

# Terms and Conditions

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## 1. AGREEMENT / EARLY TERMINATION RIGHT

(a) These terms and conditions, together with the Order Form, contain the entire understanding and agreement between you and us relating to the rental of the Product(s) ("Agreement").

**(b) You may terminate this Agreement at any time during the Trial Period, with or without cause (including if you disagree with any terms of this Agreement), in accordance with Clause 10.3 below.**

## 2. DEFINITIONS

In this Agreement the following words shall have the following meanings:

**"PB", "we", "us"** or similar expressions means Pitney Bowes Australia Pty Ltd (ABN: 82 001 475 921);

**"you"** or similar expressions means the customer or prospective customer whom is, or wishes to, rent a Product through Buy Now Australia;

**"Average Saleable Condition"** - all of the Products are immediately available for use by another customer without the need for repair or remanufacture;

**"Buy Now Australia"** - means PB's website at <http://www.pitneybowes.com/au> through which you will order, or have ordered, the Product(s) to be supplied under this Agreement;

**"Data Capture"** - the capability of PB to process and archive information regarding postal product usage by product type and weight break;

**"Date of Dispatch"** - the date we (or our agents) dispatch the Products to you;

**"Delivery"** - dispatch by us (or by our appointed carrier) to your installation address;

**"Meter"** - franking and date stamping device used in the Product to show postage paid;

**"Minimum Rental Period"** - means the minimum rental period for the Product(s) as set out in the Order Form, namely, a twelve (12) month period after the Trial Period;

**"New Pitney Bowes Meter Customer"** - means a customer who does not currently have (whether leased, rented or purchased), and did not have in the previous twelve (12) months, a postage Meter with Pitney Bowes;

**"Order Form"** means the relevant page(s) on Buy Now Australia that were completed by you and that sets out the Product(s) that you will rent from PB;

**"Postage by Phone Account"** - means the account that will enable you to perform Postage Resets, as described in Clause 8.5;

**"Postage Credit"** - means both: (a) Postage Resets; and (b) the Agreed Deposit Balance in your Postage by Phone Account, as described in Clause 8.5.

**"Postage Resets"** - means resets of the Meter from your Postage by Phone Account with credit to enable the printing of stamps onto envelopes using the Product(s);

**"Product(s)"** - means the hardware (including any accessories/ancillary items) to be supplied under this Agreement, as detailed in the Order Form;

**"PSD"** (Postal Security Device) - means the Device used for Postage by Phone security and funds management;

**"Rental Amounts"** - means the rental amounts payable by you to us during the Rental Period in respect of the rental of the Product(s), as specified in the Order Form, plus GST;

**"Rental Period"** - means the Minimum Rental Period and any Renewal Term;

**"Renewal Term"** - has the meaning given to it in Clause 9 below; and

**"Trial Period"** - means the initial thirty (30) days trial period as described in Clause 10.2 below.

## 3. YOUR OBLIGATIONS

### 3.1 You must:

- (a) pay us all Rental Amounts in full and on time for the whole of the Rental Period. Time is of the essence in respect of all your payments (including GST) under this Agreement;
- (b) take care of the Products, keep the Products in your possession, and keep them in good working order;
- (c) pay us the full replacement costs for any Products you lose or damage beyond reasonable repair;
- (d) use the Products only in accordance with the manufacturers' instructions;
- (e) tell us in writing within seven (7) days of any loss, theft or damage to the Products or change in your address; and
- (f) indemnify us and keep us indemnified against any loss, damage, expense or injury arising directly or indirectly out of your use of the Products other than in accordance with the manufacturers' instructions.

### 3.2 Risk. Risk in the Products shall pass to you immediately upon Delivery.

### 3.3 Prohibition on assignment or parting with possession. You must not, without our written permission:

- (a) charge, part with, sell, or allow anyone else to use the Products, or move them from your installation address; or
- (b) assign this Agreement to anyone else.

## 4. OUR RIGHTS, OBLIGATIONS AND LIABILITY

### 4.1 Waiver. Our rights will not be affected if we do not enforce, or delay enforcing, any of these terms.

### 4.2 PB Rights. We may:

- (a) assign or transfer our rights or obligations to another party by informing you in writing;
- (b) use any credit balance we are holding on your behalf towards payment of any sum you owe us or which will fall due to us.

