

Terms and Conditions Of Intellimail International Pty Ltd (IMI) ABN: 72 646 117 935

RECITALS:

IMI carries on a direct marketing and distribution business in Victoria. The Customer has requested IMI to provide the *Services* and IMI has agreed to provide those *Services* in accordance with the terms and conditions of this agreement. The Customer acknowledges that IMI may use subcontractors to perform some or all of the *Services*.

THE PARTIES AGREE THAT:

INTERPRETATION

In interpreting this agreement: words in italics are defined in the Schedule; legislative reference include subordinate legislation and any variations, re-enactment or replacement; the singular includes the plural and vice versa, a gender includes each other gender and words denoting individuals include corporations, partnerships, unincorporated associations and instrumentalities; the grammatical derivatives of a defined word or phrase will have a corresponding meaning; headings may be used in interpretation; and the Recitals, Schedules and Annexures form part of this agreement.

APPOINTMENT

The Customer appoints IMI to provide the *Services* in respect of the *Products* in the *Territory*. IMI accepts the appointment.

This agreement commences at the *acceptance of the quotation*.

FEES

The Customer agrees to pay the *Fees* for the *Services*. The *Customer* will pay the *Fees* within 7 *Business Days* of the invoice date. First job fees are to be paid upon order. Credit pending approval there after License use and implementation fee is to be payed upon installation of application.

Support and maintenance fees to be paid upon installation of application and yearly thereafter. License use and implementation fee must be repaid if Support and maintenance fees are not renewed. IMI may prospectively vary the *Fees* by written notice. IMI may increase the *Fees* without notice if IMI or IMI's subcontractor's costs of providing the *Services* increase due to increases in the market prices of business inputs, including (without limitation) paper stocks and postage. The Customer grants IMI a lien over all the *Products* until payment of all accounts.

All amounts in respect of a taxable supply are expressed as GST exclusive amounts.

If a party makes a taxable supply under this agreement, the recipient of that taxable supply must also pay the amount of any GST payable in respect of that taxable supply at the same time and in the same manner as paying for the taxable supply.

Each party continually warrants that:

the party is registered or required to be registered for GST; the party's ABN stated in this agreement is correct; and the party's ABN has not been cancelled. Any amount not paid on time will be a debt payable by the Customer together with interest charged at the rate specified under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*.

IMI'S RIGHTS & OBLIGATIONS

IMI will: act as bailee only in respect of the *Products*; maintain adequate supply of the *Products* to perform the *Services*; distribute the *Products* in accordance with the *Services*; and endeavor to provide the *Service* within 1 *Business Day* of the Customer's request by 10.00am day prior to provide those *Services* dependant on agreed volume consistency.

IMI will not:

obtain or assert any ownership over the *Products*; convert any of the *Products* to IMI's own use; sell any of the *Products*; and modify any of the *Products* or the packaging of the *Products*, without the prior written consent of the Customer.

CUSTOMER'S WARRANTIES & OBLIGATIONS

The Customer warrants:

that the Customer is the owner of the *Products*; that the Customer has obtained all authorities and approvals from *Governmental Agencies* in respect of the distribution of the *Products*; the *Products* are not offensive or illegal; and the *Products* are not dangerous when distributed by the methods to be used in providing the *Services*.

The Customer will:

procure and maintain all authorities and approvals from *Governmental Agencies* in respect of the distribution of the *Products*; continually insure the *Products* against all usual risks and liabilities, including (without limitation) product liabilities; supply IMI with proper industry quality and sufficient *Products* in a timely manner to permit IMI to perform the *Services* supply IMI with proper industry quality and sufficient *Data* in a timely manner to permit IMI to perform the *Services*; and

The Customer will prospectively comply with any terms and conditions of IMI's subcontractors (as varied) when notified of those terms and conditions or variations.

CONFIDENTIAL INFORMATION

IMI may provide the Customer with certain confidential information and the Customer must:

not disclose any of the confidential information to any other person in any way; endeavor to protect and preserve the confidentiality of that confidential information so that none of the confidential information passes into the public domain; and not use or exploit that confidential information in any way.

The Customer is not prohibited from disclosing the confidential information where:

it has entered the public domain (other than through a breach of confidence by the Customer); required by law, court proceedings or a binding order of a *Governmental Agency*; or IMI has consented to the disclosure in writing. The Customer must collect and return all copies of the confidential information regardless of how it is embodied or recorded to IMI within 5 *Business Days* of the termination of this agreement.

