

# Terms and Conditions of mail Service



## 1 Definitions and interpretation

In this Agreement:

**Account Application Form** means the form completed and signed by the Customer (whether in hard copy or electronically) setting out amongst other things the Customer's name and address, an account number (as allocated by UK Mail) and an account type;

**Agreement** means the agreement between UK Mail and the Customer constituted by an Account Application Form, where applicable the Mailing Profile(s), these terms and conditions (as varied from time to time) and the Service Specification;

**Charges** means UK Mail's charges for the provision of the mail Service in respect of the mail Mailing Items, as published on the mail Website, or where applicable, as agreed in a Mailing Profile, and as may be varied or supplemented under the provisions of this Agreement;

**Customer** means the person entering into this Agreement and responsible for the mail Mailing Items that are electronically conveyed to UK Mail under this Agreement as identified in the Account Application Form;

**mail Identity** means the root password protected logon that allows the Customer access to the mail Service;

**mail Service** means the service set out in the Service Specification;

**Indicator** means the marks, impressions or other devices used by UK Mail on each mail Mailing Item to be conveyed by UK Mail under this Agreement;

**mail Website** means the website giving the Customer access to the mail Service, the URL of which is www.ukmail.co.uk (but which UK Mail may change from time to time).

**Intellectual Property Rights** means all patents, registered designs, trademarks and service marks (whether registered or not), copyright, database rights, design right, know-how, information and all similar property including that subsisting (in any part of the world) in inventions, designs, performances, computer programs, semiconductor topographies, confidential information, business names, goodwill and the styles of presentation of goods or services and in applications for protection of them in any jurisdiction;

**Licensed Software** means the software made available by UK Mail to the Customer whether by web browser or downloadable print driver, for use by the Customer, in conveying mail Mailing Items to UK Mail in accordance with this Agreement;

**Mailing Profile** means agreed parameters of mail Mailing Items to be electronically conveyed by the Customer to UK Mail in accordance with this Agreement, set out in documents signed by UK Mail and the Customer (whether in hard copy or electronically) from time to time;

**mail Mailing Item** means a letter or postcard as described in the Service Specification, which is electronically conveyed to UK Mail in accordance with the requirements set out in the Service Specification and which is subsequently processed under the mail Service;

**Royal Mail** means Royal Mail Group Ltd;

**Scheme** means the Post Office Inland Letter Post Scheme IL1/2000 (as amended from time to time) and any replacement or similar Scheme or Schemes (and any amendments thereto) relating to inland postal services made or deemed to have been made by Royal Mail from time to time under section 89 of the Postal Services Act 2000;

**Service Specification** means the specification for the mail Service set out in the mail Service Specification published by UK Mail from time to time; and

**UK Mail** means UK Mail Ltd (company number 00965783) with its registered office at 464 Berkshire Avenue, Slough, SL1 4PL.

In this Agreement (except where the context otherwise requires):

a) any reference to a clause is to the relevant clause of this Agreement;

b) the clause headings are included for convenience of reference only and shall not affect the interpretation of this Agreement;

c) use of the singular includes the plural and vice versa and use of any gender includes the other gender;

d) the words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of the foregoing words; and

e) reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted.

The Service Specification forms part of this Agreement and shall have effect as if set out in full in the main body of this Agreement and any reference to this Agreement includes the Service Specification. However, in the event of there being any conflict between the wording of the Service Specification and the main body of this Agreement, the main body of the Agreement shall prevail.

The provisions of the Scheme insofar as not inconsistent with this Agreement are hereby incorporated into this Agreement. The Customer shall be deemed to be the "sender" for the purposes of the Scheme and for the purpose of the Scheme any reference in the Scheme to Royal Mail or the Post Office shall be read as including (where the context permits) a reference to UK Mail.

## 2 Service Obligation

UK Mail shall in accordance with this Agreement process all mail Mailing Items that have been accepted by UK Mail under the mail Service.

UK Mail shall notify the Customer electronically when an mail Mailing Item has been accepted for processing under the mail Service. UK Mail reserves the right to refuse or accept any mail Mailing Item that fails to comply with the Service Specification or the terms of this Agreement.