### 4.3 Limitation of Liability. **Except in the case of fraud, personal injury or death caused by our negligence, or any other liability which cannot be excluded or limited under law:**

- (a) our total aggregate liability to you for any and all claims in relation to this Agreement (whether arising in contract, tort (including negligence), statute or otherwise) shall be limited to the amount of fees you have paid to us under this Agreement; and**
- (b) we shall under no circumstances be liable for any: (i) loss of or damage to business, contracts, opportunities, anticipated savings or goodwill; or (ii) indirect, special or consequential loss or damage; howsoever arising (whether arising in contract, tort (including negligence), statute or otherwise); even if we have been advised of the possibility of such loss or damage.**

### 4.4 Liability Disclaimers. We will not be responsible for any delay, or the consequences of any delay, in performing our obligations if the delay is due to your failure to notify us of any change in your address or to any circumstances beyond our reasonable control.

## 5. PRODUCTS

### 5.1 Ownership. We own all of the Products.

### 5.2 Supply of Products. We may supply Products:

- (a) of a different model as long as their specifications are equal to or better than the Products listed and that as a result your rental payments do not increase;
- (b) whether newly manufactured or remanufactured, containing serviceable new or used parts which are warranted equivalent to new.

### 5.3 Costs of repossession / repairs. You must pay all costs (legal or otherwise) reasonably incurred by us in repossessing the Products and having any repairs carried out if you do not take care of the Products and do not keep them in good working order.

### 5.4 Internet Connection. A Meter may use an internet access point (e.g. a wireless router) provided by PB. You may only use this access point for connectivity between the Meter and the internet and for no other purpose. You agree to pay all costs associated

(i.e. ASP or internet supplier costs) with the use of the access point.

**5.5 Software Licence.** Where any software application is provided either: (a) as an integral part of the Products; or (b) on any disk provided with the Products; that software is licensed to you free of charge. You must agree to the licence terms included on any disk provided or in any installation process.

**5.6 Embedded software.** Our Products may contain embedded software. You agree that: (a) Pitney Bowes Inc. and its licensors own the copyrights and other intellectual property in and to the embedded software; (b) you are licensed only to use the embedded software with our Product in which the embedded software resides; (c) you will not copy, modify, de-compile, or otherwise attempt to unbundle, reverse engineer or create derivative works of the embedded software, except as permitted by applicable law; (d) you will not distribute or otherwise disclose the embedded software (or any portion thereof) to any other person; and (e) you may not export the embedded software in contravention of applicable export control laws. The embedded software contains third party software, which, notwithstanding the above, is subject to any terms that may accompany such third party software.

## 6. POSTAGE METERS

6.1 Australia Post Licence.

6.1.1 We will obtain a licence from Australia Post in respect of each Meter, which will remain with us for the duration of the Rental Period. Postage Resets shall be payable by you by direct debit in accordance with Clause 8.5.

6.1.2 We will pass on any Australia Post rebates to you in relation to Postage Resets for Meters.

6.1.3 **Your use of the Products / Meter is also subject to Australia Post's 'Postage Meters - Conditions of Use', located at: <http://auspost.com.au/media/documents/postage-meters-conditions-of-use-guide-sept2011.pdf>. You should read and understand those terms, and any updated versions Australia Post publish from time to time.**

6.1.4 If you use the incorrect postage amount on any metered mail impression, we have the right to charge you for any amount charged to us by Australia Post for the understated postage and any associated processing fees charged by Australia Post.

6.2 When using the Meter:

6.2.1 you must not:

(a) do anything which may result in Australia Post revoking our licence in respect of the Meter;

(b) make any alterations to the Meter, or the design or colour of any impression approved by Australia Post, without written consent from Australia Post or us;

(c) make any modifications or attachments to the Meter which will affect the franking or revenue recording system.

6.2.2 you must, for postal security reasons, allow us to recover PSDs / Meters if we provide you with evidence that Australia Post has asked us to recover them.

## 7. WARRANTY

**Replacement Warranty.** At any time during the Trial Period or Rental Period, in the event a Product does not materially conform to the accompanying specifications and/or there is a Product defect that affects the use of the Product, the following terms shall apply:

(a) you will call our Technical Support personnel on 13 23 63 to see if the matter can be resolved via telephone;

(b) if the matter cannot be resolved by telephone, we will send you a replacement Product that will be swapped-out for the defective Product. Such replacement Product will, upon Delivery, be subject to the terms of this Agreement. We will arrange for the courier to send you the replacement Product and collect the defective Product. **The defective Product should be packaged upright and made available for collection by the courier that delivers the replacement Product. We will pay for the cost of sending you the replacement Product and you will be responsible for the cost of the collection / return of the defective Product. We will invoice you such cost (being 50% of the total cost of sending/returning the Products), and you will pay such invoice within thirty (30) days of the invoice date.**

**7.2 Warranty Exclusions.** The above warranty is provided to you alone and does not apply to: (a) consumable parts or adjustments by anyone other than us that alter the design specification of the Products or supplies; (b) faults which, in our

opinion, have occurred because you have used non-compatible consumables including, but not limited to, the use of ink which is not approved by us.

