

Australasian Recycling Label Marketplace User Terms & Conditions

Last updated and effective: 18 December 2023

PART A: GENERAL TERMS AND CONDITIONS

1. Introduction

- (a) These Terms and Conditions (**Terms**) apply to the Australasian Recycling Label Marketplace (**ARL Marketplace**), which is made available by the Australian Packaging Covenant (**APCO**). The purpose of the ARL Marketplace is to enable Suppliers to promote to certain enterprises packaging which has been evaluated through the Australasian Recycling Label (**ARL**) Program.
- (b) The ARL is designed to communicate information about the recyclability of product packaging, providing consumers with information to recycle packaging more effectively and resulting in increased recovery rates and reduced contamination levels.
- (c) **A licence to use the ARL** is available only to ARL Program Users for packaging of products of ARL Program Users sold, or offered for sale, on the Australian market.
- (d) The terms, :
 - (i) the terms "**We**", "**Us**" and "**Our**" refer to APCO;
 - (ii) the term "**You**" refers to any person who uses the Marketplace to access the ARL.
 - (iii) "**ARL Program**" means the on-pack labelling scheme operated by Us to assist consumers to recycle product packaging correctly and to support brand owners and packaging manufacturers to design, develop and manufacture product packaging that is recyclable at end-of-life.
 - (iv) "**ARL Program User**" means a person entitled to access and use the ARL as authorised by, and in a manner determined by, APCO from time to time.
 - (v) "**ARL Marketplace User**" means an ARL Program User who accesses the ARL Marketplace with the intention of viewing a list of Supplier(s) and Packaging Solutions available from each Supplier.
 - (vi) "**Packaging Solution**" means a combination of one or more packaging and/or labelling components listed on the ARL Marketplace by a Supplier.
 - (vii) "**Supplier**" means an ARL Program User who is a packaging and/or labelling manufacturer, wholesaler, or distributor and who lists their Packaging Solutions on the ARL Marketplace.

- (e) **These Terms and Conditions form a legally binding agreement between You and Us.** You agree to provide a copy of these Terms to all individuals within Your organisation which have access to or use of the Marketplace, regardless of whether You are an authorised representative of an ARL Marketplace User or an authorised representative of a Supplier. By agreeing to these Terms, You represent and warrant to Us that You have the legal authority to bind Your organisation to these Terms and that We can enforce these Terms against Your organisation.
- (f) **PLEASE READ THESE TERMS CAREFULLY BEFORE YOU ACCESS OR USE THE ARL MARKETPLACE. BY ACCESSING THE MARKETPLACE, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT WISH TO BE BOUND, PLEASE DO NOT ACCESS OR USE THE ARL MARKETPLACE.** If you are unsure or have any questions about these Terms, please ensure you seek clarification before proceeding to access the ARL Marketplace.
- (g) **These Terms apply to ARL Marketplace Users and Suppliers.** However, notwithstanding the foregoing, certain provisions set out in these Terms apply only to Marketplace Users and certain provisions only apply to Suppliers. These Terms will set out which provisions apply to Marketplace Users only and which provisions apply to Suppliers only.

2. Registration; Profile; Username and Password.

- **Approving your user account** - You must register for an account with Us (**Account**) in order to access and use certain portions of the ARL Marketplace. Your Account registration is subject to Our approval. We reserve the right to decline an application to register an Account for any lawful reason.
- **User profile** - In order to register for an Account, You must complete a user profile (**Profile**), which You consent to be shown to Us, the administrators of the ARL Marketplace. If You register an Account as a Supplier, then you acknowledge and agree that the contact details (including street address, email address and telephone number) and logo of the Supplier that You complete in Your Profile will be shown to other ARL Marketplace Users.
- **User name and password** – When creating Your Account, You are assigned a username (the email address you provided) and You select a password. You are responsible for the security and confidentiality of Your own username and password, and You agree to not share Your username or password with anyone else. You agree to notify Us immediately if You suspect or become aware of any unauthorised access to or use of Your Account. You further agree to not use the Account or log in with the username and password of a third party.

3. Creating an Account on behalf of an organisation.

If You Create an Account as an employee of an ARL Marketplace User or a Supplier, or You are otherwise acting as an agent on behalf of an organisation, **You personally represent and warrant to Us that You are authorised to enter into binding contracts (including these Terms) on Your own behalf and on behalf of Your organisation.**

4. Lawful use.

You must only access and use the ARL Marketplace in accordance with all applicable laws. You must only access and use the ARL Marketplace for lawful purposes only and ensure that Your access to, and use of, the ARL Marketplace is not illegal or prohibited by law. It is Your sole responsibility to comply with all applicable laws in relation to making Your materials accessible via the ARL Marketplace.

5. Grant of rights.

Subject to Your compliance at all times with these Terms, **We grant to You the right to access the ARL Marketplace and to use the ARL Marketplace's functionality, solely for Your own or Your organisation's internal use.** Except as expressly permitted under these Terms (or as reasonably contemplated by the use of the ARL Marketplace in the normal course of events) or expressly as authorised under applicable law, **You must not misuse the ARL Marketplace, including (without limitation) doing any of the following:**

- (a) license, sub-license, sell, re-sell, distribute or otherwise commercially exploit the whole or any part of the ARL Marketplace;
- (b) modify, copy, reproduce, republish, transmit or distribute or make derivative works based on the whole or any part of the ARL Marketplace;
- (c) reverse engineer, reverse compile or otherwise access the ARL Marketplace in order to build a competitive product or service; or
- (d) attempt to, or procure, permit or assist any other person to, do any of the foregoing.

