

# STANDARD TERMS AND CONDITIONS

Ovato Residential Distribution, a division of Ovato Print Pty Ltd ABN 76 051 706 499 (who in these standard terms will be referred to as 'we' or 'us'), is pleased to confirm the terms and conditions which will apply to our provision of services to each purchaser or intending purchaser of such services (who in these standard terms will be referred to as 'you').

## 1. SERVICES PROVIDED BY US

- 1.1 We will provide you with Services, as specified by you in your Order, where that Order has been accepted by us.
- 1.2 These terms apply to the supply of Services by us to you. These terms prevail over any terms in your documents and represent the entire agreement between us. When you place an Order with us, make any payment or comply with these terms, you are taken to have accepted them.

## 2. QUOTATION AND PRICE

- 2.1 If we give you a quotation, we are not making you an offer. We may withdraw or alter a quotation by giving you notice. If we do not withdraw a quotation, it is valid for the period stated, up to a maximum of **30 days** from the date the quotation was given unless otherwise specified.
- 2.2 Unless we otherwise agree in writing, the price of the Services will be the price set out in our valid quotation in relation to which we have accepted your Order.
- 2.3 We reserve the right:
  - (a) following consultation with you to increase our price at any time before invoice to take account of increases in the cost of providing the Services (including, but not limited to increases in the cost of materials, labour or delivery) which are due to any factor beyond our reasonable control, or your failure to give us adequate information, Distribution Materials or instructions;
  - (b) without liability on our part, to correct any errors or omissions in any offer, quotation, order, acceptance, confirmation, invoice or other documentation issued by us; and
  - (c) to impose and vary a fuel levy to reflect the surcharges imposed by freight companies.
- 2.4 On 1 July in each year, our usual prices may be increased by a percentage equal to the increase in the CPI over the previous year.

## 3. MATERIALS SUPPLIED TO US BY YOU

- 3.1 You will supply us with Distribution Materials:
  - (a) which comply with your Order and our current National Delivery Specifications (where Distribution Materials do not comply, we may refuse to perform the Services or charge in accordance with our current rates to reflect the additional cost of performing the Services); and
  - (b) in sufficient quantities, and in sufficient time so that we may perform the Services.
- 3.2 We may reject any Order where Distribution Materials:
  - (a) contain anything illegal, obscene, defamatory or offensive;
  - (b) infringe the copyright or other protected right of any person; or
  - (c) are otherwise, as we may reasonably determine, inappropriate for letterbox distribution within our Network, even if we have already received the Distribution Materials.
- 3.3 You warrant that you are either the owner and or the authorised agent of the person or persons owning or having any interest in the Distribution Materials and enter into this agreement on your own behalf and or as authorised agent of that person or persons.

## 4. DISTRIBUTION SERVICE CONDITIONS

- 4.1 We will endeavour, but cannot guarantee, to distribute your Distribution Materials within the delivery area in our Network, and within the Window, designated in your Order as accepted by us. You acknowledge that:
  - (a) actual delivery times may vary due to factors which are beyond our control;
  - (b) not all residential addresses are able to be delivered to including but not limited to:
    - (i) Secured residential apartment properties,
    - (ii) Gated communities.
  - (c) we will not deliver your Distribution Materials to letterboxes displaying a "no advertising material" sign or similar notice;
  - (d) independent distributors and deliverers in our Network may fail to undertake their tasks in an appropriate manner due to a variety of circumstances including but not limited to:
    - (i) adverse weather conditions,
    - (ii) a lack of deliverers willing to undertake the delivery service.
- 4.2 We may distribute materials for other customers at the same time as distributing your Distribution Materials.
- 4.3 Each quarter, we will review our Network to identify any Difficult Delivery Areas, and every delivery territory in which we have a Difficult Delivery Area will be removed from our Network unless we believe, acting reasonably, that we will be able to source deliverers for that Difficult Delivery Area in the following quarter. If we identify a Difficult Delivery Area in the delivery catchment specified in your Order, we will endeavour to tell you about the Difficult Delivery Area at the time of lodgement of your Order. Upon doing so, we may reject your Order as it relates to that Difficult Delivery Area, or you may cancel or revise your Order as it relates to that Difficult Delivery Area, prior to us accepting your Order.

