

CROSSFLIGHT LIMITED
TRADING AS CROSSFLIGHT MAIL

TERMS AND CONDITIONS OF SUPPLY OF BULK MAIL AND
FULFILMENT SERVICES

1. Interpretation

1.1 In these Conditions:

“Actual Value” means for the purposes of Condition 8 the lowest of the cost of repairing or replacing the Mail or the cost of reconstructing or reconstituting the Database or the resale or fair market value of the Mail and/or Database and, in any event, the actual value of the Mail and/or Database cannot be more than the original costs to the Customer plus 10%;

“Company” means Crossflight Limited (Registered Number 2111027) trading as Crossflight Mail or such other trading name as it may use from time to time;

“Conditions” means the standard terms and conditions of supply of the Services as set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Customer;

“Contract” means the contract for the supply by the Company to the Customer of the Services incorporating these Conditions;

“Customer” means any individual, firm, body corporate, unincorporated association or other body, placing an Order;

“Customer Address” means the address of the Customer from which the Mail is to be collected by the Company as detailed on the Order or otherwise notified in writing by the Customer to the Company;

“Database” means the database of the Customer to be provided to the Company in an appropriate format to enable the Company to access the information on that database using its computer systems;

“Delivery Address” means the address to which the Mail is to be delivered and which address is clearly marked in the Order or on the relevant package;

“Mail” means any document or items (including containers and packaging) consigned by a customer from the Customer Address to the Delivery Address;

“Order” means an order for the supply of Services placed by the Customer by completing an application form and/or mail docket supplied by the Company or completed by the Company on behalf of the Customer following a request by the Customer;

“Price” means the price of the Services payable by the Customer in accordance with

Condition 4; and

“Services” means the services if any described in the Order being services offered by the Company in accordance with Condition 3.

- 1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.3 Headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of Supply

- 2.1 The Company is not a common carrier and accepts the Order on and subject exclusively to these Conditions. No employee or agent of the Company has any authority to alter, vary or waive any provision of the Contract in any respect.
- 2.2 The Customer irrevocably warrants to the Company that, and the Company accepts Mail and/or the Database for conveyance, processing or onward transmission on the basis that, the following conditions are all fulfilled:-
 - 2.2.1 that the Customer is either the owner of or acting as the fully authorised agent for the owner of the Mail and/or the Database and that if any other person has an interest in the Mail and/or the Database the Customer is acting as his fully authorised agent ;
 - 2.2.2 that the Mail does not comprise or include weapons, ammunition or explosives or any other items which the Company, in its absolute discretion, decides cannot be transported safely;
 - 2.2.3 that the Mail does not comprise or include any letters, documents or items which the United Kingdom Post Office or, in the case of Mail to be delivered overseas, any equivalent body in any other country has an exclusive right to convey;
 - 2.2.4 that the Mail and/or the Database does not comprise or include drugs, documents or things which it is illegal to possess in the United Kingdom or, in the case of Mail to be delivered overseas, in any other country;
 - 2.2.5 that the Mail does not comprise or include documents or other things which it is illegal to take out of the United Kingdom or to take into the country to which they are consigned or through or over which they may be transported;
 - 2.2.6 that unless the Company has been given express prior written detailed notice and has agreed in writing to carry such Mail, none of the Mail is of a toxic, corrosive, combustible or flammable nature; and
 - 2.2.7 that unless packed by the Company the Mail is packed to the Customer’s

complete satisfaction and in strict compliance with all relevant packing regulations.

Without prejudice to any other remedy available to the Company for the breach or non-fulfilment of the above conditions, any breach or non-fulfilment of such conditions shall discharge the Company from any further responsibility for the provision of the Services or any other obligation under the Contract..

- 2.3 The Customer hereby undertakes to the Company that it will comply with all applicable laws, rules and regulations, including but not limited to Custom's laws, import and export laws and governmental regulations of any country to, from, through or over which the Mail may be sent and the Customer agrees to furnish such information and complete and attach to the Order such documents as are necessary to comply with such laws, rules and regulations.
- 2.4 No Order submitted by the Customer shall be deemed to be accepted by the Company unless and until a copy signed by the Company's authorised representative has been returned to the Customer.
- 2.5 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of the Order (including any applicable special conditions) submitted by the Customer, and for giving the Company any necessary information relating to the Mail and/or Database within a sufficient time to enable the Company to perform the Services in accordance with the terms of the Order and these Conditions.
- 2.6 The Customer agrees that the Company may open and inspect a Mail for any reason and at any time.

