



TERMS AND CONDITIONS of trade between **DIRECT MAIL CORPORATION PTY LTD ACN 065 135 702** of # ("DMC").and the customer named in the Schedule ("Customer"). Customer and DMC have agreed that DMC will provide n warehouse and logistics services to Customer on the following terms and conditions.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, unless expressed or implied to the contrary:

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in each relevant State of Australia.

"**Consequential Loss**" means the types of loss that are described in 8.3.

"**Disposal Fees**" means any and all costs associated with the disposal of products from the warehouse. This shall include, but not be limited to, the costs of hiring an external disposal contractor.

"**Distribution**" means the transportation of the Customer products by the nominated carrier chosen by Customer as instructed by Customer.

"**Fees for Services**" has the meaning given in clause 5.1.

"**Force Majeure Event**" means any event or circumstance not within the control of a party which that party is not reasonably able to prevent or overcome, including:

- (a) act of God, landslide, earthquake, flood, fire, inclement weather, natural disaster or epidemic;
- (b) Industrial Dispute;
- (c) act of war (whether or not accompanied by any formal declaration of war), terrorism, blockade, insurrection, riot or civil disturbance;
- (d) act of any government or competent authority (including the cancellation or revocation of any approval, authority or permit);
- (e) fire, explosion or other serious damage to buildings; or
- (f) declaration of a state of emergency or the invocation of martial law having an effect on commerce generally.

"**Insolvency Event**" means the happening of any of the following events:

- (a) an application is made to a court for an order, or an order is made, that a party be wound up and the application or order is not disposed of within 60 days;
- (b) an application is made to the court for an order, or an order is made, appointing a liquidator or provisional liquidator in respect of a party and the application or order is not disposed of within 60 days;

- (c) a party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or proposes a reorganisation, moratorium or other new administration involving any of them;
- (d) a party resolves to wind itself up, or otherwise dissolves itself, or gives notice of its intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party, or is otherwise wound up or dissolved;
- (e) a party states it is not able to pay its debts when and as they fall due;
- (f) as a result of operation of section 459F(1) of the Corporations Act 2001, a body corporate is taken to have failed to comply with a statutory demand;
- (g) a party makes a statement from which it can be reasonably deduced that the party is or was the subject of an event described in section 459C(2)(b) of the Corporations Act 2001;
- (h) a party takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation or administrators are appointed to the party; or

"**Operating Year**" means the 12 month period after the Commencement Date and any following 12 month period on the anniversary of the Commencement Date for the life of the contract.

"**Products**" or "**Goods**" means all products and goods of Customer to be warehoused and distributed by DMC pursuant to these Terms and Conditions.

"**Related Body Corporate**" has the meaning given in section 50 of the *Corporations Act*.

"**Services**" has the meaning given in clause 2.

"**Schedule**" means the schedule attached to these terms and conditions.

"**Working hours**" means 7.30 am to 5.30 pm on any Business Day.

1.2 **Interpretation:** In these Terms and Conditions, unless the context requires otherwise:

- (a) any reference to a party to these Terms and Conditions shall include the successors and permitted assigns of such party;
- (b) "person" includes any individual, firm, company, corporation, association of persons (corporate or not), trust or governmental agency (in each case whether or not having a separate legal personality);
- (c) a statute includes that statute as amended from time to time and any regulations, orders in council, standards or other instruments issued or made under or pursuant to that statute from time to time and legislation passed in substitution for that statute;
- (d) words importing the singular are deemed to include the plural and vice versa;
- (e) references to "parties" means Customer and DMC and references to "party" means Customer or DMC.
- (f) A reference to "dollars" or "\$" is a reference to Australian dollars.

2 SERVICES

- 2.1 DMC agrees to provide to Customer warehousing and distribution services on the terms of these Terms and Conditions called the "Services". An instruction from the Customer to DMC to provide the Services is an acknowledgment by the Customer it accepts and agrees to be bound by these terms and conditions.

