

LETTERBOX DISTRIBUTORS PTY LTD T/A LETTERBOX DISTRIBUTORS - TRADING TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. The Supplier is Letterbox Distributors Pty Ltd of 26-28 Scammel Street, Campbellfield VIC 3061.
- 1.2. The Customer includes any person engaging the Supplier on behalf of and with the authority of the person or entity that the Order is provided for.
- 1.3. The Order is any request for the supply of Printed Products, Services and Distribution by the Customer to the Supplier which has been accepted by the Supplier.
- 1.4. The proof is any artwork, advertisement, image or logo supplied by the Customer.
- 1.5. The Printed Products are all of the leaflets, flyers, catalogues and other products provided by the Supplier or by the Customer in respect of which the Services are to be provided by the Supplier.
- 1.6. The Services includes the printing by the Supplier of the proof on the Printed Products ("the printing") and the distribution of the Printed Products or other printed material supplied by the Customer ("the distribution") with a specified geographical area ("the area") and any storage by the Supplier of the Printed Products.
- 1.7. Any reference to the Printed Products and Services includes the Printed Products and/or the Services as the context requires.
- 1.8. Any reference to loss and damage includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.9. A Major failure is as defined under the *Competition and Consumer Act 2010 (Cth)*.
- 1.10. GST refers to Printed Products and services tax under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

2. GENERAL

- 2.1. These terms and conditions together with the Supplier's quotation, proof, and the Customer's written order or purchase order document (if any) constitutes the agreement between the Supplier and the Customer ("the agreement").
- 2.2. Any Order is deemed to incorporate these terms and conditions; which may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these terms and conditions will prevail.
- 2.3. The terms and conditions are binding on the Customer, and the Customer's heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.4. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.
- 2.5. Where more than one Customer completes this agreement each shall be liable jointly and severally.
- 2.6. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these terms and conditions.
- 2.7. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer in accordance with the terms herein.
- 2.8. The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 2.9. The Customer acknowledges that the Supplier may detail these terms and conditions on its website. In this event, the terms and conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such terms and conditions and/or amendments.

3. QUOTATIONS AND PLACEMENT OF ORDERS

- 3.1. Any quotation for the supply of Printed Products and Services given by the Supplier will expire after thirty (30) days.
- 3.2. The Supplier does not represent that it will provide any Printed Products and Services unless such Printed Products and services are included in the quotation or the Order.
- 3.3. A request for Printed Products and Services may be placed by the Customer with the Supplier verbally, online via the Supplier's website or otherwise in writing however the Supplier may require the Customer to provide a written order or purchase order document prior to any Printed Products being printed, released to the Customer, dispatched or distributed by the Supplier.
- 3.4. As a condition of acceptance the Supplier may require pre-payment or a deposit in respect of the price of the Order and in this event the Supplier may not be deemed to have accepted the Customer's request for Printed Products and Services unless or until such pre-payment or deposit has been paid by the Customer.
- 3.5. The Supplier may agree to provide, on request from the Customer, additional Printed Products and Services not included or specifically excluded in the quotation given or in the Customer's Order ("a variation"). In this event, the Supplier shall be entitled to make an additional charge.
- 3.6. All prices quoted or advertised by the Supplier are based on taxes and statutory charges current at that time. Should these vary during the date of the Order to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

4. PRICE AND PAYMENT

- 4.1. GST will be charged on the price of the Printed Products and Services provided by the Supplier that attract GST at the applicable rate.
- 4.2. At the Supplier's sole discretion the Price shall be either:
 - 4.2.1. The Supplier's quoted or advertised Price for the Order; or
 - 4.2.2. As detailed on invoices provided by the Supplier to the Customer in respect of Printed Products and Services supplied.
- 4.3. The Customer must make full payment of the Price (or the balance thereof) within 7 days of the date of issue of the Supplier's invoice for the Printed Products and Services unless otherwise specified or agreed between the Parties in writing. The Printed Products will only be distributed or otherwise released to the Customer on payment of the Price of the Order in full.

5. PROVISION OF THE PRINTED PRODUCTS AND SERVICES

- 5.1. The Supplier reserves its right to:
 - 5.1.1. Decline requests for the supply of any Printed Products and Services requested by the Customer;
 - 5.1.2. Cancel or postpone the provision of the Printed Products or the supply of the Services at its discretion.
- 5.2. Unless specified to the contrary in the quotation or the Order, the Supplier does not warrant that it will be capable of delivering the Printed Products or providing the Services on or by a specific day or at a specific time requested by the Customer.

- 5.3. Subject to otherwise complying with its obligations the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of performing the Services and delivering the Printed Products to the Customer.