MATERIALS:

IMI assumes in all quotations that all material provided will permit efficient handling on automated equipment and meets equipment manufacturer's published specifications. Materials furnished that are within manufacturer's specifications, but which are not up to acceptable operational standards due to poor folding, facing, trimming, packing, sticking together of material, insufficient leeway between enclosures and envelopes, square envelope flaps or other causes, will be subject to pricing at special rates. Customer will be notified when a deficiency is discovered and approval will be obtained for handling at special rates before proceeding with work. A new delivery schedule may result when deficient materials are used.

IMI is not responsible for identifying errors in preprinted copy on customer-furnished materials and assumes no liability for damages resulting from the mailing of materials which contain erroneous information. When performing mailings for not-for-profit customers, IMI is not responsible for content in mailed materials which causes a customer to lose their Nonprofit Status. All direct mail handling and processing involves spoilage. Spoilage of up to three (3) percent of customer's material is typical. Allowances for spoilage should be taken into consideration in ordering material. Every effort will be made to handle customer's material with frugality and to prevent undue spoilage. Nevertheless, IMI cannot accept responsibility for

shortages of material as a result of normal spoilage in processing. All stock and materials belonging to a customer will be held and stored only at the customer's risk, and the customer shall be responsible for insurance on their material.

Printer delivery tickets must accompany the material delivered and should show the number of skids or cartons, the quantity per skid or carton and the total delivery quantity. Each incoming carton or skid must bear an identity, item code, quantity and a sample clearly visible.

Each skid should have only one material version, unless clearly marked and separated. Multiple items should not be included within a single carton, skid or container unless noted thereon and on accompanying paperwork. IMI will apply a surcharge for any rework necessary for materials received not meeting these specifications. We accept printers' count until processing and assume no responsibility for shortages discovered at that time. Additional charges will apply if customer requires IMI to verify printer's counts prior to processing. Customer is expected to provide IMI with sufficient inventory or adequate sources of supply to meet anticipated demand. Cost for backorders, delay notices, cancelled orders and increased customer service resulting from out of stock conditions will be billed additional to customer

DELIVERY SCHEDULES:

IMI will make every reasonable effort to meet scheduled delivery and mailing date(s), but because of the many factors outside its control, accepts no liability for failure to meet scheduled date(s). In addition, IMI has no control over Australia Post service levels. Delivery schedules and cannot guarantee when mail or shipments deposited with or released to Australia Post will be delivered. The customer shall accept the date which mail or shipments were deposited with or released to Australia Post as the date of delivery.

All orders are accepted contingent to fire, accident, acts of God, mechanical breakdown or other causes beyond IMI's control. Since the time element is an integral part of the mailing business, quoted prices are based upon a specific set of time schedules for completion. Any requested deviation from the schedules described or agreed upon by both parties at commencement of order may alter the quoted price. Late material may affect the completion date of the order by a greater degree than the actual elapsed time the material is late.

FRUSTRATION

IMI is not required to carry out *Services* so far as that failure is due to circumstances beyond IMI's control, including (without limitation) inability or refusal by the subcontractor to carry out the *Services* (for any reason or any cause).

IMI is not required to settle any strike or other labor dispute on terms contrary to IMI's wishes or to contest the validity or enforceability of any law or regulation by legal proceedings.

IMI's failure to carry out the *Services* due to circumstances beyond IMI's control will not affect the Customer's liability or time to pay any money under this agreement.

GROUND FOR TERMINATION AND RECOVERY

IMI may immediately terminate this agreement and all money under this agreement immediately become payable if any of the following occurs:

- (a) any amount (in whole or part) due under this agreement is unpaid for 7 *Business Days* after it was due (whether or not legally or formally demanded);
- the Customer fails to observe or perform any of the terms or obligations (expressed or implied) in this agreement and that default has remained un-rectified for a period of 7 *Business Days* after notice specifying full details of the default and requesting rectification of the default has been given;
- the Customer:
- (i) enters into liquidation or administration (voluntarily or otherwise), except for the purpose of reconstruction or amalgamation;

- (ii) has a receiver, a receiver and manager, an administrator, controller or other insolvency administrator appointed (whether appointed by the Court or otherwise);
- (iii) is placed under official management or has an official manager appointed;
- (iv) is declared bankrupt or insolvent under administration according to law or performs any act or thing which would constitute an act of bankruptcy under the *Bankruptcy Act 1968* (Cth);
- (v) calls a meeting of creditors or make or attempt to make any composition with or arrangement for the benefit of creditors; or
- (vi) assigns (in whole or part) any property for the benefit of creditors.