3 TERM & RENEWAL

3.1 Term

The Services will be provided for the Term specified in the Schedule.

3.2 Renewal

After the Term, these Terms and Conditions shall be automatically renewed for successive periods of one (1) year following its expiration on the same terms and conditions of these Terms and Conditions.

4 TERMINATION

4.1 Immediate termination

Either Customer or DMC may terminate these Terms and Conditions immediately upon giving written notice to the other in the event that:

- (a) the other party is subject to an Insolvency Event;
- (b) A party commits a material or persistent breach in the performance or observance of any of the terms, provisions, or conditions of these Terms and Conditions which of its nature cannot be remedied;
- (c) A party commits a material or persistent breach in the performance or observance of any of the terms, provisions, or conditions of these Terms and Conditions which of its nature can be remedied but which is not remedied within 30 days of prior written notice by the other party;
- (d) the other party transfers partially or fully the rights and obligations hereunder or any part thereof without its prior written consent;
- (e) a right to terminate arises in accordance with clause 4.6(b).

4.2 Termination on notice

These Terms and Conditions may also be terminated by either Customer and DMC upon 1 months' notice:

4.3 Termination not to affect rights

Termination or expiry of these Terms and Conditions will not affect the rights, liabilities and obligations of either party which shall have accrued under these Terms and Conditions as at the date of termination or expiry nor shall it affect the coming into force or the continuance in force of any provision of these Terms and Conditions (including clauses 4.4 and 4.5) which is expressly or by implication intended to come into force or continue in force on or after such termination or expiry.

4.4 Return of Stock on Termination

In the event of the termination of these Terms and Conditions for any reason, and subject to clause 4.5, DMC will deliver, in a timely manner all of the Products in its possession or control to Customer or to any third party which is nominated by Customer. The cost of such delivery will be paid by Customer. All outstanding

amounts payable to DMC, including those occurred in the preparation and where applicable the return of product, are due at time of return.

4.5 Assistance on Termination

In the event of the termination of these Terms and Conditions for any reason, DMC will provide all reasonable assistance to Customer, or a third party nominated by Customer, in relation to the transfer and provision of information or records or any other matter reasonably required by Customer in order to provide for the continuity of Customer's business and its operations after termination of these Terms and Conditions.

4.6 Force Majeure

- (a) If, by reason of a Force Majeure Event, DMC cannot meet its obligations under these Terms and Conditions then DMC shall advise Customer immediately and Customer may contract with a third party on such terms and conditions as it may agree so as to enable the Services to continue to be provided and no payment will be payable to DMC in respect of the particular Services that DMC cannot provide.
- (b) If any Force Majeure Event continues for a period of or exceeding 30 calendar days, the non-affected party shall have the right to terminate these Terms and Conditions immediately on written notice.

5 FEES

5.1 Fees for Services

- (a) The Fees for Services are contained in the Schedule.
- (b) Pricing is based on data provided at the commencement of these Terms and Conditions should, for whatever reason, the volume and or activity of the Customer reduce/increase by more than 10% for a 3 month period then DMC shall have the right to reset its rates taking into account any reduced/increased volumes.
- (c) Incorrect delivery charges based on product information supplied by Customer or the lack of product information supplied by Customer will not be the responsibility of DMC.

5.2 Fee Reviews

- (a) Fees for all services will be reviewed on the 1st of February each operating year. Discussions around pricing reviews will commence in January unless prior arrangement is agreed by both businesses.
- (b) Should there be a rise in the cost of labour charges payable by DMC as a result of an increase in the minimum wage or any applicable award DMC has the right to increase its fees for the Services however, before increasing fees DMC will provide the Customer a written statement setting out the increase of its fees. In those circumstances the Customer may at its option, terminate the Services by providing within 14 business days written notice of termination to DMC.

