

## Agreement – Blu Courier

### Between:

Any Fastway Courier Franchisee or Regional Franchisee who has accepted the terms of this Agreement (**Fastway Franchisee**); and

The person who has accepted the terms of this Agreement by signing and dating this Agreement (**Blu Courier**)

the terms of which are to also apply in relation to Services to be performed where the Fastway Franchisee offers to the Blu Courier the opportunity to perform pick-ups and/or deliveries of packaged goods and the Blu Courier accepts that offer via the Blu Couriers electronic platform, evidencing a concluded agreement on these terms.

### RECITALS:

- A. Courier Franchisees operate a Fastway Courier Franchise business in a defined territory pursuant to a Courier Franchise Deed entered into with a Fastway Regional Franchisee. Fastway Regional Franchisees operate a Fastway Regional Franchise business in a defined territory pursuant to a Regional Franchise Deed entered into with the National Master Franchisor.
- B. The Courier Franchisee's defined territory is an exclusive territory so that only the Courier Franchisee has the right to pick-up and deliver Fastway freight in that territory. If there is no Courier Franchisee in that territory then the Regional Franchisee is entitled to pick-up and deliver Fastway freight in that territory.
- C. The Fastway Franchisee wishes to offer the Blu Courier the opportunity to provide pick-up and delivery services within its exclusive territory using the Blu Courier electronic platform.
- D. The Blu Couriers electronic platform allows the Fastway Franchisee to offer to Blu Couriers the opportunity to perform selected pick-ups and deliveries within their exclusive territory (**Offer** or **Offers**) for a nominated 'per packaged good' consideration rate) (**Fee**).
- E. The Blu Courier may accept but is not obliged to accept one or more Offers.
- F. If the Blu Courier accepts an Offer and notifies the Fastway Franchisee of its acceptance using the Blu Couriers electronic platform then a contract is formed between that Fastway Franchisee and that Blu Courier to perform the Services and pay the Fee in accordance with the terms of this Agreement.

### 1. Engagement

The Fastway Franchisee engages the Blu Courier to provide the Services described in **Schedule 1 (Services)** subject to the terms and conditions in this Agreement.

## 2. Duration

This Agreement will commence on the date upon which the Blu Courier accepts an Offer and notifies the Fastway Franchisee of its acceptance using the Blu Couriers electronic platform and will continue until terminated in accordance with this Agreement (**Term**).

## 3. Provision of services by the Blu Courier

### 3.1 Services to Fastway Franchisee

The Blu Courier will provide the Services to the Fastway Franchisee in accordance with Fastway delivery standards set out at [www.fastway.com.au](http://www.fastway.com.au). The Services are set out in **Schedule 1**.

The Fastway Franchisee does not guarantee any minimum level of Offers, Fees or number of Services that the Blu Courier will be entitled to provide, earn or be allocated.

### 3.2 Equipment

The Blu Courier is required to have available a registered and road worthy motor vehicle and a mobile telephone and number. The equipment provided and used by the Blu Courier to provide the Services must be suitable for the Services and must be maintained by the Blu Courier in good working condition.

Each Blu Courier will be liable for a weekly fee, as advised by the Fastway Franchisee from time to time, for access to use the software required to provide the Services. This weekly fee is subject to change by notification.

## 4. Fees

### 4.1 Fees

The Fastway Franchisee must pay the relevant Fee to the Blu Courier in consideration of providing the Services as set out in **Schedule 1 (Fees)**. The Fees are exclusive of any goods and services tax imposed under *The New Tax System (Goods and Services Tax) Act 1999 (GST)*. Where GST is payable on a supply made by the Blu Courier under this Agreement, the Blu Courier may charge the Fastway Franchisee an additional amount equal to the GST payable on that supply.

### 4.2 Payment

The Fastway Franchisee must pay the Fees and any GST amount weekly in arrears and will issue a Statement of Services and Fees detailing the Offers accepted and completed by the Blu Courier.