The Customer may terminate this agreement with 3 months written notice, if IMI fails to observe or perform any of the terms or obligations (expressed or implied) in this agreement and that default has remained un-rectified for a period of 7 *Business Days* after notice specifying full details of the default and requesting rectification of the default has been given.

ARBITRATION

A party may by written notice refer a dispute about any matter relating to concerning or arising out of this agreement to arbitration.

The President (or his or her delegate) of the Law Institute of Victoria (or its successor) will appoint the arbiter.

The arbitration will be conducted in accordance with the *Commercial Arbitration Act 1984* (Vic), except that: the arbitrator must observe the rules of natural justice and rules of evidence;

a party may be represented by a lawyer or other representative;

the parties consent to an appeal to the Victorian Supreme Court on any question of law arising in the course of the arbitration or out of the arbitration award.

INDEMNITY

IMI will not be responsible to the Customer for any loss, damage or injury (of any kind or cause) arising out of the acts or omissions of IMI in performing this agreement. The Customer will continually indemnify IMI against all *ClalMI* in respect of any loss, damage or injury (of any kind or cause) (including legal fees) that IMI may sustain as a result of or arising out of the acts or omissions of the Customer in performing this agreement, except to the extent that such loss, damage or injury arises directly from IMI's negligence, willful misconduct or bad faith.

To the extent permitted by law, IMI's statutory liability (if any) for any loss, damage or injury (of any kind or any cause) to the Customer is limited to the *Fees* for the relevant *Services*.

The Customer will pay IMI any enforcement costs (including legal fees) in respect of a breach or termination (or both) of this agreement.

A reference to legal fees in this Clause means legal fees on a solicitor and own client basis.

RELATIONSHIP OF THE PARTIES

The parties' relationship is that of independent contractors and is not intended to be that of agency, partnership or joint venture.

The parties do not consider themselves to be under any fiduciary obligation towards each other.

NOTICES

A notice under this agreement may be served by facsimile or by leaving it at or by posting it to the recipient in a prepaid registered or certified letter addressed to the recipient at the address as stated in this agreement.

A party may by notice to all parties change its details for service of notices under this agreement.

A notice sent by post is deemed to be served on the day on which it should have been delivered in the normal course of post even though the notice may be returned by the Post Office undelivered.

A notice sent by facsimile is deemed to be served at the time of arrival as noted on the confirmation slip received by the sender.

MISCELLANEOUS

Time is of the essence in performing this agreement.

This agreement contains all the terms agreed between the parties and supersedes all prior dealings and agreements between the parties relating to the subject matter.

The parties will do all things reasonably necessary or desirable to give full effect to this agreement.

This agreement may not be assigned (in whole or part) by the Customer without the prior written consent of IML.

Each indemnity is a continuing, separate and independent obligation of the Customer and survives performance and termination of this agreement.

Any waiver or variation of this agreement must be in writing signed by the party or parties to be bound by the waiver or variation.

A waiver of any breach of this agreement will not affect any other rights and remedies in respect of any other breach of this agreement.

A legislative or regulative amendment will not limit a term of this agreement, unless application of the law is mandatory.

A part of this agreement that is illegal, unenforceable or inoperative must be read down to the extent necessary so that it is operational or must be severed from this agreement if it cannot be read down.

The laws and courts of Victoria and the Commonwealth of Australia apply to this Agreement.

GENERAL INFORMATION

Business Days

means a day that is not a Saturday, a Sunday, a public holiday or a bank holiday in Melbourne

DISTRIBUTION RATES AND CHARGES DISTRIBUTION RATES ARE SUBJECT TO CHANGE IF CHARGED BY IML.

Claim

means any right of action, loss, expense or liability to or incurred or recovered by or against a person of any nature and however arising (whether present, unascertained, immediate, future or contingent)

Governmental Agency

means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department or commission, authority, tribunal, agency or entity

Products

As described within the quotation

Territory

*Victoria, *NSW, *Tasmania, *Queensland, *WA, *SA, *NT, *ACT, OR Australia