7.3 Exclusion of implied conditions. Subject to Clause 7.4 below, all conditions, terms and warranties that are or might otherwise be implied by law, practice or trade usage, are excluded to the fullest extent permitted by law.

7.4 Competition and Consumer Act 2010 (Cth) etc. limits. Provisions of the Competition and Consumer Act 2010 (Cth) and Australian Consumer Law and other statutes in some cases either cannot be excluded, restricted or modified; or can only be restricted or modified to a limited extent. If any provisions of those types do apply, then to the extent permitted by law our liability under those provisions is limited as follows. Our liability is limited, at our option, to the replacement of the goods; or the supply of equivalent goods; or repair of the goods.

## **8. FEES, DIRECT DEBIT AND CREDIT CARD PAYMENTS, AND PAYING FOR YOUR POSTAGE CREDIT**

8.1 You must pay the fees set out in the Order Form for the duration of the Rental Period.

8.2 We may increase the Rental Amount once per year at the anniversary date of the Date of Dispatch by the greater of: (i) five per cent (5%); or (ii) the annual increase in CPI (8 capital cities).

### 8.3 Payment of Rental Amounts by Direct Debit.

(a) For customers paying Rental Amounts by Direct Debit (if elected by you on the Order Form), you request and authorise us and our bank to debit or charge you the Rental Amounts specified in the Order Form on a monthly in advance basis throughout the Rental Period; to be debited through the Bulk Electronic Clearing System from the account nominated by you in the Order Form. Our Direct Debit User ID for Rental Amounts payments is: 228295.

(b) If you wish to stop or defer a debit payment you must notify us in writing at least fourteen (14) days before the next debit day. This notice should be given to us in the first instance. You can arrange the cancellation through your own financial institution.

(c) If you wish to cancel your authority for us to debit your account at any time by giving us fourteen (14) days' notice in writing before the next debit day. This notice should be given to us in the first instance. You can also request a stop or cancellation through your own financial institution.

(d) In either of the events mentioned in Clauses 8.3(b) or 8.3(c) above we will mutually agree an alternative payment method. Note: physical invoicing may incur an additional processing fee.

(e) It is your responsibility to ensure that there are sufficient clear funds available in your account to allow a debit payment to be made in accordance with the direct debit request.

(f) If there are insufficient clear funds in your account to meet a debit payment:

(i) you may be charged a fee and/or interest by your financial institution;

(ii) you may also incur fees or charges imposed or incurred by us; and

(iii) you must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in your account by an agreed time so that we can process the debit payment.

(g) If you believe that there has been an error in debiting your account, you should notify us directly on 13 23 63 and confirm that notice in writing with us as soon as possible so that we can resolve your query more quickly.

(h) If we conclude as a result of our investigations that your account has been incorrectly debited we will respond to your query by arranging for your financial institution to adjust your account (including interest and charges) accordingly. We will also notify you in writing of the amount by which your account has been adjusted.

(i) If we conclude as a result of our investigations that your account has not been incorrectly debited we will respond to your query by providing you with reasons and any evidence for this finding.

(j) Any queries you may have about an error made in debiting your account should be directed to us in the first instance so that we can attempt to resolve the matter between us and you. If we cannot resolve the matter you can still refer it to your financial institution which will obtain details from you of the disputed transaction and may lodge a claim on your behalf.

### 8.4 Payment of Rental Amounts by Credit Card.

(a) For customers paying Rental Amounts by Credit Card (if elected by you on the Order Form), you request and authorise us

and our bank to debit or charge you the Rental Amounts specified in the Order Form on a monthly basis throughout the Rental Period; to be debited or charged to the credit card account nominated by you in the Order Form.

(b) All of the terms and conditions in Clause 8.3 shall apply equally in respect of credit card payments (as if they were repeated in this Clause 8.4).

#### 8.5 Payment of Postage Credit.

(a) Our Postage Credits system is known as the "Postage by Phone" system.

(b) **We will debit your nominated Direct Debit bank account an initial \$100 to create your Postage by Phone Account.** This amount is your "**Agreed Deposit Balance**" and enables you to perform Postage Resets for your Meter. This amount is held by us in our capacity as the trustee of the Postage by Phone Reset Deposit Account trust fund. However, this amount may be increased or decreased by you during the Trial Period or Rental Period by contacting us.

