in the Operational Materials which are inconsistent with this Agreement, this Agreement will prevail to the extent of the inconsistency.

#### **20. Termination**

20.1 Either party may terminate this Agreement at any time with immediate effect by giving the other party written notice of termination where:

(a) the other party commits a material breach of this Agreement which is not remediable; or

(b) the other party, having breached a term of this Agreement which is remediable and having been given a notice which specifies the breach that has occurred and requires rectification of the breach within fifteen days, fails to remedy the breach within that period.

20.2 Notwithstanding the provisions of clause 20.1, either party may terminate this Agreement upon giving thirty days' written notice to the other party.

#### **21. Force Majeure**

21.1 Neither party is liable for delays or for non-performance due to an event of Force Majeure.

21.2 An obligation to pay money which is due and payable is not excused by Force Majeure.

#### **22. Assignment**

The Consignor must not assign or transfer this Agreement without the prior written consent of Australia Post, such consent not be unreasonably withheld.

#### **23. Lien**

23.1 Australia Post has a general lien for all Service Fees and charges due and payable by the Consignor over the Parcels the subject of this Agreement.

23.2 In the event of a failure by the Consignor to pay an amount that is due and payable to Australia Post in respect of Services provided under this Agreement, Australia Post may sell the Parcels and their contents and apply the proceeds thereof towards discharge of the lien and the reasonable and direct costs of the sale.

#### **24. Variation**

This Agreement may be waived, varied or amended from time to time:

(a) by written agreement between Australia Post and the Consignor; or

(b) unilaterally by Australia Post by making a notice available online thirty days' prior to the change coming into effect.

#### **25. Internet Terms**

If Australia Post and the Consignor agree to contract in respect of a Parcel or to book a Parcel for consignment by using the internet, then the parties agree that the terms of this Agreement apply to any such contract or booking using the internet.

#### **26. Applicable Law**

This Agreement is governed by, and is to be construed in accordance with, the laws in force in the State in which this Agreement is entered.

#### **27. GST**

27.1 The Consignor must pay Australia Post any amount of GST that Australia Post is required to pay in connection with the Services at the same time as Australia Post is required to pay the consideration for the supply to which the GST relates. Each party agrees that, to the extent it makes taxable supplies under this Agreement, it must issue a tax invoice to the other party.

27.2 If the GST rate changes and results in an increased GST liability for Australia Post, Australia Post can recover this amount from the Consignor.

27.3 If a supply made under this Agreement is treated as not subject to GST but is, or becomes, a taxable supply, the supplier may charge and recover from the recipient, in addition to any other consideration, an amount equivalent to the GST payable on that taxable supply. This clause 27 survives the termination of this Agreement and the completion of the transactions contemplated by it.

27.4 If, in relation to a supply made under this Agreement, an adjustment event occurs that gives rise to an adjustment, then the price of that supply (including any GST Amount) will be adjusted accordingly and, where necessary, a payment will be made to reflect that adjustment. As a precondition to Australia Post paying any amount to a supplier in respect of an adjustment, the supplier must issue a compliant adjustment note.

27.5 Unless a contrary intention appears, words or expressions used in this clause 27 have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).