- 4.4 Unless otherwise agreed, all Distribution Materials remaining with us or our independent distributors or deliverers on expiry of the Window ("Remaining Distribution Materials"), will be retained by us on the following terms and conditions:

- (a) If you notify us in writing in your Order that you want to collect the Remaining Distribution Materials, on expiry of the Window:
  - (i) we will continue to hold the Remaining Distribution Materials on your behalf;
  - (ii) we will make arrangements for the Remaining Distribution Materials that we are reasonably able to collect to be collected from our Network and stored at our premises, at your cost;
  - (iii) we will notify you when these Distribution Materials are ready for collection at our premises and upon payment of our costs, you can collect these Distribution Materials within a reasonable period of time. If not collected within a reasonable period of time we may dispose of the Remaining Distribution Materials in accordance with paragraph 4.4(b).
- (b) If you do not notify us in writing in your Order that you want to collect the Remaining Distribution Materials, on expiry of the Window:
  - (i) we will cease to hold the Remaining Distribution Materials on your behalf, and title to and property in those Distribution Materials will pass to us;
  - (ii) upon title passing to us, we will arrange for the destruction of the Remaining Distribution Materials and we have no obligation to account to you for any proceeds obtained upon the destruction.

- 4.5 You acknowledge that these conditions have been built into the price payable for the Services.

## 5. OTHER SERVICES

- 5.1 Where the Services ordered include database evaluation services, the Distribution Materials distributed may not reach their intended recipient.
- 5.2 Where the Services ordered include direct mail services, you are responsible for any errors in data that you supply us (and all consequences arising there from) and you acknowledge that we have no control or responsibility for the Distribution Materials after posting by us.
- 5.3 We may undertake such other services (including related services) which in our reasonable opinion are necessary to fully carry out the terms of your Order as accepted by us, even if you have not specified all the particular services in your Order. We will charge you our current rate for undertaking such services following notification to you of such services.

## 6. CANCELLATION OF ORDER

- 6.1 You may cancel an Order prior to the release of the Distribution Materials to our Network, however such cancellation attracts a fee of up to 10%, at our discretion, of the price of the Order excluding all third party costs associated with receiving your Order at our premises.
- 6.2 We cannot recall the Distribution Materials once the Distribution Materials have been provided to our Network. We may charge you in full for the Services, if your Order is cancelled by you after that time.

## 7. PAYMENT

- 7.1 If you do not have a current credit facility in place with us, you must pay for the Services in full prior to us performing the Services, unless otherwise agreed.
- 7.2 If you have a current credit facility in place with us, we may invoice you for Services at any time after provision of the Services. You must pay each invoice within 30 days from the date of invoice.
- 7.3 If you dispute an invoice you must nonetheless pay the entire amount. We will refund any agreed amount following resolution of the dispute. If you fail to pay any invoice by the due date then, without affecting any other right or remedy available to us, we may:
  - (a) suspend or refuse to perform any Services to you whether under an existing or new Order;
  - (b) charge you interest on the amount unpaid at the rate set from time to time under the *Penalty Interest Rates Act 1983* (Vic) (such interest to be computed daily and compounded monthly) until payment in full is made;
  - (c) exercise a general lien on all of your property in our possession to cover the amount unpaid for the Services; and
  - (d) recover from you, in addition to the outstanding amount, all reasonable costs incurred by us in collection of the outstanding amount.

## 8. TAXES AND CARBON TRADING SCHEMES

- 8.1 Prices quoted or agreed, and our usual prices, do not include:
  - (a) sales, goods and services, value added, carbon, emissions, environmental or any other applicable government tax or duty payable either before or after invoice from us; or
  - (b) any costs associated with the introduction of any carbon or emissions trading or similar scheme ("Trading Scheme"). If, during the period that we provide the Services to you, any Trading Scheme is introduced, we reserve the right to adjust our prices to reflect the increased costs of supplying the Services to you (including increased costs arising from or in connection with the purchase or trading of emissions, carbon or other like permits and any increased costs of our production inputs arising from the introduction of the Trading Scheme).
- 8.2 Such taxes, duties and costs are payable by you in addition to the prices quoted.

