

## TERMS AND CONDITIONS

### 1 INTERPRETATION

1.1 In these Terms and Conditions:

**Authentication Method** means the process of authorising a person to upload documents onto the Customer account by either a password or a registration code.

**Bing** means Bing Technologies Pty Ltd ABN 15 098 420 903.

**Business Day** means a day which is not a Saturday or Sunday or a public holiday where Bing's production facilities are located.

**Customer** means the person or entity named as such in the Application Form to which these Terms and Conditions are attached.

**Force Majeure** means an event or circumstance beyond the reasonable control of a party which results in that party being unable to observe or perform an obligation of the party under this agreement.

**Price Schedule** means the price schedule agreed with the Customer for the provision of the Services.

**Services** means the desktop mail and other communication services offered by Bing.

**EasyPost® Mailroom Software** means the object code versions of the software known as EasyPost® Mailroom provided by Bing Technologies Pty Ltd to the Customer from time to time.

**Terms** means these Terms and Conditions and where the context so permits shall include the agreement formed between Bing and the Customer and / or Directors and Guarantor.

1.2 A reference to this agreement includes a reference to these Terms and Conditions, the Service Application Form, the Price Schedule and the Standard Product Details attached to or referred to in these Terms and Conditions, as amended from time to time.

### 2 SERVICES PROVIDED

2.1 Bing will provide the Services in relation to documents transmitted to it by the Customer.

2.2 The Customer acknowledges that Bing may subcontract some or all of the Services to a third party.

2.3 Bing will provide the Services in accordance with the attached "Standard Product Details" (as amended from time to time). These Standard Product Details may be amended by Bing as required from time to time. Customers will be informed at least 6 weeks in advance of any amendments to the "Standard Product Details".

2.4 Bing reserves the right to modify postal addresses on the transmitted letters to conform with the postal carrier's requirements.

2.5 The Customer acknowledges that:

- (a) the transmission of documents to Bing relies on internet technologies outside of Bing's control;
- (b) Bing does not guarantee that documents will be capable of being transmitted to Bing at all times;
- (c) to the extent permissible by law, Bing shall not be liable for any loss, damage, cost or expense resulting from any delay in transmission of documents to Bing.

2.6 The Customer shall be responsible for ensuring that all details in documents, including names and addresses are accurate and complete.

2.7 The Customer warrants and undertakes that the contents of transmitted documents will not breach or offend any local, state and federal laws, rules and regulations (including, without limitation, the *Criminal Code Act 1995* and any laws relating to national security, anti-terrorism and anti-hoax measures) and that the provision of the Services by Bing in relation to documents will not cause Bing to be in breach of any local, State and federal laws, rules and regulations.

2.8 The Customer indemnifies Bing and EPIP Pty Limited, their officers, employees, sub-contractors and agents from and against all actions, claims, proceedings or demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly, in respect of any loss, death, injury, illness, damages, costs or expenses (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising out of or in connection with documents transmitted to Bing or any breach of clause 2.7.

### 3 AUTHENTICATION

3.1 Bing will provide the Customer with an Authentication Method to assist in the prevention of unauthorised transmission of documents to Bing and the Customer will have the ability to restrict the persons who may transmit documents to Bing.

3.2 As the Customer will be charged in accordance with clause 4 for Services provided in relation to all documents transmitted to Bing, the Customer is responsible for taking all precautions as are reasonably necessary, prudent or desirable to protect and keep strictly confidential the Authentication Method provided to the Customer and to prevent unauthorised persons from sending documents to Bing.

3.3 To avoid doubt, the Customer will be responsible for payment for Services provided in relation to all documents transmitted to Bing which in any way uses the Authentication Method provided to the Customer, even in cases where the Authentication Method has been used by a person not, or no longer authorised by the Customer to effect the transmission.

3.4 It is the Customer's responsibility to immediately notify Bing if it becomes aware of or suspects that there has been any unauthorised use of the Customer's Authentication Method.

### 4 PAYMENT

4.1 The Customer will pay Bing for the Services according to the Bing Price Schedule applicable, as varied by Bing from time to time, including any agreed set-up and training charges. All charges will be increased by the amount of any goods and services tax (GST) that Bing must pay on the supply of the Services.

4.2 For the term, on the 15th day and last day of each calendar month, Bing will generate an invoice for the charges incurred since the date of the previous invoice, or in the case of the first invoice, since the date of this agreement.

4.3 All invoices provided by Bing to the Customer in accordance with this agreement will include GST applicable and comply with the requirements of the New Tax System (Goods and Services Tax) Act 1999.