6 CUSTOMER'S RESPONSIBILITIES

6.1 Information

Customer will, as soon as reasonably practicable, provide DMC with information and details (in a clear and easily identifiable manner) in relation to the following:

- (a) Expected Shipments;
- (b) Full Product Codes;
- (c) Customer Brand Catalogue and any relevant updates;
- (d) Product Safety Information;
- (e) Disposal Instructions for damaged or returned Products;
- (f) Its requirements in relation to the clear marking, identifying and labelling of Products;
- (g) At the beginning of each Operating Year, the estimated minimum and maximum value of the inventory to be held in each warehouse at any one time including the landed cost by product during that Operating Year.

6.2 Disposal Fees to be borne by Customer

If the Products of Customer are required to be disposed of, for any reason, then Customer shall be liable for any and all Disposal Fees whether or not the reason for disposal of the Products occurred whilst they were in the possession and care of DMC.

6.3 Customer warrants:

- (a) That it is the owner of the Goods or otherwise has the authority of the owner to consign the Goods upon and subject to these Terms and Conditions.
- (b) That, the Goods will comply with the requirement of any applicable law (including, if applicable, the Australian Code for the Transport of Dangerous Goods by Road and Rail and Air Navigation Orders Part 33) relating to the consigning and packaging of the Goods and any expenses and, other than as provided in these Terms and Conditions, charges of DMC in complying with the provisions of any such law or with any order or requirement there under or with the requirement of any harbour, dock, railway, shipping, customs warehouse or other authority or company shall be paid by Customer.

6.4 Warehouse Ordering Processing

Customer will transfer orders by electronic interface to DMC. DMC will be required to fulfil or process within the agreed time frame on DMC's system and make information available online or send updated information via the electronic interface.

6.5 Payment of Fees for Services

DMC will invoice Customer as specified in the Schedule. Customer will pay any invoices received from DMC within 14 days following receipt. Without limiting any right DMC has pursuant to clause 4 if an invoice is not paid when due DMC reserves the right to suspend Services.

7 DMC'S RESPONSIBILITIES

7.1 Warehousing

DMC shall manage the warehousing of the Products and the warehouse for the benefit of Customer

7.2 Hours of work

DMC shall manage the Warehouse during Work Hours.

7.3 Inventory Management

DMC where applicable will process all transactions in its IMS.

7.4 Inwards/outwards goods movements

8.5.1 DMC shall be responsible for the management of all inward Product movements, including:

- (a) Receiving Products and ensuring that the Products comply with the inwards documentation and that any variances are recorded and advised to Customer within 24 hours of receipt however this does not extend to DMC verifying the the number of Goods in any box or carton is consistent with the number stated in any documentation;
- (b) Collection of Products in accordance with Customer's standard operating procedures regarding collection from retail customers;
- (c) Storage of the Products in accordance with DMC's standard procedure;
- (d) Recording acceptance of the Products into DMC's operating system (IMS) or Customer System and where applicable clearly indicating the status of a Product; and
- (e) Confirming with Customer that the Products have been processed and are available for distribution. In respect of LCL (Less than Full Container Load) and FCL/FTL (Full Container Load/ Full Truck Load) this confirmation must be completed within 48 hours of LCL receipt and 72 hours of FCL receipt of the Products into the warehouse.
- (f) DMC will not be responsible for any third party charges including charges associated with the customs clearing process, taxes and excise duties and any possible delays caused through that process. DMC's responsibility does not include delays caused by Customer or Government Agencies or suppliers not supplying correct paperwork or instructions.

8.5.2 DMC shall be responsible for the management of all outward Product movements, including:

- (a) Picking, consolidating and packaging the Products so that they are ready for dispatch to meet the order delivery requirements of Customer;
- (b) Adhering to any special instructions endorsed on orders in accordance with the requirements of Customer;
- (c) Notifying Customer immediately if Products are ordered that are unable to be fulfilled with the Product stock available in the warehouse at that time; and
- (d) Arrange that any Products that require inspection prior to despatch, undergo such an inspection in an efficient manner and in accordance with the requirements of Customer.

