



www.skywayexpress.com.au
Info@skywayexpress.com.au

ABN: 53 611 229 675
Head Office: 4-6 Junction St, Auburn NSW2144
Phone: 1300 092 987

Trading Terms and Conditions for Sale of Courier Services

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of goods and services by Skyway Express to a Customer from time to time. Any supply of goods and services by Skyway Express to the Customer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by Skyway Express ('Agreement') and any such supply does not give rise to a new or separate agreement.

1. Interpretation

In these Terms unless the contrary intention appears:

"Additional Charges" includes all handling charges, delivery and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to Skyway Express arising out of the sale of Services, and are exclusive of GST

"Customer" means the person to or for whom the Services are to be supplied by Skyway Express.

"Services" means the Coupons and Courier services sold to the Customer by Skyway Express and includes any services provided by Skyway Express to the Customer.

"PPSA" means the *Personal Property Securities Act 2009 (Cth)*.

"Purchase Price" means the list price for the Services in Australian Dollars as charged by Skyway Express at the date of delivery or such other price as may be agreed by Skyway Express and the Customer prior to delivery of the Coupons, and is exclusive of GST.

"Terms" means these terms and conditions of trade, as amended from time to time by the Company.

2. Order for Coupons or Service

2.1 An order given to Skyway Express is binding on Skyway Express and the Customer, if:

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2.1.1 a written acceptance is signed for or on behalf of Skyway Express; or

2.1.2 The Services are supplied by Skyway Express in accordance with the order.

2.2 An acceptance of the order by Skyway Express is then to be an acceptance of these Terms by Skyway Express and the Customer and these Terms will override any conditions contained in the Customer's order. Skyway Express reserves the right to accept a part only of any order by notifying the Customer in writing or by supplying the services to the Customer. No order is binding on Skyway Express until accepted by it.

2.3 By accepting these Terms, the Customer acknowledges and agrees that all services published for sale by Skyway Express are indicative only, and may be replaced by an equal or better service at Skyway Express's absolute discretion. In addition, all dimensions that are published by Skyway Express are nominal only.

2.4 An order which has been accepted in whole or in part by Skyway Express cannot be cancelled by the Customer without obtaining the prior written approval of Skyway Express, which it may refuse in its absolute discretion.

3. Warranties

3.1 Skyway Express's liability is limited, to the extent permissible by law and at Skyway Express's option, to;

3.1.1 in relation to the services:

- i. the replacement of the Coupons or the supply of services
- iii. the payment of the cost of replacing the services or of acquiring equivalent services; or
- iv. The payment of the cost of having the products repaired

3.1.2 Where the goods are services:

- i. the supply of service again; or
- ii. the payment of the cost of having the services supplied again.

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3.2 Any claims to be made against Skyway Express for;

3.2.1 short delivery;

3.2.2 Goods that are damaged upon receipt; or

3.2.3 Other delivery discrepancies must be lodged with Skyway Express in writing within 7 days of the delivery date.

3.3 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms or in any other warranty statement provided by the Company are excluded and Skyway Express is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

3.3.1 any increased costs or expenses;

3.3.2 any loss of profit, revenue, business, contracts or anticipated savings;

3.3.3 any loss or expense resulting from a claim by a third party; or

3.3.4 any special, indirect or consequential loss or damage of any nature whatsoever caused by Skyway Express's failure to complete or delay in completing the order to deliver the Goods.

4. Delivery

4.1 The times quoted for delivery are estimates only and Skyway Express accepts no liability for failure or delay in delivery of Goods.

4.2 Risk in accepting the Goods passes on delivery to the Customer.

4.3 All Additional Charges are payable by the Customer in addition to the Purchase Price of the services.

4.4 Skyway Express do not accept any order that is worth higher than \$1500 Australian Dollar, Skyway Express does not take any responsibilities for the orders higher than \$1500 Australian Dollar.

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5. Returns

5.1 Returns of coupons and orders will only be accepted if:

5.1.1 Skyway Express provides prior approval of the return in writing;

5.1.2 the Customer obtains a return number from Skyway Express;

5.1.3 the coupon books are returned in their original condition, and in full package quantities;

5.1.4 a copy of the corresponding tax invoice is supplied with the Goods; and

5.1.5 the Customer bears all freight charges incurred in returning the Goods (unless otherwise agreed with Skyway Express).

5.2 Skyway Express reserves the right either to credit the purchase price to the Customer, or to replace the coupons, at Skyway Express's absolute discretion.

5.4 Any credit granted by Skyway Express to the Customer as the result of a return will expire and become unredeemable twelve (12) months after the date of the grant, except as otherwise provided by law.

5.5 Single orders and used coupon books are not returnable.

6. Price and Payment

6.1 The Customer must pay the Purchase Price and the Additional Charges to Skyway Express.

6.2 If the Customer is in default, Skyway Express may at its option withhold further deliveries or cancel a contract without prejudice to any of its existing rights.

6.3 All payments are due on or before delivery of the Coupon books to the Customer or booking date, unless the Customer has entered into a Credit Agreement with Skyway Express.

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6.4 If Skyway Express and the Customer have entered into a Credit Agreement, all payments are due within 2 days of the date of invoice.

6.5 Where the Customer makes payment by credit card, the Customer will be liable for any merchant fee applicable to that transaction.

6.6 Interest is charged on all outstanding amounts at the rate of 10% per annum (calculated and accruing daily) from the expiry of the due date until the date payment is received by Skyway Express.

6.7 All amounts payable by the Customer under these Terms must be paid without set-off or counterclaim of any kind.

6.8 The Customer hereby charges all of its rights, title and interests in any current or future personal property in favour of Skyway Express for the purpose of securing the Customer's current and future obligations to Skyway Express.