The Service Specification sets out UK Mail's service level target. The Customer acknowledges that UK Mail is required to use Royal Mail for the final sortation and delivery, and accordingly is not able to offer any assurance as to the actual delivery date of any mail Mailing Item. Accordingly, UK Mail shall not be liable to the Customer or to any other person for failure to deliver within this target (whether as a result of breach of this clause or otherwise).

## 3 Equipment and mail Mailing Items

The Customer shall at its expense obtain and, for the duration of this Agreement, maintain such equipment as is necessary to enable the Customer to electronically convey mail Mailing Items to UK Mail for processing under the mail Service. It is the Customer's responsibility to ensure that such equipment complies with the specifications and requirements set out in the Service Specification.

The Customer shall ensure that each mail Mailing Item that it electronically conveys to UK Mail conforms to the requirements set out in the Service Specification and where applicable, the Mailing Profile.

The Customer warrants that either it is the owner of all mail Mailing Items that it electronically conveys to UK Mail for processing under the mail Service or if not the owner it is an agent of the owner and is authorised to electronically convey the mail Mailing Items on the owner's behalf for such processing by UK Mail.

The Customer shall ensure that:

- a) each mail Mailing Item will comply with the Scheme (except as expressly permitted by this Agreement); and
- b) the Mailing Preference Service's Suppression File is applied to all relevant mail Mailing Items.

The Customer shall procure that the contents of all mail Mailing Items that are electronically conveyed to UK Mail conform to the British Codes of Advertising and Sales Promotion. Any breach of this clause 3.5 shall be deemed not to be capable of remedy for the purpose of clause 8.2.

The Customer acknowledges that mail Mailing Items that are processed by UK Mail under the mail Service shall be printed to the standard of the Service Specification. UK Mail shall not be liable to the Customer in respect of the accuracy or consistency of the printing of the mail Mailing Items where the printing of such mail Mailing Items complies with the Service Specification.

The Customer warrants that it is either the owner of the intellectual property vested in the content (including but not limited to graphics, images and text) of any mail Mailing Item it conveys to UK Mail under the mail Service or it is otherwise licensed or authorised to use such intellectual property.

The Customer shall grant a royalty free license to UK Mail for the purpose of allowing UK Mail to perform its obligations under this Agreement, or shall obtain any required third party licence for UK Mail for the purposes of performing its obligations under this Agreement.

The Customer shall indemnify UK Mail and/or Royal Mail and render it harmless against any and all losses, including without limitation all claims, damages, awards, expenses (including legal expenses) suffered or incurred by UK Mail and/or Royal Mail in respect of any and all matters arising out of, or in connection with any breach by the Customer of clauses 3.7 and 3.8.

Without prejudice to the generality of the foregoing, UK Mail and Royal Mail reserves the right to reject any mail Mailing Item that does not conform to the Service Specification.

## 4 Licensed Software

UK Mail in consideration of the payment by the Customer from time to time of the Charges in accordance with clause 6 hereby grants to the Customer for the duration of this Agreement a non-exclusive, non-transferable licence to use the Licensed Software for the purposes of the mail Service upon the terms and conditions of this Agreement.

UK Mail warrants that it has the right, power and authority to license the Licensed Software to the Customer upon the terms and conditions of this Agreement.

UK Mail does not warrant that the Customer's use of the Licensed Software will be uninterrupted or error free or that the Licensed Software will be free of harmful code such as viruses, Trojan horses, worms or other malicious code.

Subject to the foregoing, all conditions, warranties, terms and undertakings express or implied, statutory or otherwise in respect of the Licensed Software are hereby excluded.

Risk in the Licensed Software will pass to the Customer upon accessing of the Licensed Software

by the Customer. If the Licensed Software is subsequently destroyed, damaged or lost, UK Mail will upon request replace same.

The Customer shall not:

a) (other than as permitted by law) reverse compile, reverse engineer, adapt or otherwise modify the whole or any part of the Licensed Software; or

b) remove or alter any copyright or other proprietary notice on the Licensed Software.