7.5 Inventory Accuracy

- (a) DMC shall conduct cyclic stock take of the Products in its warehouses as required by Customer and at Customer's cost based on applicable hourly rates.

- (b) DMC shall conduct full physical stock takes of the Products as reasonably requested by Customer from time to time, at Customer's cost.
- (c) If Customer requires a stock take to be undertaken by an independent auditor, DMC will oblige with any reasonable requirements of Customer in respect of such a stock take, including providing access to its warehouse and relevant records in accordance with clause 11.
- (d) DMC will notify Customer on the completion of any cyclic count or stock take under clause 7.5(a) and 7.5(b) and Customer will notify DMC on the completion of any cyclic count or stock take of any variations between the Product counts determined by each stock take and the product counts reflected in IMS or Customer system ("**Variation**").
- (e) All Variations will be finalised subsequent to any full stock take, allowing an additional 2 weeks to review discrepancies and identify causes of any discrepancy.

7.6 Product condition while in store

- (a) DMC will store all products in a secure, dry, clean and professionally presented environment and in a manner that ensures the condition of the stock is maintained, at all times.
- (b) DMC shall handle all Products with care, so as not to damage the Products, during all stages of providing the Service.

7.7 Order assembly and dispatch

- (a) Products will be carefully handled during all phases of the order assembly and dispatch process. If applicable, specialised packaging will be utilised to eliminate the risk of in-transit damage and reduction of the quality of the goods when presented to the customer. All orders will be packed and consolidated in a manner that will provide adequate security to the Products contained.
- (b) Products ordered and unable to be fulfilled will be immediately notified to Customer.

8 LIMITED LIABILITY FOR LOSS OR DAMAGE

8.1 Goods in transit

- (a) DMC is not a common carrier under Australian law and will accept no liability as such. DMC reserves the right to refuse the carriage or transport of Goods for any person, corporation or company and the carriage or transport of any class of Goods at its discretion.
- (b) Other than otherwise set out in these Terms and Conditions, Customer acknowledges and agrees that DMC nor any servant, agent or sub-contractor of DMC nor any other person who carries the Goods at any time pursuant to these Terms and Conditions shall not in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for any personal injury or loss or damage to or mis-delivery, delayed delivery or non-delivery of the Goods or any of them whether in transit or in storage or otherwise nor for any Consequential Loss or injury of any kind whatever whether such personal injury, loss, damage, mis-delivery, delayed delivery, non-delivery or consequential damage or injury is caused or alleged to have been caused by the negligence, or wrongful act, or

default of DMC or its servants or agents or sub-contractors or the servants or agents of any sub-contractors or by any cause whatever.

- (c) The Customer and any customer of the Customer are liable for and shall indemnify DMC against all duties, taxes, payments, fines, expenses, losses, damages (including physical damage) and liabilities, whether or not arising out of the negligence of any agent or subcontractor of DMC or DMC incurred in the performance of the obligations in these Terms and Conditions, including any liability to indemnify any other person against claims made against such other person by the Customer or any customer of the Customer or owner of Goods.

8.2 Goods in Storage

- (a) At all times risk in the Goods shall remain with the Customer to the maximum extent permitted by law. It is the obligation of the Customer to arrange any insurance for the Goods whilst the Goods are in the care and control of DMC. DMC will not insure the Goods which are stored by DMC.
- (b) To the full extent permitted by law, DMC its agents or subcontractors shall not be responsible for loss or damage of any kind whatsoever arising out of or in connection with the storage of the Goods and the Customer agrees to indemnify the DMC in respect of any claims made by sub-contractors or third parties including any government authority concerning the provision of the Services.
- (c) In the event DMC is liable to a Customer the maximum amount recoverable from DMC for any loss or damage to Products in storage shall be limited to the lesser of:
 - (i) \$100 in total; or
 - (ii) The value of the Goods where the value of the Goods is calculated by the invoice value of the Goods at the time of acquisition by the Customer again.