A recipient-created tax invoice will accompany the Statement of Services and Fees, including the Blu Courier's ABN and such other details as required by the Fastway Franchisee from time to time.

## 5. Use of the Fastway Franchisee's facilities

The Blu Courier may, for the purpose of performing the Services, use the property or facilities of the Courier Franchisee or Regional Franchisee with their prior consent. The Blu Courier's use of any such property or facilities is at its own risk, except to the extent that any damage is caused by the Fastway Franchisee's act, omission or negligence.

## 6. Blu Courier's obligations

- (a) The Blu Courier must perform the Services in a diligent and professional manner as set out in **Schedule 1** and otherwise according to any standards that would normally apply to the provision of such services and must take all reasonable and necessary steps to ensure that any employees or agents involved in providing the Services do so in the same manner.
- (b) The Blu Courier must take out and maintain all insurances required by law including the insurances listed in **Schedule 1**. The insurances must be taken out for the minimum amount set out in **Schedule 1** and must be maintained during the Term at the cost of the Blue Courier.
- (c) The Blu Courier must provide the Services at its own cost and, unless specified in **Schedule 1**, and will not be reimbursed for any out of pocket expenses.
- (d) The Blu Courier must pay its own taxes, including any payroll tax.
- (e) The Blu Courier is solely responsible for paying its employees and agents all remuneration and benefits including salary, superannuation, annual leave, sick leave, long service leave and any other benefits to which they may be entitled as its employees and agents and for otherwise complying with all relevant legislation and industrial awards which are applicable to its employees.
- (f) The Blu Courier must obtain and provide to the Fastway Franchisee an Australian Business Number and evidence of its right to work in Australia.
- (g) If the Blu Courier is registered for GST, the Blu Courier must advise the Fastway Franchisee of the GST registration and will be paid GST on the Fees (less deductions). If the Blu Courier is not registered for GST, the Fastway Franchisee will not pay GST to the Blu Courier in respect of the Fees.
- (h) If a Blu Courier changes its GST registration status, it must notify Fastway Franchisees within 7 days. For Blu Couriers newly registered for GST, Fastway Franchisees will only pay GST on those Fees earned during the week immediately preceding the GST registration and notification to Fastway Franchisees.
- (i) The Blu Courier is responsible for loss of or damage to a parcel in its care and control and will be charged a fee per parcel which is lost or damaged, as set out in **Schedule 1**.

## **7. Relationship between parties**

The relationship between the Fastway Franchisee and the Blu Courier is that of a principal and independent contractor. Nothing in this Agreement constitutes the relationship of partnership or employer and employee between the Fastway Franchisee and the Blu Courier.

## **8. Confidentiality**

- (a) The Blu Courier must not, and must ensure that its employees and agents do not, either during or after the Term, disclose any confidential information relating to the Fastway Franchisee, except in the proper course of performing its duties under this Agreement, as required by law, or with the previous written consent of the Fastway Franchisee.
- (b) The Blu Courier and its employees and agents must only use the confidential information for the purpose of performing the Services and must not use or attempt to use any such confidential information in any manner which may injure or cause loss to the Fastway Franchisee.
- (c) The Blu Courier must, upon request from the Fastway Franchisee, procure a confidentiality undertaking from any or all employees or agents of the Blu Courier who provide Services under this Agreement. The terms of that undertaking must be in or to the same effect as the terms of this clause.

## **9. Indemnity**

The Blu Courier will indemnify the Fastway Franchisee against liability for all loss, damage or injury to any person or property caused by the Blu Courier or its employees or agents in the course of providing the Services. This clause survives the termination of this Agreement.

## **10. Termination of Agreement**

### **10.1 Termination by notice**

Either party may terminate this Agreement by giving at least 7 days written notice to the other party.

### **10.2 Termination for breach**

- (a) If a party breaches any term of this Agreement, the other party may give notice requiring that party to rectify the breach. If the notified party fails to rectify the breach to the satisfaction of the notifying party within one day of the notice, the notifying party may terminate this Agreement by notice in writing.
- (b) The Fastway Franchisee may terminate this Agreement at any time without notice if the Blu Courier engages in a serious, material or fundamental breach of this Agreement.