7. Retention of Title

7.1 Ownership, title and property in the Coupon books and courier services and in the proceeds of sale of those services remains with Skyway Express until payment in full for the Services and all sums due and owing by the Customer to Skyway Express on any account have been made. Until the date of payment:

7.1.1 the Customer has not the right to sell the Coupon books in the ordinary course of business;

7.1.2 the coupon books are always at the risk of the Customer;

7.1.3 the Customer is fully responsible and liable for any Goods that are in the Customer's possession; and

7.1.4 the Customer must maintain the Goods in the condition in which they were received.

7.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:

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7.2.1 if any payment to Skyway Express is not made promptly before the due date for payment;

7.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Skyway Express is dishonoured;

7.2.3 As Skyway Express is not permitted to check what is inside the parcels, it is the customer's responsibility to ensure the box/parcel does not contain any drugs, cash, gold, precious, high value, illegal or dangerous goods.

7.2.4 Customer must not approach to any of Skyway Express employees or contractors or drivers or clients in any circumstances, offer them a private or cash job or anything that effect Skyway express interests. All the orders have to go through Skyway express otherwise Skyway express do not take any responsibility in case of loss, damage accident or any other issues.

7.2.5 Skyway Express reserves all the rights if a customer fails to follow Skyway Express's requirements regarding the freight rules.

7.3 In the event of a default by the Customer, then without prejudice to any other rights that Skyway Express may have at law or under this Agreement:

7.3.1 Skyway Express or its agents may stop the service, pick up/ Delivery without notice to the Customer if the customer fails to pay or breach of agreement.

7.3.2 Skyway Express may recover and resell the Coupon books and products;

7.3.3 if the Services cannot be distinguished from similar Services which the Customer has or claims to have paid for in full, Skyway Express may in its absolute discretion seize all goods matching the description of the Services and hold same for a reasonable period so that the respective claims of Skyway Express and the Customer may be ascertained. Skyway Express must promptly return to the Customer any goods the property of the Customer and Skyway Express is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.

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7.4 Separately, the Customer hereby charges all its right, title and interest to and in the proceeds of sale of the collateral (as defined in the PPSA) as original collateral, or any of it, in favour of Skyway Express.

8. PPSA

8.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

8.2 Skyway Express and the Customer acknowledge that these Terms constitute a Security Agreement and entitle Skyway Express to claim:

(a) a Purchase Money Security Interest ("PMSI") in favour of Skyway Express over the Collateral supplied or to be supplied to the Customer as grantor pursuant to these Terms; and

(b) a security interest over the proceeds of sale of the collateral referred to in (a) as original collateral.

8.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.

8.4 The Proceeds of sale of the Collateral referred to in clause 8.2(a) fall within the PPSA classification of "Account".

8.5 Skyway Express and the Customer acknowledge that Skyway Express, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to the Customer pursuant to these Terms and in the relevant Proceeds.

8.6 To the extent permissible at law, the Customer:

8.6.1. waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to Skyway Express.

8.6.2 agrees to indemnify Skyway Express on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;

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8.6.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of Skyway Express; and

8.6.2.2 enforcement or attempted enforcement of any Security Interest granted to Skyway Express by the Customer;

8.6.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;

8.6.4 agrees to waive its right to do any of the following under the PPSA:

8.6.4.1 receive notice of removal of an Accession under section 95;

8.6.4.2 receive notice of an intention to seize Collateral under section 123;

8.6.4.3 object to the purchase of the Collateral by the Secured Party under section 129;

8.6.4.4 receive notice of disposal of Collateral under section 130;

8.6.4.5 receive a Statement of Account if there is no disposal under section 132(4);

8.6.4.6 receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.

8.6.4.7 receive notice of retention of Collateral under section 135;

8.6.4.8 redeem the Collateral under section 142; and

8.6.4.9 reinstate the Security Agreement under section 143.

8.6.5 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

9. On-Sale

The Customer agrees that upon the on-sale of any Goods and services to third parties, it will:

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9.1 inform any third party involved of these Terms;

9.2 inform any third party of the Skyway Express's service warranties if any; and

9.3 not make any misrepresentations to third parties about the Services.

10. Trustee Capacity

If the Customer is the trustee of a trust (whether disclosed to Skyway Express or not), the Customer warrants to Skyway Express that:

10.1 The Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;

10.2 The Customer has the right to be indemnified out of trust assets;

10.3 The Customer has the power under the trust deed to enter into this Agreement; and

10.4 The Customer will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Skyway Express.

11. Indemnity

To the full extent permitted by law, the Customer will indemnify Skyway Express and keep Skyway Express indemnified from and against any liability and any loss or damage Skyway Express may sustain as a result of any breach, act or omission, arising directly or indirectly from or in connection with any of these Terms by Customer or its representatives.

12. General

12.1 These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.

12.2 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

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12.3 Any conditions found to be void, unenforceable or illegal may, to that extent, be severed from the Agreement.

12.4 No waiver of any of these Terms or failure to exercise a right or remedy by Skyway Express will be considered to imply or constitute a further waiver by Skyway Express of the same or any other term, condition, right or remedy.

13. 5% Price Beat

13.1 Skyway Express will beat 5% any price lower than the price for any good published in Skyway Express's Buyers' Guide if:

- a) The Buyer provides a current written quote or invoice displaying the lower price
- b) The quote or invoice is dated on or after the release of our most recent Buyers' Guide
- c) The Service quoted or invoiced is of the same service, type and quality and service area as advertised by Skyway Express.