8.3 DMC's liability for consequential loss arising:

Without limiting any other provision whether in transit or in storage DMC will not be liable for any claim for any loss of profit, data, revenue, goodwill or business, for any interruption to business, for any failure to realise anticipated savings or for any consequential, indirect, special, punitive, exemplary or incidental damages suffered by Customer or any third party and arising directly or indirectly from any breach of any of DMC's obligations arising under or in connection with these Terms and Conditions or from any cancellation of these Terms and Conditions or from any negligence, misrepresentation or other act or omission on the part of a party or DMC's related companies, servants, agents or contractors or from any other cause whatsoever.

8.4 Limits on any claim

- (a) Subject to the limits contained in clause 8.2 this document does not exclude, restrict or modify any rights or remedies of the Customer under any provision of any Commonwealth, State or Territorial Law that cannot be excluded, restricted or modified including any such rights or remedies

under the Competition and Consumer Act 2010, (Cth) as amended from time to time (the "Act").

- (b) Any claim by Customer against DMC must be commenced within 12 months of the date the subject matter of the claim arose.

9 RETENTION OF TITLE AND LIEN

9.1 Bailee Only:

DMC shall only ever be a bailee of the Products for reward and at no time, and in no circumstance, will DMC acquire title to, or property or other interest in, such Products.

9.2 Retention of Title

Subject to clause 9.2, DMC acknowledges and agrees that:

- (a) DMC shall have a general lien and a particular lien on all Goods in their possession for any and all sums due and payable at any time by Customer under these Terms and Conditions. DMC shall be entitled to sell or dispose of such Goods at the expense of Customer and apply the proceeds in or towards the payment of such sums on 30 days notice in writing to the owner of the Goods.
- (b) In no circumstances may DMC exercise any right in relation to the lien referred to in clause 9.2(a) unless Customer has failed to make payment in accordance with these Terms and Conditions, DMC has issued a notice to remedy the default without Customer remedying the non-payment. DMC may not exercise any right in relation to the lien in respect of amounts in dispute until the dispute has been finally determined.

10 CLAIM PROCEDURES FOR WAREHOUSE VARIATIONS OR DAMAGES

10.1 For Goods under DMC care prior to dispatch with carrier:

- (a) DMC will receipt all Products received by them and notify Customer of any shortages, overages and damages within 1 business day of unloading being completed. Damaged product will be entered into DMC inventory management system or Customer system as such and be held separately in stock.
- (b) Where damage occurs within DMC warehouses DMC will put the goods away in a dedicated location and record the goods in DMC's system. This location will be counted and cleared on a regular basis with a Customer representative's.
- (c) The method of disposal for "DMC Damage" products must be confirmed and agreed to by Customer.

10.2 For Goods despatched by DMC:

- (a) Where DMC has picked and dispatched the order and the consignee advises a discrepancy DMC will conduct a stock take on all affected products as soon as possible after notification.
- (b) If the physical count reflects the reported discrepancies DMC will dispatch replacement stock to the consignee immediately with the cost of freight to DMC account unless otherwise agreed.
- (c) If the consignee reports a surplus transport for all surplus Products will be arranged by DMC and charged to DMC account unless otherwise agreed.

- (d) Where the physical count agrees with DMC or Customer system DMC cannot accept any liability for loss of Product other than proven transportation loss as covered in clause 8.1.

11 SECURITY AND ACCESS

- 11.1 Access to the warehouse and DMC is by invitation to external parties and only authorised Customer employees, agents or representatives are permitted into the warehousing areas to carry out specific tasks. Access is available to Customer team members at any reasonable time and such members shall have the right to make an inspection of the premises and the provision of the Services and to perform stock takes of the Products.
- 11.2 DMC must ensure that its security arrangements are of a standard reasonably acceptable to Customer from time to time.