3. The Services

- 3.1 The Company will at the request of the Customer and as detailed in the Order provide any of the following Services:-
 - 3.1.1 Bulk Mail Service: the Company will collect Mail from the Customer Address and arrange for such Mail to be sorted and despatched by the appropriate means to be decided in the Company's absolute discretion within one or more of the categories of service level offered by the Company from time to time to be determined by the Customer in the Order or, failing such determination, in the absolute discretion of the Company.
 - 3.1.2 Fulfilment Service: the Company will use its reasonable endeavours to carry out any of the following tasks relating to the Database provided that full written details of the task required are supplied by the Customer and accepted in writing by the Company:-
 - 3.1.2.1 the processing of mailing lists for the Customer by computer including from the Database;
 - 3.1.2.2 the deletion of duplicate addresses from the Database;

3.1.2.3 the printing of envelopes and/or labels from the Database;

3.1.2.4 mailshot services (including printing of envelopes and/or labels, insertion of the items in to the envelopes and sealing and despatch of such mailshots); and

3.1.2.5 any other services using the Database or creating a database for the Customer that the Customer and the Company agree in writing.

3.2 In the provision of the Services, the Company is in its absolute discretion entitled to process and/or convey Mail:-

3.2.1 by its own employees and/or by any mail service, airline, delivery company and/or other independent contractor whatsoever;

3.2.2 by means of any conveyance;

3.2.3 by any route whatsoever.

4. Price of the Services

4.1 The Price of the Services shall unless otherwise agreed in writing by the Company and the Customer, be the Company's list price in force from time to time (as the same is available on written request from the Company) for such Services on the date the Order is placed by the Customer with the Company. Where the Services are specific to the Customer and no list price is available, the Price shall be the price agreed in advance in writing, or failing that, the price which the Company in its absolute discretion deems appropriate for the Service.

4.2 The Price shall unless otherwise stated, be exclusive of:-

4.2.1 any applicable value added tax and any other applicable taxes, duties, imposts or levies; and

4.2.2 packaging, packing and insurance.

5. Terms of Payment

5.1 The Company shall be entitled to invoice the Customer on or at any time after the Order has been placed by the Customer and each invoice shall quote the number (if any) of the Order.

5.2 Unless otherwise stated in the Order the Customer shall pay each invoice within 7 days of its date of issue, failing which interest shall accrue on a daily basis in accordance with Condition 5.5.

5.3 The Customer shall not be entitled to set off against the Price any sums owed or claimed to be owed to the Customer by the Company.

- 5.4 In the event that the Company pays or agrees to pay to any third party any duty and/or taxes and/or levy in respect of any Mail:-
- 5.4.1 the Company shall do so on the sole basis that in doing so it is acting as the Customer's fully authorised agent.
 - 5.4.2 whether or not delivery of the Mail is actually made to the Delivery Address to which they are consigned, immediately upon receipt of the Company's Invoice in respect of such duty and/or tax and/or levy the Customer shall settle such Duty Invoice in full.
 - 5.4.3 in the event of any Customer failing to comply strictly with sub-condition (b) above the Company shall be at full liberty to deal with the Mail in accordance with Condition 6 below.
- 5.5 If the Customer fails to pay by the due date any amount which is payable to the Company under the Contract, then, without prejudice to Condition 6:-
- 5.5.1 that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at a rate equivalent to 7% per annum over Lloyds Bank Plc base rate from time to time, calculated on a daily basis;
 - 5.5.2 the Company shall be entitled to suspend the performance of the Services or any other services on behalf of the Customer until the outstanding amount has been received by the Company.
 - 5.5.3 the Customer hereby irrevocably agrees to indemnify the Company on demand on a full indemnity basis for all costs and expenses (including legal, debt collection and valuation fees and any internal costs and expenses of the Company) and any value added tax incurred thereon by it in connection with the enforcement of any of the rights of the Company under these Conditions; and
 - 5.5.4 all amounts payable by the Customer to the Company in respect of invoices issued by the Company shall become immediately due and payable.

6. Lien

The Company shall have a lien over the Customer's Mail for any amount due under the Contract and the cost of recovering the same. If any lien is not satisfied within a reasonable time the Company shall be at full liberty to sell the Mail, either privately or by auction, and to apply the proceeds of any such sale in or towards discharge of the lien and the expense of the sale.

7. Insurance

No insurance cover for Mail and/or the Database shall be arranged by the Company unless a request in writing is received by the Company from the Customer and the Company confirms cover prior to the Company accepting the Mail and/or the Database. For the avoidance of doubt, no insurance for the Mail and/or Database shall be deemed or assumed to have been arranged by the Company unless and until written confirmation of the insurance cover arranged by the Company for the Customer is received by the Customer and any such cover shall only commence from the date and time and shall be subject to the terms of the insurance stipulated in such confirmation in writing.