## 9. CLAIMS

You will be deemed to have accepted the provision of the Services free of defects or other non conformity with your Order as accepted by us unless we receive a substantiated written claim as to any defects or other non conformity within 14 days from provision of the Services.

## 10. EXCLUSIONS AND LIMITATIONS

10.1 We exclude all legislated guarantees, implied conditions and warranties except any legislated guarantee, implied condition or warranty the exclusion of which would contravene any statute or cause any part of this paragraph to be void ("Non-excludable guarantee").

10.2 To the extent permitted by law:

- (a) except for liability for breach of a Non-excludable guarantee, we exclude liability (whether in contract, tort (including negligence), pursuant to statute or otherwise) for loss of profits or consequential or indirect loss or damage; and
- (b) our liability to you for our breach of any Non-excludable guarantee, other statutory provision or any express guarantee, condition or warranty or our negligence is limited, at our option, to supplying the Services in respect of which the breach or negligence occurred again or to paying the cost of having those Services supplied again.

10.3 You acknowledge that the exclusions and limitations in this clause 10 are customary for suppliers of services equivalent to the Services, and are fair and reasonable given the nature of the Services and the Price charged for them.

## 11. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

11.1 From time to time, we may provide you with reports or other information about the scope and/or performance of the Services (including maps, statistics or other data regarding the Services, the Network or our National Delivery Specifications), or other commercially valuable data ("Our IP"). Our IP is owned by or licensed to us and is protected by copyright, patent and trademark laws.

11.2 Unless otherwise agreed in writing, the following terms apply to Our IP:

- (a) You acknowledge that:
  - (i) Our IP is confidential and commercially valuable and is supplied to you on a confidential basis; and
  - (ii) you have no (and will not assert any) intellectual property or other rights in Our IP apart from those granted under these terms.
- (b) You agree to take all necessary steps to:
  - (i) maintain the confidential nature of Our IP, including keeping Our IP secure and safeguarding it from access by or disclosure to unauthorised third parties; and
  - (ii) prevent and restrain any breach of this obligation of confidentiality (including a breach by your employees, contractors or agents).
- (c) We grant you a non-exclusive licence to use and reproduce Our IP within Australia solely for purposes relating to or in connection with the Services. Unless you have our prior written consent to do so, you must not:
  - (i) adapt or modify Our IP for any purpose; or
  - (ii) publish or otherwise make Our IP available to any third party.
- (d) You must notify us immediately upon becoming aware of any unauthorised use, copying or disclosure of Our IP.
- (e) We may terminate any licence of Our IP at any time for any reason by giving you written notice. If a licence is terminated, you must, in respect of Our IP to which that licence relates:
  - (i) immediately cease, and take all reasonable measures to procure the cessation of, all uses of Our IP by you, your employees, contractors and agents; and
  - (ii) deliver up to us, or if delivery up is not practicable, destroy or permanently delete, Our IP (and any whole or partial copies of it) that is in your possession, custody or control.

11.3 We acknowledge that we have no and will not assert any intellectual property rights in any Distribution Materials or other information you provide us regarding your products, services or customers ("Your IP"). You license us and our Network to use, reproduce, adapt or modify Your IP, and to publish the Distribution Materials, to the extent this is reasonably necessary for us to perform the Services.

## 12. WARRANTIES

12.1 You warrant that:

- (a) your Distribution Materials will not:
  - (i) contain anything illegal, obscene, defamatory or offensive; or
  - (ii) infringe the copyright or other protected right of any person; and
- (b) the distribution of the Distribution Materials will not give rise to any claims against or liabilities to us or our officers, employees, contractors or agents.

## 13. INDEMNITY

You indemnify us against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against us) that we may sustain or incur as a direct or indirect result of a breach by you of any of the above warranties.