(c) To download additional postage credit to your Meter you perform a "Postage Reset" transaction on your Meter. This is drawn down against your Agreed Deposit Balance.

(d) After each Postage Reset, we will debit your nominated Direct Debit bank account for an amount equal to the Postage Reset less the rebate then-currently allowed by Australia Post (at the time of writing, 2.5%). This 'tops up' (restores) your Agreed Deposit Balance to its full agreed amount.

(e) The balance of your Agreed Deposit Balance, and any unused postage credit on your Meter, will be refunded to you at the end of the Trial Period (if applicable) or at the end of the Rental Period.

(f) All of the terms and conditions in Clause 8.3 shall apply equally in respect of Postage Credit payments by Direct Debit (as if they were repeated in this Clause 8.5). Our Direct Debit User ID for Postage Credit payments is: 008683.

8.6 Interest. We may charge you interest on any late payments at a rate of 1% per month.

8.7 GST. You will pay GST on all fees due under this Agreement in the amount and manner prescribed by applicable law. We may adjust your payments to us to reflect any GST rate changes.

## 9. AUTOMATIC RENEWALS

9.1 **After the Minimum Rental Period, this Agreement will automatically continue (at the same Rental Amounts, subject to annual increases in accordance with Clause 8.2) on a rolling three (3) monthly basis (each a "Renewal Term") until either party terminates this Agreement by giving the other party at least one (1) months' termination notice in writing (such termination to only be effective at the end of the relevant Renewal Term).**

## 10. TRIAL PERIOD / ENDING THIS AGREEMENT

10.1 Rental Period. Subject to your cancellation rights during the Trial Period, as set out in Clauses 10.3, 10.4 and 10.5 below, this Agreement shall remain in force during the Minimum Rental Period and thereafter for any Renewal Terms in accordance with Clause 9.

10.2 Trial Period. Subject to Clauses 10.3, 10.4 and 10.5 below, you may use the Products for a period of thirty (30) days commencing from the seventh day after the Date of Dispatch (the "Trial Period"). For the duration of the Trial Period, no Rental Amounts will be payable by you, but any Postage Resets downloaded by you during the Trial Period will be payable by you. If you are a New Pitney Bowes Meter Customer, we will include \$50 of postage credit ("Free Postage Credit") on the first Meter (only) that you rent through Buy Now Australia, without charge to you. To avoid doubt, you do not have to pay us the Free Postage Credit in the event you cancel this Agreement during the Trial Period, and any remaining Free Postage Credit will be forfeited back to PB upon cancellation.

10.3 Cancellation during the Trial Period. You may cancel this Agreement at any time during the Trial Period by giving us written notice that you wish to cancel the Agreement. The notice must be sent addressed to 'Finance Director, Pitney Bowes Australia Pty Ltd, Level 1, 68 Waterloo Road, Macquarie Park, NSW 2113' by registered mail or by e-mail to [accounts.au@pb.com](mailto:accounts.au@pb.com) and must reach us by no later than 5:00pm on the 30th day of the Trial Period.

10.4 Return of Products on Termination. If you cancel this Agreement in accordance with Clause 10.3 above, or if this Agreement terminates for any reason, the Products must be returned to us undamaged (subject only to fair wear and tear) and

in accordance with Clause 11 below.

**10.5 Agreement to continue if no termination.** If you decide not to cancel this Agreement during the Trial Period; or fail to give us the notice required under Clause 10.3 above; or the notice is received by us after the date as set out in Clause 10.3 above; this Agreement will continue for the Rental Period without further notice to you.

**10.6 PB's Termination Rights.** We may end this Agreement during the Rental Period by giving you written notice if:

(a) you do not abide by the terms of this Agreement; or

(b) you do not pay us on time; or

(c) you become insolvent, bankrupt, cease to trade or you are unable to pay your debts when they are due;

each of which shall be considered a repudiation of this Agreement (i.e. actions by you or circumstances brought about by you that indicate that you no longer intend to honour your obligations under this Agreement).

**10.7 Consequences of termination for breach.** If we end this Agreement for any of the reasons given in Clause 10.6 above you must pay to us: (i) rent arrears and interest thereon; and (ii) future rent amounts that would have become due during the Rental Period, but each discounted by five per cent (5%) to reflect net present value.