The Licensed Software contains confidential information of UK Mail and all copyright, trade marks and other Intellectual Property Rights in the Licensed Software are the exclusive property of UK Mail (and/or its licensors) and the Customer shall (at its cost) take all such steps as are necessary from time to time to protect UK Mail's confidential information and Intellectual Property Rights in the Licensed Software.

The Customer is responsible for ensuring that the Licensed Software is compatible with its existing software programmes and UK Mail shall not be liable to the Customer where the Customer's use of the Licensed Software is incompatible with such existing software or where such use causes corruption, interruption or other errors in respect of the Customer's existing software or systems.

## 5 Customer access and passwords

The Customer shall be responsible for the acts and/or omissions of any persons making use of its mail Identity(ies) whether being authorised to do so or not. The Customer will promptly notify UK Mail on becoming aware of any mail Identity and/or password being known and/or available to a third party.

If the Customer becomes aware that any unauthorised access to or use of the Licensed Software and/or mail Service has occurred or may occur, it shall promptly notify UK Mail.

If UK Mail becomes aware that any unauthorised access to or use of the Licensed Software and/or mail Service has occurred or may occur it shall promptly notify the affected Customer.

Without prejudice to UK Mail's rights under clause 5.5, upon notification under clause 5.2 or 5.3 UK Mail and the Customer shall discuss what steps if any may be appropriate to reduce the risk of any further unauthorised access to or use of the Licensed Software and/or mail Service, and each of the Customer and UK Mail shall take such steps as soon as is reasonably practicable at their own cost.

Where at any time UK Mail becomes aware that the Customer is not complying with the terms of this Agreement included but not limited to access to or use of the Licensed Software and/or mail Service or that there has been or may be unauthorised access to or use of the Licensed Software and/or mail Service, UK Mail reserves the right to suspend and/or terminate the Customer's access to the Licensed Software and the mail Service, and will notify the Customer in the event that suspension or termination occurs. UK Mail has discretion to restore the Customer's access where the Customer has demonstrated to UK Mail's reasonable satisfaction that such non compliance has ceased and the Customer is taking all reasonable steps to prevent its recurrence.

Due to the nature of the internet, online systems and software UK Mail cannot ensure that the mail Service will be available at all times and/or will always function effectively. Accordingly, UK Mail shall not be liable to the Customer in respect of the unavailability or malfunctioning of the mail Service. UK Mail will attempt to inform Customers via the mail Website of periods of planned downtime during which the Customer will not be able to access the mail Service. However, Customers should be aware that some downtime may not be planned.

UK Mail shall not be liable to the Customer where the Customer is unable to access the mail Service, electronically convey mail Mailing Items or otherwise use the mail Service for reasons related to internet connectivity and/or telecommunications.

## 6 Charges and payment

The Customer shall pay the Charges in accordance with those published on the mail Website from time to time or where applicable, in accordance with the Mailing Profile(s). UK Mail may vary the Charges (acting reasonably and after notifying the Customer) if the mail Mailing Items that the Customer electronically conveys to UK Mail do not comply with the relevant Mailing Profile. UK Mail reserves the right to review and increase Charges at any time upon giving 30 days notice to the Customer by publishing it on the mail Website or by written notice where a Mailing Profile applies.

UK Mail may offer 3 account options for its mail Service. The invoicing and payment arrangements in respect of the 3 account options are as follows:

- (a) Credit Account Customers - UK Mail shall send to the Customer weekly invoices, whether by post, email or other means, showing the total Charges or other sums due from the Customer and the Customer shall pay all such invoices by direct debit within 21 days of date of the invoice or by such means as otherwise agreed in writing.
- (b) Ad Hoc Account Customers - The Customer shall pay the Charges upon booking the mail Services online using a credit or debit card accepted by UK Mail.
- (c) Prepayment Account Customers - The Customer shall establish a credit balance by making an advance payment sufficient for the Charges prior to using the mail Service by using a credit or debit card accepted by UK Mail. The Customer may from time to time make additional payments to the prepayment account so as to maintain a credit balance. Such credit balance may be used in part or full payment of the Charges in respect of future mail Mailing Items that it conveys to UK Mail for processing under the mail Service. UK Mail shall notify the Customer of its credit balance from time to time.