The Distribution

- 5.4. The Printed Products supplied by the Customer are not deemed to pass into the possession, custody or control of the Supplier until unloaded by the Customer at the premises of the Supplier and a confirmation of the delivery or receipt of the Printed Product is provided in writing by an authorised representative of the Supplier to the Customer or the Customer's agent.
- 5.5. The Customer must ensure that printed material for distribution is divided into equal or uniform bundles of no more than 500 pages per bundle and each weighing no more than 10 kg ("the weight limit"). In the event that any bundle of the Customer's Printed Products exceeds the weight limit the Supplier may, in its sole discretion:
 - 5.6. Refuse to accept delivery of [any] bundles of Printed Products that are in excess of the weight limit; or
 - 5.7. Divide the bundles of the Printed Products into bundles not in excess of the weight limit and to make an additional charge at its prevailing rate to the Customer as a variation to the Customer's Order.
- 5.8. The Supplier will store Printed Products pending the Customer's instructions to distribute the Printed Products and reserves the right to charge its prevailing rate of \$35.00 per pallet per month for storage. The Supplier further reserves the right to dispose of the Printed Products after one (1) month since the Printed Products passed into the Supplier's possession, custody or control without notice to the Customer.

6. DEFAULT

- 6.1. In this clause the "default date" is the day after the date by which payment of the Supplier's invoice(s) was due to be made by the Account Customer to the Supplier and the "outstanding balance" is the price of the order less the deposit paid by the Customer.
- 6.2. The Customer will be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Customer and rejected by the Supplier's bank.
- 6.3. If the Supplier does not receive the outstanding balance by the default date the Customer will be liable for:
 - 6.3.1. Interest on the outstanding balance from the default date at the rate of twelve per centum (12%) per annum calculated on a daily basis;
 - 6.3.2. An account keeping fee of \$35.00 to be charged at the end of each calendar month following the default date until the outstanding balance has been paid;
 - 6.3.3. Any debt collection or recovery costs incurred by the Supplier; and if the Supplier's debt collection agency ("the agency") charges commission on a contingency basis then the Customer shall pay as a liquidated debt the commission payable by the Supplier to the agency, at the agency's prevailing rate as if the agency achieved one hundred per cent recovery and the following formula shall apply:
$$\text{Commission} = \frac{\text{Original Debt} \times 100}{100 - \text{Commission \% charged by the agency (including GST)}}$$
(n.b. in the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au)
- 6.3.4. Any charges reasonably made or claimed by the Supplier or the agency's lawyer for legal costs on the indemnity basis.

7. RISK AND LIABILITY

- 7.1. The Customer will ensure that there is sufficient and accurate information or a proof of sufficient quality to enable the Supplier to execute the Order. Sufficient information includes any special requirements or specifications pertaining to the Order and any special instructions for the storage, packing or delivery of the Printed Products.
- 7.2. The Supplier takes no responsibility and will not be liable for any loss and damage or costs incurred by the Customer as a result of the Printed Products and/or Services being faulty or not fit for purpose due to insufficient or inaccurate information or a proof of insufficient quality having been provided by the Customer, or the Printed Products being disposed of after one (1) month in storage with the Supplier.
- 7.3. The Customer must ensure when placing the Order that it has informed itself of the characteristics and suitability of the type of material of the Printed Products for the Customer's intended use, including the suitability of the Printed Products for the Services requested. The Supplier accepts no responsibility for the use and suitability of the Printed Products, including for the printing of the proof thereon save where a sample has been provided and the Printed Products supplied differ significantly from that sample.
- 7.4. The Supplier takes no responsibility for representations made in relation to the Printed Products and Services by any third party or any delay in the delivery of the Printed Products by a third party carrier nominated by the Customer.
- 7.5. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any loss and damage incurred as a result of delay, or failure to provide the Printed Products and Services or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control or as a result of the bundles supplied by the Customer for distribution being in excess the maximum number of pages or the weight limit.
Risk in relation to the distribution of the Printed Product
- 7.6. The Customer is responsible for ensuring the Printed Product is compliant with any applicable laws, standards, codes, regulations or rules for advertising to the public and the Advertiser warrants that:
 - 7.6.1. The Printed Product does not constitute a breach of or infringement of any applicable laws, standards, codes, regulations or rules of any government, quasi-government or statutory or regulatory authority, or public or private right of an individual, including (without limitation) any intellectual property right; and
 - 7.6.2. It has obtained all necessary permits, licenses and approvals (if any) required for the production, distribution and display of the Printed Product and the Printed Product is not offensive, defamatory or inappropriate to display to the general public.
- 7.7. The Customer indemnifies and will keep the Supplier indemnified against:
 - 7.7.1. Any breach by the Customer of its warranty as to fitness of any Printed Product;
 - 7.7.2. Any order for payment of monies, fines, costs and expense (including without limitation any legal costs on the indemnity basis) incurred by the Supplier and arising directly or indirectly from or in connection a claim made by:
 - 7.7.2.1. A third party; alleging a breach of that third parties' private rights, including (without limitation) any intellectual property right, defamation or other civil suit associated with production, distribution or display of the Printed Product in public;
 - 7.7.2.2. A government, quasi-government or statutory or regulatory authority alleging a breach of inter alia any applicable laws, standards, codes, regulations or rules with which the Printed Product must comply.
- 7.8. The Customer acknowledges and accepts that any estimate provided by the Supplier as to the quantity of Printed Products required to cover the area is indicative only. The Customer accepts all risk in relation to the quantity of the Printed Products ordered by it and the Customer will not be entitled to a refund of the Price of the Order or part thereof or any loss and damage suffered by the Customer in reliance on the Supplier's estimate.