- (c) The Fastway Franchisee may terminate this Agreement at any time by notice in writing to the Blu Courier if the Blu Courier:
  - (i) is guilty of any dishonesty, serious misconduct or serious neglect of duty in connection with the provision of the Services; or
  - (ii) engages in any act or omission that in the reasonable opinion of the Fastway Franchisee has or will likely have the effect of causing material damage to the Fastway Franchisee or the Fastway network.

### 10.3 Termination for insolvency

Either party may terminate this Agreement if:

- (a) the other party enters into a Deed of Arrangement or an order is made for it to be wound up;
- (b) an administrator, receiver or receiver/manager or a liquidator is appointed to the other party pursuant to the *Corporations Act 2001 (Cth)*; or
- (c) the other party would be presumed to be insolvent by a court in any of the circumstances referred to in the *Corporations Act 2001 (Cth)*.

### 10.4 Obligations upon termination

If on termination of this Agreement the Blu Courier is owed any Fees, expenses or reimbursements, subject to the Fastway Franchisee having the right to set-off any moneys owing to it by the Blu Courier, whether a liquidated amount or otherwise, the Fastway Franchisee will issue a Statement of Services and Fees and corresponding recipient-created tax invoice to the Blu Courier and pay all amounts payable to the Blu Courier within 7 days of the date of termination.

## 11. Set Off

Both parties acknowledge and agree that any payments made to the Blu Courier under this Agreement are inclusive of, in full satisfaction of, in entire compensation for, and may be set off against, all payments, rates (however described), loadings, penalties, allowances and/or entitlements to which the Blu Courier and/or any of its employees or agents may otherwise be entitled to under any applicable industrial instrument, industrial law or contract determination. For the avoidance of doubt, this clause will prevail in the event that the Blu Courier is deemed to be an employee or a contractor under a contract of carriage. In addition, the Blu Courier will indemnify the Fastway Franchisee in relation to any claim, demand, suit or action brought by a Blu Courier employee or agent against the Fastway Franchisee with respect to any remuneration, payment, entitlement or compensation arising from or with respect to any services provided under this Agreement.

## 12. Assignment

- 12.1 A Fastway Franchisee (**Assignor**) may assign, transfer or novate its rights under this Agreement to another Fastway Franchisee (**Assignee**) upon that Assignee entering into a

Courier Franchise Deed with the Regional Franchisee in relation to the Assignor's Fastway exclusive territory without the prior consent of the Blu Courier.

**12.2** The Blu Courier may not assign, transfer or novate its rights or obligations under the Agreement.

**13. General**

**13.1 Entire Agreement**

This Agreement constitutes the entire agreement of the parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understandings, undertakings and negotiations in respect of the matters dealt with in this Agreement.

## **13.2 Governing law**

This Agreement is governed by, and is to be construed and take effect in accordance with, the laws of the State in which the Services are provided.

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State in which the Services are provided.

### **SCHEDULE 1**

#### **A. Services**

The Services to be performed are the pick-up and/or delivery of packaged goods within the Fastway Franchisee's exclusive territory offered to the Blu Courier by the Fastway Franchisee, or Offers that are pre-allocated to the Blu Carrier by the Fastway Franchisee, and accepted by the Blu Courier via the Blu Couriers electronic platform.

#### **B. Fees**

The Fees for each pick-up and delivery performed by the Blu Courier for the Fastway Franchisee will be set out on the Blu Couriers electronic platform and will be paid in accordance with this Agreement after completion of the Service.

#### **C. Insurances**

Public liability insurance in the amount of \$0.05 per parcel will be deducted from the Fees.

Accident and Injury insurance in the amount of \$1.37 per day will be deducted from the Fees.

#### **D. Claims**

A fee between \$10-\$50, depending on the value of the claim, will be charged to the Blu Courier and deducted from the Fees, for each parcel that is lost or damaged while in the care and control of the Blu Courier.