8. Warranties and Liabilities

- 8.1 The Company gives no warranties, express or implied, in respect of the provision of the Services.
- 8.2 The total liability of the Company to pay to the Customer compensation for loss or damage occurring in respect of the Mail and/or the Database shall be limited to the lesser of the Actual Value or the Price provided that:-
 - 8.2.1 no compensation shall be payable by the Company to the Customer in respect of any indirect or consequential loss (including, without limitation, lost income, profits, interest, markets or use);
 - 8.2.2 no compensation whatsoever shall be payable in the event that the Customer fails within 7 days of any loss damage misdelivery or delay occurring to the Mail and/or Database becoming known to the Customer to report this to the Company at its registered office by recorded delivery first class letter;
 - 8.2.3 no compensation whatsoever shall be payable in the event that the Customer fails within 14 days of any loss, damage, misdelivery or delay occurring to the Mail and/or Database to report this to the Company at its registered office by recorded delivery first class letter;
 - 8.2.4 no compensation whatsoever shall be payable in the event that any legal proceedings commenced against the Company by the Customer relating to any claim for compensation as aforesaid are not brought within the period of 2 years commencing with the date of the alleged loss damage misdelivery or delay;
 - 8.2.5 no compensation shall be payable in the event of loss, damage, misdelivery or delay caused by events beyond the Company's control, including but not limited to acts of God, perils of the air, adverse weather conditions, mechanical delays, acts of war, hostilities, civil commotions, strikes, industrial action, acts of public enemies, or acts or omission of public authorities (including customs and quarantine officials) with actual or apparent authority; and
 - 8.2.6 no compensation shall be payable in respect of any loss or damage to Mail which includes cash, currency or other prohibited items.

- 8.3 Save as provided in Condition 8.2 above the Company shall not be under any other liability whatsoever or howsoever arising to the Customer in respect of the provision of the Services.
- 8.4 Without prejudice to the generality of Condition 8.2 above and for the avoidance of doubt the Company shall not be liable in respect of any losses caused:-
- 8.4.1 partly by its negligence and/or the negligence of its employees and partly by the negligence of the Customer;
- 8.4.2 by any independent contractor in any manner whatsoever.
- 8.5 In the event of any loss, damage, misdelivery or delay occurring in respect of the provision of Services by reason of any act or default of an independent contractor the Company shall at the Customer's request and expense assign to the Customer any right of action which the Company may have against the independent contractor.

9. Warranties and Indemnity

- 9.1 Where the Customer supplies a Database, the Customer hereby warrants that, and agrees to indemnify and hold harmless the Company and any employee, agent or subcontractor on a full indemnity basis in respect of all liabilities, costs, claims, damages, proceedings and expenses whatsoever arising out of the following:-
- 9.1.1 the Mail does not infringe the intellectual property rights of any third party and will not give rise to any claim by a third party for infringement of the intellectual property rights of that third party arising from the Database.
- 9.1.2 the Customer has duly complied with all requirements of the Data Protection Act 1984 and indemnifies the Company against any breach by the Customer of all relevant requirements of the Data Protection Act 1984 including in the event that the provision of the Database to the Company will constitute such a breach of the Data Protection Act 1984, or may give rise to any claim by any individual for compensation for loss or unauthorised disclosure of data; and
- 9.1.3 the Database and any media by which the Database is provided to the Company is free from all viruses, faults or defaults which may in any way adversely affect the Company's computer systems.
- 9.2 The Customer shall indemnify the Company and agrees to indemnify and hold harmless the Company and any employee, agent or subcontractor of the Company on a full indemnity basis in respect of the following:
- 9.2.1 any breach of these Conditions by the Customer (including in particular, but without limitation, of Condition 2.2);
- 9.2.2 any expenses incurred as a result of the Company's inability for any reason beyond its control to be able to provide the Services;

9.2.3 any claims, costs and/or demands by third parties relating to the Services;

9.2.4 any unusual expenses incurred by the Company as a result of it providing the Services to the Customer.

10. General

10.1 The Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other subsidiaries, associated companies, agents or sub-contractors.

10.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be sent by recorded delivery mail or by electronic or facsimile transmission (provided that a confirmatory copy is sent by post) to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

10.3 Any notice given by either party under the provisions of Condition 10.2 shall if sent by post be deemed to have been received 7 days after posting and if sent by electronic or facsimile transmission (provided that a confirmatory copy is sent by post) to have been received instantaneously.

10.4 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

10.6 The Contract shall be governed and interpreted in all respects in accordance with the law of England and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.

10.7 These Conditions (together with any special terms and conditions agreed in writing between the Company and the Customer) and the terms of the relevant Order constitute the entire agreement between the Company and the Customer, supersede any previous agreement or understanding and may not be varied except in writing by the Company and the Customer. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.