

RESELLER AGREEMENT

1. About this document

This agreement sets out the terms and conditions that apply to our reseller program.

2. Parties

The parties to this agreement are:

- (a) MailGuard Pty Ltd Australian Company Number 096 696 874 ('us', 'we' or 'our'), and
- (b) the person named in the Application Form ('you' or 'your').

3. Commencement and duration

- (a) This agreement commences when we notify you in writing that your Application Form has been accepted. We may accept or refuse an Application Form at our sole and absolute discretion.
- (b) This agreement continues until it is terminated in accordance with clause 12.

4. Appointment

- (a) As our Reseller, you may:
 - (i) use our Approved Materials to promote our products and services; and
 - (ii) refer potential customers to us using your Reseller ID –subject to and in accordance with this agreement and our Published Policies.
- (b) The parties are independent contractors. Nothing in this agreement creates an employment, agency, partnership or joint venture relationship between the parties and you must not suggest or represent otherwise to any person.

5. Approved Materials

- (a) 'Approved Materials' means any promotional artwork, graphics, banners, logos, or other media that we approve and make available to Resellers, from time to time.
- (b) You may only use Approved Materials for the purpose of promoting our products and services and referring potential customers to us.
- (c) You must not:
 - (i) make any changes to Approved Materials without our prior written consent;
 - (ii) use Approved Materials in a manner that is likely to expose us to the risk of legal liability (civil or criminal); or
 - (iii) use any other of our intellectual property rights, including our name, logo, trade marks, copyright or get-up without our prior written consent.
- (d) We may make changes to Approved Materials at any time and you must comply with any direction we give you in relation to the use or discontinuance of use of Approved Materials.

6. Commissions

- (a) You will be eligible to receive a commission in respect of amounts paid by customers you refer to us.
- (b) You will be eligible to be paid commissions in respect of each:
 - (i) Bona Fide New Customer;
 - (ii) who signs up for products and services using your Reseller ID; and
 - (iii) who does not use a discount or voucher code.
- (c) Commissions will only be paid in respect of amounts actually received from customers you refer.
- (d) The rate of commission will be notified to you or set out on our website. We may change the commission rate at any time – new rates will apply from the date that we give you notice or that we publish them on our website, whichever is earlier.
- (e) If you recommend us or our products and services to potential customers, you must notify them that you may receive a commission for doing so.

7. Payment

- (a) Commissions will be paid within 30 days of the end of each month – unless we notify you otherwise.
- (b) We may, at our sole discretion, determine the method of payment to you and you must ensure that you are able to receive payments via that method.
- (c) We may withhold payments where we reasonably believe that you have breached this agreement or a Published Policy.

8. GST (this clause applies only to Resellers located in Australia)

- (a) In this clause 8, a word or expression defined in the GST Act has the same meaning as in the GST Act.
- (b) In order to be a Reseller, you must be registered for GST and provide us with a valid ABN in your Application Form.
- (c) The commissions paid under this agreement are inclusive of GST.
- (d) Where we are entitled under the GST Act to issue recipient created tax invoices:
 - (i) you agree that we can issue tax invoices in respect of referrals and commissions and you will not issue tax invoices;
 - (ii) you acknowledge that you are registered for GST when you enter into this agreement and you must notify us if you cease to be registered; and
 - (iii) we acknowledge that we are registered for GST when we enter into this agreement and we will notify you if we cease to be registered.
- (e) If we are not entitled to issue recipient created tax invoices and you do not supply us with a tax invoice, we may reduce the commission payable to you under this agreement by the amount of GST included in the commission.

9. Local Taxes (This clause applies only to Resellers located outside Australia)

- (a) Except where express provision is made to the contrary, the consideration payable by you under this agreement represents the value of any taxable supply for which payment is to be made.
- (b) You are solely responsible for paying all Local Taxes. Where you are located outside of Australia, all of our fees are expressed as being exclusive of Local Taxes.

10. Reseller obligations

- (a) You must:
 - (i) comply with our reasonable directions;
 - (ii) act lawfully, honestly and professionally;
 - (iii) act ethically and in a manner that does not bring us or the Products into disrepute;
 - (iv) comply with all applicable laws, regulations and industry codes of practice;
 - (v) comply with our Published Policies;
 - (vi) cooperate and do all things reasonably required by us to investigate any complaint or breach or potential breach of this agreement, a Published Policy or any applicable law, regulation or industry code of practice; and
- (b) Your obligations set out in this clause 8 are in addition to those contained in the rest of this agreement and those imposed by law.

11. Liability and indemnity

- (a) To the maximum extent permitted by law:
 - (i) all implied conditions, warranties, guarantees and representations of any kind are excluded;
 - (ii) we do not warrant that Products or our website will operate free from interruptions or errors;
 - (iii) in entering into this agreement, you acknowledge that you have made your own enquiries and have not relied on any promise not expressly set out in this agreement;
 - (iv) we exclude and you release us from all liability to you for loss or damage of any kind (however caused or arising, including by negligence) arising from or in any way connected with this agreement.
- (b) You indemnify us (and our directors, employees and agents) against any harm, injury, loss, damage, cost, expense (including legal expenses), claim or liability we (or they) suffer in connection with your:
 - (i) breach of this agreement; or
 - (ii) wilful, unlawful or negligent act or omission.

12. Termination

- (a) Either party may terminate this agreement at any time by giving the other 30 days' written notice.
- (b) We may immediately terminate this agreement by giving you written notice if:
 - (i) you become or threaten to become insolvent;
 - (ii) you breach clause 10 of this agreement;
 - (iii) you breach any other provision of this agreement and fail to remedy the breach within 7 days after receiving a notice detailing the breach and requiring its remedy.