4.4 Where credit is offered, invoices for Services provided in accordance with this agreement shall be payable within seven days of the date of the invoice. Where pre-payment arrangements exist, invoices shall be credited as paid in accordance with those arrangements.

4.5 Charges will be incurred each time that documents are successfully transmitted to Bing.

4.6 The Customer must ensure that it is satisfied with the appearance of the document before it is transmitted to Bing given that fees will be incurred for that document once it is successfully received and processed by Bing.

4.7 Should the Customer's account be in breach of the trading terms and be passed on for debt collection, all costs, including commission, solicitors' fees and any out of pocket expenses will be the liability of the Customer.

### 5 PROMOTION

5.1 The Customer permits Bing to state in promotional material and publicly that the Customer uses the Services and to use the Customer's logos in connection with such promotion.

### 6 CONFIDENTIALITY

6.1 Subject to clause 6.2, Bing must keep secret and confidential the contents of documents transmitted by the Customer to it and must not disclose, communicate, or otherwise make known to any person, whether during this agreement or after its termination, any part of the contents of those documents for any purpose whatsoever (other than is necessary for providing the Services), without the previous written consent of the Customer.

6.2 Bing shall be relieved from its obligation in clause 6.1 in respect of any of the contents of documents that become part of the public domain otherwise than by a breach of this agreement or are required to be disclosed by law or legal process.

### 7 EXCLUSION AND LIMITATION OF LIABILITY

7.1 Subject to clause 7.3, there shall be no terms, conditions or warranties implied into this agreement.

7.2 Subject to clauses 2.8, and 7.4, Bing's liability, whether for breach of contract, negligence or otherwise, in any way connected with this agreement is:

**TERMS AND CONDITIONS**

- (a) excluded, insofar as liability for loss of profits, loss of revenue and loss of goodwill and for special, indirect, consequential damages are concerned; and
  - (b) limited for all claims in the aggregate to the amount paid by the Customer to Bing for the Services provided by Bing in relation to documents transmitted to Bing prior to the time when Bing's liability first arose.
- 7.3 Where legislation implies in this agreement any condition or warranty, and that legislation prohibits excluding or modifying by contract the application of or exercise of rights under such condition or warranty, the condition or warranty shall be deemed to be included in this agreement.
- 7.4 The liability of Bing for any breach of any condition or warranty referred to in clause 7.3 shall be limited, at the option of Bing, to the supplying of the Services again, or the payment of the cost of having the Services supplied again.
- 7.5 The Customer indemnifies Bing, and EPIP Pty Limited, their officers, employees, sub-contractors and agents from and against all actions, claims, proceedings or demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly, in respect of any loss, death, injury, illness, damages, costs or expenses (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) arising out of or in connection with any breach of this agreement by the Customer or any negligent act or omission of the Customer.
- 7.6 The obligations to indemnify set out in clauses 2.8 and 7.5 are continuing obligations separate and independent of other obligations, and shall survive the expiration or termination of this agreement.
- 8 TERM AND TERMINATION**
- 8.1 This agreement commences on the date it is signed by Bing (as shown in the Application Form) and, unless terminated under clause 8.2 or 9.3, will continue in force until terminated by either party giving to the other at least 30 days written notice of termination.
- 8.2 If:
- (a) either party is in breach of any of its obligations contained in this agreement;
  - (b) that breach has continued for not less than 3 days;
  - (c) the other party serves upon the party in breach notice in writing requiring the breach to be remedied within 14 days of the date of such notice, or such greater number of days as that party may in its discretion allow; and
  - (d) the party in breach shall have failed to comply with the notice referred to in paragraph (c),
- the other party may immediately terminate this agreement by notice in writing to the party in breach.
- 8.3 Termination of this agreement will not affect the duties and obligations of the parties which have occurred prior to the date of termination.
- 9 FORCE MAJEURE**
- 9.1 Neither party shall be liable for any delay or failure to perform its obligations pursuant to this agreement (other than the payment of money) if such failure is due to Force Majeure.
- 9.2 If a delay or failure of a party to perform an obligation is due to Force Majeure, the performance of that party's obligation will be suspended during the period the Force Majeure continues.
- 9.3 If delay or failure by a Party to perform its obligation due to Force Majeure exceeds sixty days, either party may immediately terminate this agreement by providing written notice to the other party.
- 10 CUSTOMER AS TRUSTEE**
- 10.1 If the Customer enters into this agreement as trustee of any trust ("Trust") under any trust deed, deed of settlement or other instrument ("Trust Deed"), this clause 10 applies and the Customer acknowledges entering into this agreement in its personal capacity as well as trustee of the Trust.
- 10.2 The Customer represents and warrants that:
- (a) the Customer has been validly appointed as trustee of the Trust;
  - (b) the Customer is the sole trustee of the Trust and no action has been taken or proposed to remove it as trustee of the Trust;
  - (c) the Customer has power under the Trust Deed and its constitution, if any, to enter into this agreement and perform the obligations imposed by this agreement as trustee;
- (d) all necessary resolutions required by the Trust Deed and its constitution, if any, have been passed to enter into this agreement;
  - (e) the Customer is not, and has never been, in default under the Trust Deed;
  - (f) the Customer has a right to be fully indemnified out of the Trust assets in respect of all obligations under this agreement, and the Trust assets are sufficient to satisfy that right of indemnity;
  - (g) there is no limitation on the Customer's right to be indemnified out of the Trust assets; and
  - (h) there are no material facts or circumstances relating to the Trust assets or affairs of the Trust which might, if disclosed, affect the decision of Bing to enter into this agreement,
- 10.3 No change of trustee of the Trust (including any appointment of an additional trustee) can occur without the prior written consent of Bing, which consent must not be unreasonably withheld or delayed
- 11 MISCELLANEOUS**
- 11.1 Any notice to be given under this agreement may be served by delivery to, or sending it by post or email to the party to be served.
- 11.2 A notice that is posted shall be deemed received three days after the date of posting.
- 11.3 The whole of the agreement between the parties is contained in this agreement.
- 11.4 There are no agreements, understandings, other terms whether express or implied, or collateral agreements in force or effect between the parties that are not contained or referred to in this agreement.
- 11.5 No amendment to this agreement shall be binding upon the parties unless that amendment is in writing, and is signed by the parties.
- 11.6 This agreement is made in and is subject to the non-exclusive laws in New South Wales and the parties submit to that jurisdiction.
- 11.7 Any waiver of a party's rights under this agreement shall be an effective waiver only if the waiver is expressly set out in writing and signed by the party making the waiver.
- 11.8 If it is held by a court that:
- (a) any part of this agreement is or would be void, voidable, illegal or unenforceable; or
  - (b) the application of any part of this agreement to any person or circumstances shall be or become invalid or unenforceable, unless any part of this agreement were severed from this agreement,
- that part shall be severable and shall not affect the continued operation of the remaining Terms of this agreement.
- 11.9 The Customer must not assign its rights or obligations under this agreement without the written consent of Bing, which consent must not be unreasonably withheld.
- 11.10 Bing may assign its rights and obligation under this agreement to a third party without the prior consent of the Customer.
- 12 GRANT OF LICENCE**
- 12.1 Bing is the exclusive distributor of the EasyPost® Mailroom Software and grants the Customer a non-exclusive, non-transferable licence to install and use the EasyPost® Mailroom Software during the term of this agreement on any computer that the Customer owns or directly controls.
- 12.2 The Customer must not provide or sub-licence the EasyPost® Mailroom Software to any third party without prior written consent from Bing and must ensure that no unauthorised person uses the EasyPost® Mailroom Software.
- 12.3 The Customer must:
- (a) subject to the Terms of this agreement, not:
    - (i) translate, adapt, vary or modify the EasyPost® Mailroom Software without the written consent of Bing (except to the extent that applicable laws prohibit that restriction);
    - (ii) decompile, disassemble, reverse engineer or otherwise attempt to derive the source code of the EasyPost® Mailroom Software (except to the extent that applicable laws prohibit that restriction); or
    - (iii) remove any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the EasyPost® Mailroom Software or documentation.

Please Initial	Initials	Date
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**PRIVACY STATEMENT**

Bing is collecting the personal information so that we can consider your (or your organisation's) application for Services and, if applicable, on a credit basis.

When submitting your application for credit, you consent to Bing collecting credit worthiness related information about you and/or your organisation from a credit reporting body. Bing will use that information to consider your application.

We securely store all personal information, and we do not disclose personal information to third parties outside Australia, unless required or permitted by law.

If you provide someone else's personal information to us, you acknowledge that you have their consent to do so and that you have drawn this notice to their attention.

For further information about how we collect, use, store and disclose your personal information, please see our privacy policy at <https://www.bingmail.com.au/privacy-policy>. This policy also describes how you can access and correct your personal information, and how you can complain about a breach of the Australian Privacy Principles, the Privacy Data and Protection Act 2014, the Information Privacy Principles, the Health Records Act 2001 and the Health Privacy Principles.

Please Initial	Initials	Date
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