



Melbourne Mail Management's Conditions For The Provision Of Goods And Services

1: GENERAL CONDITIONS

1. Definitions

- 1.1 'Buyer' means the person who buys or agrees to buy the Goods from the Seller.
- 1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 'Delivery Date' means the date specified by the Seller when the Goods are to be delivered.
- 1.4 'Goods' means the articles which the Buyer agrees to buy from the Seller. Reference in this agreement to 'Goods' shall where the context permits also include any services provided by the Seller to the Buyer, including but not limited to mail delivery services
- 1.5 'Price' means the price for the Goods excluding carriage, packing, and insurance.
- 1.6 'Seller' means **Melbourne Mail Management**
PO Box 222 Kerrimuir VIC 3129
Australia

2. Conditions applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 2.2 All orders for the Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation of these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.5 The Buyer acknowledges that the Buyer has been informed by the Seller that Goods provided pursuant to this agreement may be provided wholly or in part by independent contractors, including but not limited to services pertaining to the delivery of mail.

3. The Price and payment

- 3.1 The Price shall be as quoted **[see quote]**.
- 3.2 Payment of the Price shall be due within **7** days of the date of the invoice. Time for payment shall be of the essence.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of **5 %** above the penalty interest rate prescribed from time to time pursuant to the Penalty Interest Rates Act 1983.
- 3.4 The Price of the Goods shall be the Seller's quoted price which shall be binding on the Seller provided that the Buyer shall accept the Seller's quotation within **14 days**. The Seller may, by giving notice to the Buyer at any time up to **4** days before delivery, increase the Price of the Goods to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the contracts of sale which are beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials, costs of supply and costs of independent contractors engaged by the Seller). The Buyer may not cancel the contract in these circumstances unless such an increase exceeds **15%** of the Sellers quoted price, and in that event the Buyer may cancel this contract within **4 days** of any such notice from the Seller.
- 3.5 If the Buyer fails to make any payment on the due date then without prejudice to any of the Seller's other rights the Seller may:
- 3.5.1 suspend or cancel deliveries of any Goods due to the Buyer; and/or
- 3.5.2 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.

4. The Goods

- 4.1 The quantity and description of the Goods shall be as set out in the Seller's quotation.
- 4.2 The Goods shall be supplied in accordance with the description contained in the Seller's specification.
- 4.3 The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.
- 4.4 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
- 4.4.1 such discrepancy in quantity shall not exceed **15 %**
- 4.4.2 the Price shall be adjusted pro rata to the discrepancy.
- 4.5 The specification[s] and design[s] of the Goods (including the copyright, design right or other intellectual property in them shall as between the parties be the property of the Seller. Where any designs or specifications have been supplied by the Buyer for manufacture or delivery by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

5. Warranties and liability

5.1 The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller.

6. Delivery of the Goods

6.1 Delivery of the Goods shall be made to the Buyer's address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

7. Acceptance of the Goods

- 7.1 The Buyer shall inspect the Goods on delivery and shall within [24 hours] of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with descriptions or sample. The buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.
- 7.2 The Buyer shall notify the Seller of any non-delivery of a whole consignment of complete cartons within **3** days of the date of dispatch (as stated on the invoice). Notwithstanding the receipt by the Seller of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of cartons indicated on the advice sheet.
- 7.3 If the Goods are not in accordance with the contract for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage by replacing such Goods or, if the Seller shall elect, by refunding a proportionate part of the Price.
- 7.4 The Seller's liability to the Buyer, whether for any breach of contract or otherwise, shall not in any event exceed the Price and the Seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer.
- 7.5 If the Buyer properly rejects any of the Goods which are not in accordance with the contract the Buyer shall nonetheless pay the full Price for such Goods unless the Buyer promptly gives notice of rejection to the Seller and at the Buyer's cost returns such Goods to the Seller before the date when payment of the Price is due.
- 7.6 No goods delivered to the Buyer which are in accordance with the contract will be accepted for return without the prior written approval of the Seller (in accordance with the Seller's returns authorisation procedure) on terms to be determined at the absolute discretion of the Seller.
- 7.7 If the Seller agrees to accept any such Goods for return the Buyer shall be liable to pay a handling charge of **100** % of the invoice price. Such Goods must be returned by the Buyer carriage-paid to the Seller in their original shipping carton. Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.

8. Title and risk

- 8.1 The Goods shall be at the Buyer's risk as from delivery.
- 8.2 In spite of delivery having been made property in the Goods shall not pass from the Seller until:
 - 8.2.1 the Buyer shall have paid the Price in full; and
 - 8.2.2 no other sums whatever shall be due from the Buyer to the Seller.
- 8.3 Until property in the Goods passes to the Buyer in accordance with clause 8.2.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 8.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until the property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 8.5 The Seller shall be entitled to recover the Price notwithstanding that property in any of the Goods has not passed from the Seller.
- 8.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 8.4 shall cease.
- 8.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the seller shall forthwith become due and payable.
- 8.8 The Buyer shall insure and keep insured the Goods to the full Price against "all risks" to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

9. Insolvency or other default of Buyer

- 9.1 If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or if the Buyer is unable to pay its debts as and when they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrator administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets of the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:
 - 9.1.1 suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability upon its part; and/or
 - 9.1.2 exercise any of its rights pursuant to clause 8.
- 9.2 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or alleges to have for any reason whatever.

- 10 Force Majeure**
The Seller does not accept liability or pay compensation for any loss, damage or expense where the performance or prompt performance of its obligations in this contract is prevented or affected by reason of "force majeure". "Force majeure" means any event beyond the Seller's control which the Seller could not, even with all due care, foresee or avoid, and includes war or threat of war, riots, civil strife, terrorist activity, industrial action, natural or nuclear disaster, fire, epidemics, severe weather conditions, closure of airports or ports, governmental action and all similar events.
- 11. Jurisdiction**
10.1 This contract is subject to the laws of Victoria
10.2 All disputes arising out of this contract shall be subject to the jurisdiction of the Courts of Victoria.
- 12. Notices**
11.1 Any notice required to be served pursuant to this contract of sale shall be in writing and served by pre-paid post or by hand on the Seller at **PO BOX 222 Kerrimuir VIC 3129 Australia** or such other address as the Seller may from time to time notify to the Buyer and on the Buyer at the Buyer's registered office or principal place of business.
- 13. Warranty of Buyer**
13.1 In circumstances where the Buyer has provided to the Seller any kind of documentation, correspondence or publication ("the documentation") and has requested the Seller to provide mailing services for the dissemination, mailing or delivery of the documentation, the Buyer warrants that the documentation does not contain anything that is defamatory, offensive or contrary to law and agrees to indemnify and keep indemnified the Seller for all or any actions, claims, disputes or liabilities howsoever arising in circumstances where it is alleged or found that the documentation is defamatory, offensive or contrary to law.
- 14. Confidential Information**
14.1 The Buyer and Seller shall at all times hereafter with respect to any information of a confidential or sensitive nature ("Confidential Information") passing between them or divulged to the other by reason of this or any other agreement:
(a) maintain the secrecy of any Confidential Information;
(b) refrain from divulging or disclosing to any other person, firm, corporation or entity any Confidential Information;
(c) refrain from using or attempting to use Confidential Information in any manner which will or may cause or be calculated to cause injury or loss to either the Buyer or Seller or their respective clients;
(d) refrain from copying or transmitting any Confidential Information, or attempting to do the same; and use their best endeavours to protect the disclosure of any of the Confidential Information by or to third parties.
14.2 For the purposes of this agreement, the meaning of 'Confidential Information' shall be deemed to include the Seller's price and client lists, and quotations.