UK Mail shall determine which of the account options are available to the Customer at the time of contracting. Some of the account options may require the Customer to satisfy certain credit requirements. UK Mail reserves the right to refuse to offer or to withdraw the Credit Account option where the Customer fails to satisfy UK Mail's credit requirements from time to time.

Any queries relating to invoices must be received by UK Mail, in writing, within 7 days of the date of the invoice.

All payments due from the Customer under this Agreement will be made without deduction whether by way of counterclaim, set-off or otherwise unless the Customer has a valid court order requiring an amount equal to the deduction to be paid by UK Mail.

All Charges or other sums payable under this Agreement are expressed exclusive of VAT, which shall be paid at the time and in the manner required by law.

If a Credit Account Customer fails to make any payment to UK Mail under this Agreement on the due date, without prejudice to any other right or remedy available to UK Mail, UK Mail shall be entitled to:

- a) immediately suspend the performance or further performance of its obligations under this Agreement without liability to the Customer; and
- b) charge daily interest on all amounts not paid until payment is received in full at an annual rate equal to 4% above the Barclays TSB Bank plc base lending rate from time to time.

## 7 Exclusions of liability and claims

The Customer acknowledges and agrees that:

- a) the treatment of all mail Mailing Items that have been processed under the mail Service pursuant to this Agreement will be the same as in the case of ordinary mailing items posted with Royal Mail and, in particular, UK Mail does not keep detailed records of conveyance or delivery of any mail Mailing Items; and
- b) in the event of loss of or damage to any mail Mailing Item dealt with by UK Mail under this Agreement, UK Mail shall, subject to satisfactory proof of such mail Mailing Item having been accepted by UK Mail and of the loss or damage, and subject to the remainder of this clause 7, pay compensation to the Customer subject to the following limits:

(i) where UK Mail has already handed over the relevant mail Mailing Item to Royal Mail, the compensation shall be limited to whatever payment UK Mail recovers from Royal Mail under the Scheme in relation to that mail Mailing Item;

(ii) otherwise, the compensation in respect of the relevant mail Mailing Item shall be limited to the Charge paid.

UK Mail's maximum liability to the Customer in relation to the total number of mail Mailing Items, that have been accepted by UK Mail, in any one day (whether under clause 7.1 or other provision of this Agreement, in tot (including negligence or breach of statutory duty) or otherwise) is £10,000.

Except as provided in clause 7.1, UK Mail shall not be liable to the Customer or to any other person (whether in contract, tort (including negligence or breach of statutory duty) or otherwise) for any loss of or damage to any mail Mailing Item dealt with by UK Mail under this Agreement or for any delay in delivery.

Notwithstanding clause 7.1, UK Mail shall not be liable to the Customer for any loss or damage (whether in contract, tort (including negligence or breach of statutory duty) or otherwise) of any mail Mailing Item-

- a) which occurs as a direct or indirect result of any failure by the Customer to comply with this Agreement (including the Scheme and the Service Specification); or
- b) for which UK Mail has not acknowledged acceptance; and
- c) unless the Customer notifies UK Mail of a claim under clause 7.1 in writing within 28 days of the relevant date of acceptance by UK Mail.

Neither party shall be liable to the other for loss of profit, revenue, business, goodwill and like loss (whether direct or indirect) or for any consequential or indirect losses.

UK Mail shall not be liable for any failure or delay in performance of UK Mail's obligations (including for any loss or damage or failure to deliver or delay in delivery of a mail Mailing Item) due to any event beyond UK Mail's reasonable control including an act of God, war, riot, civil commotion, terrorism, malicious damage or blockades, industrial disputes, compliance with any law or governmental order, rule, regulation or direction, national emergencies, fire, flood, tropical

or storm, accident, breakdown of plant or machinery or default of supplies (including fuel,) or sub-contractors.

Nothing in this Agreement shall exclude or restrict either party's liability for fraudulent misrepresentation or for death or personal injury caused by negligence.