## 14. TERMINATION

14.1 A party may, without affecting any other rights it may have, terminate or suspend any contract formed upon the acceptance of an Order which is subject to these

terms and conditions with immediate effect by giving notice to the other if the other party has:

- (a) breached any provision of that contract and has failed to remedy the breach within 7 days after receiving notice requiring it to do so;
- (b) breached a material provision of that contract where that breach is not capable of remedy;
- (c) ceased to be able to pay its debts as they become due;
- (d) become subject to any form of insolvency administration; or
- (e) had any step taken by a mortgagee to take possession or dispose of the whole or any part of that party's assets.

14.2 If we exercise our rights pursuant to clause 14.1 above to terminate or suspend a contract, we will immediately be entitled to invoice you for work in progress under that contract at our current usual prices.

14.3 This clause does not limit or affect any other remedy which may be available to us including seeking compensation for any loss or damage suffered by us.

## 15. FORCE MAJEURE

We will not be liable for any failure to perform or delay in performance of any obligation where such failure or delay is due to anything beyond our reasonable control, including but not limited to adverse weather or terrain, strikes, lockouts and other industrial action, raw material shortages, accidents, power failure, breakdowns of plant or machinery or import or export regulations or embargoes.

## 16. GENERAL

16.1 We are a member of the group of companies whose parent company is Ovato Limited ACN 050 148 644 ("Ovato"), and accordingly we may perform any of our obligations or exercise any of our rights alone or through any other member of Ovato.

16.2 We may subcontract the supply or delivery of the Services.

16.3 Any failure by us to insist on strict compliance with any contract between us or any delay by us in exercising our rights under any contract between us will not constitute a variation or waiver of any provision of that contract or of any right available to us.

16.4 You acknowledge that third parties may be involved in our provision of the Services to you. These third parties may be your or our agent or other intermediary, be suppliers to us or customers of ours in connection with the supply of the Services to you or be otherwise involved, directly or indirectly, in the supply of the Services to you. You acknowledge that we may pay, give to, or receive from such third parties commissions, fees, rebates or other remuneration or benefits ("Rewards") for our involvement with the third party in connection with the supply of the Services to you.

16.5 Where we supply the Services to you and those Services are for the benefit of another person ("End Customer"), you agree to make all necessary disclosures to the End Customer in relation to any Rewards exchanged between us so as to comply with all applicable laws. To the extent that you act or purport to act on behalf of an End Customer in any way, you warrant that you hold all necessary authority from that End Customer to do so.

16.6 If part or all of any provision of these terms and conditions or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or part of it cannot be so interpreted, the provision or part of it will be severed from these terms and conditions and the remaining provisions of these terms and conditions continue in force.

16.7 Where you comprise two or more persons, an agreement or obligation to be performed or observed by you binds those persons jointly and each of them severally.

## 17. GOVERNING LAW AND JURISDICTION

17.1 This contract is governed by the laws of the State of Victoria.

17.2 Each party submits to the jurisdiction of the courts of that State and of any court that may hear appeals from any of those courts, for any proceedings in connection with this contract.

## 18. DEFINITIONS

18.1 Expressions defined in these terms and conditions have their defined meaning wherever used throughout these terms and conditions.

18.2 In these terms and conditions:

"CPI" means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics or successor index;

"Difficult Delivery Area" means a delivery territory which has been not delivered for greater than 8 mid-week and weekend windows in the last 13 weeks and has not been delivered for the last 2 consecutive windows of that quarter. "Distribution Materials" means your catalogue or other printed material to be distributed to letterboxes;

"Network" means our network of delivery territories around Australia, as assessed by us each quarter, into which our independent distributors, and independent deliverers retained by them, may deliver Distribution Materials; "Order" means your order as set out in our standard order form;

"Services" means the letterbox distribution and other services set out in your Order, as accepted by us;

"we", "us" or "our" means Ovato Residential Distribution, a division of Ovato Print Pty Ltd ABN 76 051 706 499;

"Window" means the days in which the Services are to be provided, as set out in your Order, as accepted by us; and

"you" or "your" means you or your organisation, as specified in your Order.