**10.8 Termination during the Minimum Rental Period.** You may at any time request that we agree to the termination of this Agreement during the Minimum Rental Period. Should you wish to terminate, we will provide you with a written quotation setting forth the basis on which any agreed termination shall take place, which shall take into account all rental payments up to the date of the quotation.

## 11. RETURN OF THE PRODUCTS

**11.1 If this Agreement is ended under Clause 10 above, you will no longer have our permission to keep the Products and you must, within seven (7) days from when this Agreement ended, at your own risk and expense, send back the Products (packaged upright, and complete with all ancillary items originally supplied) to PB in Average Saleable Condition.**

11.2 If you do not return the Products you must:

(a) allow us to enter the installation address so we may collect our Products and pay us our reasonable costs for such collection;

(b) pay us the full replacement cost of the Products if we are prevented from collecting, or you no longer have them, and for any parts or accessories missing from returned or collected Products;

(c) continue to pay Rentals on a pro-rata basis until all the Products are returned and accepted by us.

11.3 We will invoice you for any costs / fees payable under Clause 11.2.

## 12. VARIATIONS

The terms of this Agreement may only be varied by mutual written agreement.

## 13. NOTICES

Any notice(s) given in relation to this Agreement must be sent by registered mail. Notices from us to you will be sent to your address in the Order Form. Notices from you to us shall be sent to: The Legal Department, Pitney Bowes Australia Pty Ltd, Level 1, 68 Waterloo Road, Macquarie Park, NSW 2113. Any notice will be deemed delivered two (2) business days after posting.

## 14. DATA PROTECTION

14.1 You have a right to know how we will use your personal information. Personal information provided by you will be stored and processed by us in compliance with the Privacy Act 1988 (Cth) (the "Act") and the Australian Privacy Principles set out in the Act. Your personal information may be transferred to other companies within the Pitney Bowes group, Australia Post, credit reference agencies and other persons who act on our behalf for the purposes of making credit decisions, fraud prevention, tracing of debtors and recovery of our property. By accepting this Agreement, you expressly consent and agree to such transfers,

including those made to countries outside of Australia, including but not limited to the United States of America, for the purposes of this Agreement. We remain responsible for personal information security. We will also keep your bank account details confidential.

14.2 Further information about how you can access and seek correction to the personal information that we hold about you, and how to make a complaint about a breach of privacy, is set out in our privacy policy, available at: [www.pitneybowes.com.au/Legal/Privacy-Statement.shtml](http://www.pitneybowes.com.au/Legal/Privacy-Statement.shtml) or by contacting us on 02 9475 3500 or [privacymatters.au@pb.com](mailto:privacymatters.au@pb.com).

14.3 Postage Credit and Data Capture information may be routinely supplied by us to Australia Post to provide you with information about Australia Post products and services. We will use the Postage Credit and Data Capture information to ensure your Meter is operating within specification and to provide elements of reporting as and when appropriate. You have a right to receive a copy of the information we hold about you if you apply to us in writing.

## **15. EMAIL MARKETING CONSENT**

You hereby consent to us contacting you by email to offer or promote other PB goods or services. You may unsubscribe at any time by contacting us on: [privacymatters.au@pb.com](mailto:privacymatters.au@pb.com) or Tel: 02 9475 3500.

## **16. LAW / JURISDICTION**

This Agreement is governed by and construed in accordance with the laws of the State of New South Wales, Australia. You and we agree to submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales, Australia.

## **OFFER CONDITIONS & FREE TRIAL / COOLING-OFF PERIOD**

### **Offer Conditions**

Pitney Bowes will provide 'new Pitney Bowes postage meter customers' (*as described in the Terms & Conditions*) with \$50 of postage credit free of charge (excludes GST).

The free postage credit amount cannot be transferred or refunded.

In order for you to down-load postage credit, we will need to set-up a postage credit account for you. We will debit \$100 from your direct debit account accordingly. However, you may increase/decrease the credit account balance at any time by contacting us. Any unused credit will be refunded to you at the end of the rental period. If paying rental by credit card, we will contact you separately to set-up postage credit by direct debit.

After the minimum 12 month rental term, the rental will automatically roll-over in 3 month blocks unless / until terminated in accordance with the Terms and Conditions.

### **Free Trial / Cooling-Off Period**

The postage meter is provided with an initial 30 days free trial period (**Trial Period**).

You may return the postage meter to us prior to the end of the Trial Period (*for any reason, including if you subsequently disagree with any of the Terms & Conditions*). In such event, the rental arrangement will cease upon our receipt of the postage meter. See the Terms and Conditions for more details.