The Customer shall indemnify UK Mail and keep UK Mail indemnified against any liability, loss, claim, costs or expense (including legal expenses) suffered or reasonably incurred by UK Mail (or its employees, agents or contractors) as a result of any breach by the Customer of any provision in this Agreement.

## 8 Termination

Without prejudice to any other right to terminate under this clause 8, either party may terminate this Agreement at any time by giving the other party 30 days' notice.

Either party (the "terminating party") may terminate this Agreement immediately by giving the other party (the "breaching party") notice if:

- a) the breaching party commits any breach of the terms of this Agreement and the breach is not capable of remedy or where the breach is capable of remedy the breaching party has not remedied that breach within 14 days of being notified of the breach by the terminating party; or
- b) the breaching party has an administrator or a receiver (including any administrative receiver or manager) appointed over the whole or any part of its assets or an order made or a resolution passed for winding-up of the breaching party (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or if circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitle a court to appoint an administrator or make a winding-up order or if the breaching party has made any composition with its creditors generally.

In respect of Credit Account Customers, UK Mail may terminate this Agreement immediately by giving the Customer notice if the Customer fails to pay any Charges or other sums due under this Agreement when due, provided that UK Mail has given the Customer notice specifying an intention to terminate this Agreement and given a period of 7 days to remedy that failure.

In the case of Prepayment Account Customers, UK Mail may terminate this Agreement immediately on notice if the Customer has not made any use of the mail Service to convey an mail Mailing Item for a period of 6 months from the date of last use to convey an mail Mailing Item. The provisions of clause 9.4 will then apply.

## 9 Consequences of Termination

The termination of this Agreement (for any reason) shall not affect the coming into or the continuance in force of any obligations which expressly or by implication are intended to come into or continue in force on or after such termination and shall be without prejudice to any other rights of either party accrued up until the date of termination.

On termination of this Agreement (for any reason) the Customer shall immediately:

- a) cease using the Licensed Software; and
- b) cease using the mail Identity and password(s);

c) The Customer shall also immediately upon termination of this Agreement or otherwise when reasonably requested by UK Mail return to UK Mail any property (and delete, remove and/or uninstall all copies of the Licensed Software held by the Customer) provided to the Customer under this Agreement.

On termination, any sum owing to UK Mail by the Customer, regardless of whether the Customer has been issued with an invoice for that sum or whether such sum is due to be paid in the future, will become immediately due and payable.

Where UK Mail has terminated pursuant to clause 8.4, the Customer's remaining credit account balance, if any, shall be forfeited and transferred to UK Mail.

## 10 Confidentiality

Except as provided in clauses 10.2 and 10.3, UK Mail and the Customer undertake to the other to keep confidential the terms of this Agreement, all information (written or oral) concerning the business, the customers or financial information of the other that it has received as a consequence of the discussions leading up to this Agreement or which it subsequently receives as a consequence of the performance of this Agreement, including the prices charged by UK Mail under this Agreement ("Confidential Information").

UK Mail and the Customer may each disclose Confidential Information to their respective legal, financial and other business advisors (in each case in so far as such advisors need to know such Confidential Information) or as may be required by law or by any regulatory authority.

Clause 10.1 shall not apply to Confidential Information which the receiving party can demonstrate was: (i) already in its possession prior to its receipt from the disclosing party; (ii) was subsequently disclosed to it lawfully by a third party who did not obtain such Confidential Information (directly or indirectly) from the disclosing party; or (iii) was in the public domain other than as a result of a breach of clause 10.1 by the receiving party.

The obligations of the parties under this clause 10 survive termination of this Agreement however caused.

## 11 Assignment, Use of Agents and Sub-contracting

UK Mail may employ any person as UK Mail agent, sub-contractor or otherwise in the performance of any of UK Mail's obligations under this Agreement. In particular, the Customer recognises UK Mail may use Business Post Ltd (or other members of its group), or its or their franchisees and owner-drivers to convey mail Mailing Items that have been processed under the mail Service. The Customer also conveys that UK Mail will hand over mail Mailing Items to Royal Mail for final conveyance to the destination address.