- 7.9. Whereas the Supplier will endeavour to distribute the Printed Product to all letter boxes within the area subject to the quantity of the Printed Product; the Customer acknowledges and accepts all risk that the Supplier may be prevented or is justified in omitting in its sole discretion letter boxes from distribution of the Printed Product. In this event, the Customer will not be entitled to a refund of the Price of the Order or part thereof or any loss and damage suffered.

Limitation of Liability

- 7.10. The Supplier's liability for any loss and damage associated with, arising from or in connection with the supply of the Services may not exceed the Price of the Order, including but not limited to personal injury and damage to property.

8. WARRANTY

- 8.1. The Supplier warrants that the Customer's rights and remedies in the agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the Printed Products and services to which the warranty relates.
- 8.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* as may be amended from time to time.
Warranty for Printed Products and Services
- 8.3. Provided that the Customer reports any defect in any Printed Products and Services supplied, preferably within three (3) days from the date that the defect became apparent, the Supplier will rectify the defect within a reasonable period of time.
- 8.4. The Supplier provides the following warranty to Customers who are Consumers in respect of Printed Products supplied by it: *"Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Printed Products repaired or replaced if the Printed Products fail to be of acceptable quality and the failure does not amount to a major failure."*
- 8.5. In respect of all claims under warranty, the Supplier reserves its right to inspect or investigate Printed Products and Services alleged to be defective.
- 8.6. To the extent permitted by law the Supplier's liability in respect of defective Printed Products and Services that do not constitute a major failure will be limited to:
 - 8.6.1. The resupply by the Supplier of the defective Printed Products and Services; or
 - 8.6.2. The refund of the Price paid by the Customer in respect of the defective Printed Products and Services.
- 8.7. When reporting defects, the Customer warrants that it will provide a full report within three (3) days noting its full address and full particulars regarding the nature of the defects, thus allowing the Supplier to investigate the matter promptly.
- 8.8. The Supplier shall not be liable to compensate the Customer for any reasonable delay in rectifying Printed Products and Services found to be defective or in assessing the Customer's claim.
- 8.9. The Customer warrants that it will use its best endeavours to assist the Supplier with identifying the nature of the defective Printed Products and Services claim.
Claims made under Warranty
- 8.10. Claims for warranty should be made in one of the following ways:
 - 8.10.1. The Customer must send the claim in writing to the Supplier's address 26-28 Scammel Street, Campbellfield VIC 3061.
 - 8.10.2. The Customer must email the claim to the Supplier to sales@letterboxdistributors.com.au.
 - 8.10.3. The Customer must contact the Supplier on the Supplier's business number (03) 8761 6301.
9. **TERMINATION AND CANCELLATION**
Cancellation by the Supplier
- 9.1. The Supplier may cancel any Order to which these terms and conditions apply at any time before payment of the Price in full is made by the Customer by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any deposit or sum advanced in respect of the Price. The Supplier shall not be liable for any loss and damage whatsoever arising from such cancellation.
 - 9.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - 9.2.1. Any money payable to the Supplier becomes overdue for payment; or
 - 9.2.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - 9.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
Cancellation by the Customer
- 9.3. The Customer may cancel any Order before Printed Products leave the Supplier's premises for distribution. In the event that the Customer cancels the Order then the Customer shall be liable for any loss and damage suffered by the Supplier; but not exceeding the Price of the Order.
- 9.4. The Supplier may retain any deposit or other sum paid in respect of the Price of the Order and offset such sum or deposit in satisfaction or partial satisfaction of any loss and damage suffered by the Supplier as a result of the Customer's cancellation.
- 9.5. In the event of a Cancellation by the Customer, the Customer must arrange for collection at its cost of any Printed Products in the possession, custody or care of the Supplier.

10. ENTIRE AGREEMENT

- 10.1. The agreement as defined herein constitutes the whole agreement between the Customer and the Supplier.
- 10.2. The agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.
- 10.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.
- 10.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010 (Cth)* or the Fair Trading Acts in each of the States and Territories of Australia.