13. Notices

- (a) A notice under this agreement must be in writing and faxed, posted or emailed to a party's service address or personally delivered to the party.
- (b) A party's service address is any of:
 - (i) in the case of a corporation, its current registered address; or
 - (ii) the last business address, fax number or email address the party notified as its service address.
- (c) From the date of this agreement until further notice:
 - (i) your service address is the business address, fax number and email address set out in the Application Form; and
 - (ii) our service address is:

MailGuard Pty Ltd
68-72 York Street
SOUTH MELBOURNE
VIC 3205 Australia
- (d) Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice will be deemed to be received:
 - (i) if sent by hand when left at the address of the recipient;
 - (ii) if sent by pre-paid post, 3 days (if posted within Australia to an address in Australia) or 10 days (if posted from one country to another) after the date of posting; or

- (iii) if sent by fax, when the sender's fax machine issues a successful transmission notification for the whole notice; or
- (iv) if sent by email, upon the earlier of sender receiving a notification that the email has been read and 9.00 am on the next Business Day subject to the sender not receiving a delivery failure notification –

but if a notice is served by hand, or is received by the recipient's fax machine on a day which is not a Business Day, or after 4:45 pm on a Business Day, the notice is deemed to be received at 9.00 am on the next Business Day.

- (e) We are deemed to have delivered a notice if:
 - (i) it is set out on our website or anywhere else on the world wide web;
 - (ii) we give you notice of the URL where the document can be found; and
 - (iii) the document can be found at that URL when the notice is given and for at least 3 days after that.

14. Confidentiality

- (a) "Confidential Information" means all information regardless of form, that we designate is confidential and includes (but it not limited to)
 - (i) our technical, financial and business information;
 - (ii) our partner agreements, our management console, price books, sales and marketing information and collateral;
 - (iii) customer information and records;
 - (iv) any information which if made public, may be harmful to our goodwill, business, public image, commercial relationships or standing; and
 - (v) any information which may provide another party with a commercial advantage over us.
- (b) You agree at all times to hold all Confidential Information in full and complete confidence, and not to disclose the Confidential Information to any person or to use it in any way that may commercially injure us.
- (c) You agree not to copy or authorize or permit anyone else to copy the Confidential Information.
- (d) You agree to inform your representatives or employees of the confidential nature of the Confidential Information and to ensure that they are under

binding obligations no less restrictive than those contained in this agreement, to keep that information confidential.

- (e) You acknowledges that a breach of confidentiality may cause significant loss and damage to us and that damages alone may not provide an adequate remedy and that the grant of injunctive relief (without the need for establishing actual loss or damage) to restrain a threatened breach, breach or continuation of a breach shall be warranted and appropriate.

15. General

- (a) If a provision of this agreement is invalid or unenforceable it is to be read down (to the point of severance) and does not affect the validity or enforceability of the remaining provisions.
- (b) If a party overlooks a breach of this agreement by the other party on one or more occasions, it is not taken to have agreed to any future breach or waived any of its rights.
- (c) This agreement may be only amended by a written document signed by the parties.
- (d) You may not transfer, assign or sublicense any of your rights, duties or obligations under this agreement to another person without our prior written consent. We may transfer, assign or sublicense any or all of our rights, duties or obligations under this agreement to another person by giving you written notice.
- (e) We may email and or call you, and customers you refer to us, in order to market and promote our goods and services. Our Privacy Policy is available at www.mailguard.com.au/privacy
- (f) This agreement is governed by and is to be construed under the laws of Victoria, Australia. Each party irrevocably and unconditionally submits to the jurisdiction of the courts of Victoria, Australia and waives any claim or objection based on absence of jurisdiction or inconvenient forum.

16. Definitions

In this agreement, unless the context indicates otherwise:

the expression:	means:
Reseller ID	the unique identification number, hyperlink or tracking code (or any other means by which we can track your referrals) that we assign to you
Application Form	the form (whether web based or otherwise) via which a person can apply to become an Reseller

Bona Fide New Customer	a person who: • is not related to you; • is not controlled by you; • is otherwise independent from you; and • who has not contacted or ordered products and services from us, prior to your referral
Business Day	Monday to Friday excluding any day that is a public holiday at the place that an event or act is to occur
GST Act	the A New Tax System (Goods and Services Tax) Act 1999
Published Policies	our policies: • concerning Resellers and our Reseller program; or • concerning users of our Products; or • provided to you or published on our website (including our Acceptable Use Policy) – as introduced or amended from time to time

17. Interpretation

Interpret this agreement as follows:

- (a) If an expression is defined in the Dictionary, its other grammatical forms have a corresponding meaning.
- (b) Expressions like 'includes', 'including', 'e.g.' and 'such as' are not words of limitation. Any examples that follow them are not to be taken as an exhaustive list.
- (c) Headings are only for convenience. They are to be ignored when interpreting this agreement.
- (d) A reference to the singular includes the plural and vice versa.
- (e) A 'person' includes any entity which can sue and be sued.
- (f) A 'person' includes any legal successor to or representative of that person.
- (g) A reference to a document includes the document as modified from time to time and any document replacing it.
- (h) If something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day.

- (i) The words 'in writing' include any communication sent by letter, fax or email or any other form of communication capable of being read by the recipient.
- (j) A reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re enacted or replaced from time to time.
- (k) Money amounts are stated in Australian currency unless otherwise specified.