UK Mail recognises that the Customer may use agents to electronically convey the mail Mailing Items to UK Mail. If the Customer does so, it remains responsible for acts and/or omissions of the agent and for compliance with this Agreement, in particular the agent's compliance with the obligations set out in clause 5. UK Mail is entitled to deal with the Customer's agent in respect of any mail Mailing Items that are electronically conveyed by that agent.

This Agreement is personal to the Customer and the Customer may not assign or licence any or all of the Customer's rights or obligations under it without the prior written agreement of UK Mail.

## 12 The Indicator

The Indicator that UK Mail applies to the mail Mailing Items that are processed under the mail Service is the property of UK Mail.

Nothing in this Agreement will operate so as to grant the Customer any rights in respect of the Indicator. All Intellectual Property Rights in respect of the Indicator will (as between the Customer and UK Mail) remain vested in UK Mail at all times. All goodwill attaching to the Indicator arising through UK Mail's application of the Indicator to the Customer's mail Mailing Items will automatically accrue to UK Mail, whether arising at common law or otherwise, and the Customer assigns with full title guarantee to UK Mail any such goodwill which may otherwise be vested in it.

## 13 Notices

Save for notices published on the mail Website under this Agreement, all notices between the parties must be in writing and delivered by hand, or post, if to UK Mail, to UK Mail's registered office and if to the Customer, to the Customer's address specified on the Account Application Form, or in either case, to such other address as is notified by one party to the other.

Notices will be deemed to be received if sent by post, 2 days (excluding Saturdays, Sundays and bank or public holidays) after posting (excluding the day of posting), and if delivered by hand, on the day of delivery.

## 14 Miscellaneous

UK Mail reserves the right for and for Royal Mail to open and inspect mail Mailing Items to verify compliance with the requirements of relevant law and regulation and this Agreement.

UK Mail may vary these terms and conditions by giving the Customer at least 30 days notice by publication on the mail Website.

The failure of either party to enforce or to exercise, at any time or for any period, any term of, or right arising pursuant to, this Agreement does not constitute, and shall not be construed as, a waiver of such a term or right and shall not affect the party's right to enforce or exercise it at a later date.

UK Mail is not and does not contract as a common carrier. This Agreement supersedes any prior agreements and arrangements between UK Mail and the Customer, and constitutes the entire agreement between UK Mail and the Customer, relating to its subject matter. Neither party has relied upon or been induced to enter into this Agreement by any representation or statement other than as set out in this Agreement. No addition to or modification of this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of both UK Mail and the Customer. Any mail Mailing Item that is electronically conveyed to UK Mail is electronically conveyed under this Agreement to the exclusion of all other documents or terms that the Customer attempts to apply, even if they are endorsed upon, delivered with or contained in any document that the Customer delivers to UK Mail.

This Agreement shall be subject to English law. The parties submit to the exclusive jurisdiction of the English Courts.

Nothing in this Agreement is intended to confer on any person any benefit or right to enforce any term of it which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

Data Protection Act – The Customer consents to and understands that for all account applications, a credit search will take place using a credit reference agency. This information may also be shared with other Business Post Group plc subsidiaries.

Each and every term and/or condition contained in this Agreement shall be read separately and distinctly and the invalidity or unenforceability of any part of this Agreement shall not affect the validity or enforceability, of the remainder.

UK Mail is not and does not contract as a common carrier. This Agreement supersedes any prior agreements and arrangements between UK Mail and the Customer, and constitutes the entire agreement between UK Mail and the Customer, relating to its subject matter. Neither party has relied upon or been induced to enter into this Agreement by any representation or statement other than as set out in this Agreement. No addition to or modification of this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of both UK Mail and the Customer. Any mail Mailing Item that is electronically conveyed to UK Mail is electronically conveyed under this Agreement to the exclusion of all other documents or terms that the Customer attempts to apply, even if they are endorsed upon, delivered with or contained in any document that the Customer delivers to UK Mail.

This Agreement shall be subject to English law. The parties submit to the exclusive jurisdiction of the English Courts.

Nothing in this Agreement is intended to confer on any person any benefit or right to enforce any term of it which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

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