12 INSURANCE

- 12.1 It is the responsibility of Customer to insure and keep insured the Products in the name of Customer for the full insurable value of the Products whilst they are in the warehouses of DMC and whilst they are in transit to the warehouses of DMC and to a consignee. The insurance must be against the risks of loss, recovery or damage by fire, explosion, burglary, theft, terrorism, and all other events outside DMC control including "Acts of god", such other risks as are normally insured against by prudent persons carrying on businesses similar to those carried on by Customer and DMC, including Consequential Loss on the Products.
- 12.2 For the avoidance of doubt all costs associated with the recovery, clean up, removal, and or reinstatement of Customer Products will be paid for by Customer.
- 12.3 DMC will arrange a Public Liability Policy of an amount not less than \$15,000,000 to cover any liabilities arising from or incidental to the Services.
- 12.4 DMC shall maintain motor vehicle insurance with third party property cover with a minimum of \$10,000,000 cover.
- 12.5 DMC will **not** to maintain Bailees Liability insurance cover

13 EMPLOYEES AND SUB-CONTRACTORS

DMC may appoint sub-contractors to provide part or all of the Services.

14 ASSIGNMENT

- 14.1 DMC may assign its interest under these Terms and Conditions, in whole or part, without the prior written consent of Customer.

15 GST

- 15.1 Definitions

In this clause the expressions "consideration", "GST", "supply", "tax invoice", "recipient", representative member and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

15.2 Prices are GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with these Terms and Conditions are exclusive of GST. If GST is imposed on any supply made under or in accordance with these Terms and Conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount must be made at the same time as payment for the taxable supply is required to be made in accordance with these Terms and Conditions.

15.3 Reimbursement

If either party is required to pay or reimburse to the other or indemnify the other for any cost, expense or other amount that the other party has incurred or will incur in connection with these Terms and Conditions, the amount must be reduced by any part of that amount for which the other party (or representative member if this is not the other party) can claim an input tax credit, partial tax credit or other like offset.

16 LAW

16.1 The proper law of these Terms and Conditions shall be the law of the State of Victoria.

16.2 Any shipment, whether the Goods are delivered or not, shall be subject to these Conditions and shall be governed by the law of Victoria.

17 NOTICES

17.1 Any document to be served on or any notice to be given to Customer under these Terms and Conditions shall be sent to the address specified in the Schedule to DMC.

18 GENERAL

18.1 Amendment

The parties agree that the terms of these Terms and Conditions may only be varied in writing signed by both parties.

18.2 Further assurances

Each party agrees, at its own expense, on the request of the other party, to do everything reasonably necessary to give effect to these Terms and Conditions and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

18.3 Entire agreement

These Terms and Conditions constitutes the entire agreement of the parties about its subject matter and any previous agreements, representations, conditions, warranties, understandings and negotiations on that subject matter cease to have any effect.

18.4 Severance

If one or more provisions of these Terms and Conditions shall be invalid or unenforceable the remaining provisions of the agreement shall not be affected thereby and shall continue in full force and effect. If any provision of these Terms and Conditions is found to be invalid or unenforceable, that provision will be severed from these Terms and Conditions.

18.5 No Waiver

- (a) If the Agreement is breached by the other party, continuance of the Agreement will be at the sole discretion of the party not responsible for the breach and decision not to terminate immediately shall not be used as a precedence to reduce such party's right to terminate the contract on at a later time.
- (b) These Conditions, and in particular and without limiting the generality hereof the limitations and exclusions of DMC's liability herein contained, shall continue to apply and to be of full force and effect in all circumstances notwithstanding any breach or alleged breach by DMC of the contract of carriage and in particular (but without limitation of the generality hereof), notwithstanding any departure by DMC from these Conditions or the conditions of this contract of carriage whether by way of deviation or otherwise howsoever.

18.6 Relationship between the parties / no authority to bind

These Terms and Conditions will not be deemed to create a partnership or joint venture of any kind between the parties. No party will have any right or authority, express or implied, to bind the other to any other agreement, obligation or undertaking.