6. The ARL Marketplace.

From time to time, at Our sole and absolute discretion, We may either:

- (a) discontinue the provision of the ARL Marketplace or any functionality included as part of the Marketplace; or
- (b) implement upgrades to the ARL Marketplace through modification, improvement or provision of a new version of the Marketplace. Any upgrade to the Marketplace will not limit or otherwise affect these Terms. **You acknowledge and agree that We are not liable to You or to any third party for any loss of access to the ARL Marketplace (on either a temporary or permanent basis) or as a result of any downtime. Where we decide to discontinue the provision of the ARL Marketplace or any functionality that is included as part of the ARL Marketplace, We will endeavour to provide you with reasonable advance notice of such decision. You acknowledge and agree that We may provide such notice by posting a notice to the ARL Marketplace.**

7. Your obligations.

In accessing and using the ARL Marketplace and accessing any functionality made available through the ARL Marketplace, **You must not:**

- (a) use the ARL Marketplace for any purpose other than as contemplated by these Terms;
- (b) use the ARL Marketplace in a manner that is illegal or fraudulent or facilitates any illegal or fraudulent activity;
- (c) use the ARL Marketplace in a manner that may interfere with, disrupt or create undue or unreasonable burden on the ARL Marketplace or on the servers and networks that host or support the Marketplace;
- (e) use the ARL Marketplace with the assistance of any automated scripting tool or software, other than as provided or made available by Us to You;
- (f) act in a manner that may diminish or adversely impact Our reputation (including by linking to the ARL Marketplace on any other website);
- (g) post or otherwise transmit any images or content that is unlawful, obscene, harmful, hateful, invades the privacy of a third party, contains nudity or pornography or is otherwise objectionable;
- (h) post or otherwise transmit materials that impact or invade the privacy of a third party without that party's consent;
- (i) post or otherwise transmit material that is intentionally false, defamatory, unlawfully threatening or harassing;
- (j) post or otherwise transmit material that infringes any third party's intellectual property rights or other proprietary rights;
- (k) post or otherwise transmit materials that contain any malicious software;

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- (l) use the ARL Marketplace to artificially generate or inflate traffic or page links to a website or for any purpose not expressly permitted under these Terms;
- (m) attempt to penetrate or to breach the security of the ARL Marketplace, or to otherwise interfere with the normal functionality and performance of the ARL Marketplace; or
- (n) attempt to, or procure, permit or assist any other person to, do any of the following.

8. Your data.

You grant to Us a non-exclusive, royalty-free, worldwide, perpetual and irrevocable licence (including the right to grant sub-licences) to reproduce, use and to otherwise exploit all data and material relating to You and Your organisation that is provided to Us or which is collected by Us during the course of Your access to and use of the ARL Marketplace (**User Data**), including for the purpose of Us providing the ARL Marketplace to You and to other ARL Marketplace Users and Suppliers. You retain ownership of Your User Data. We will take reasonable measures to protect Your User Data from misuse, interference and loss, as well as from unauthorised access, modification or disclosure. We will take reasonable steps to destroy or de-identify personal information when the information is no longer required for the purpose(s) for which it was collected, unless required or authorised by law to retain such information. We reserve the right to remove any User Data where We reasonably form the opinion that such User Data does not comply with Your obligations under these Terms. **You represent and warrant to Us that You are authorised to provide the User Data to Us and that Our use of the User Data will not infringe the rights of any third party.**

9. Period of these Terms and Conditions.

When You create an Account on the ARL Marketplace, these Terms and Conditions commence from the date You create Your Account and continue for 36 months from that date, unless extended or earlier terminated in accordance with these Terms and Conditions.

PART B: APCO IS NOT A PARTY TO ANY CONTRACT BETWEEN MARKETPLACE USER AND SUPPLIER

10. APCO is not a party to any contract.

(a) For the avoidance of any doubt, You acknowledge and agree that We are not a party to any contract, arrangement, understanding or agreement made between any ARL Marketplace User (or the organisation which they are authorised to represent) and any Supplier.

(b) We do not introduce Marketplace Users to Suppliers (or vice versa). We merely make the ARL Marketplace available to enable ARL Marketplace Users (and their organisations) to identify and determine the suitability of the packaging products offered by Suppliers via the ARL Marketplace for the particular requirements of the Marketplace User (and his/her organisation).

(c) Without limiting the foregoing, You acknowledge and agree that APCO is not responsible for the packaging, delivery and transportation of products ordered from any Supplier and that You (or the ARL Marketplace User) and the Supplier are responsible (under the terms and conditions of the purchase and supply contract You or the ARL Marketplace User enter into with the Supplier) for arranging the delivery and transportation of products from the Supplier to You or the ARL Marketplace User.

(d) If, for whatever reason, You or the ARL Marketplace User are not satisfied with the products purchased from or supplied by a Supplier, then the process and conditions for the return of products purchased from the Supplier will be governed in accordance with the terms and conditions of the purchase and supply contract made between You (or the ARL Marketplace User) and the Supplier. You acknowledge and agree that it is Your responsibility to check and agree to the returns policy of the relevant Supplier from which You (or the ARL Marketplace User) purchased the products. If You or the ARL Marketplace User wish to raise a dispute or complaint about a Supplier or the products purchased from a Supplier, then such dispute or complaint should be raised directly with the Supplier.

(e) **You acknowledge and agree that APCO does not supervise, direct, control or monitor any party (either ARL Marketplace User or Supplier) in the performance of any contractual obligations that may have been agreed to by the parties** in the course of the ARL Marketplace User agreeing to purchase products from the Supplier. All contracts for the purchase of products between an ARL Marketplace User and a Supplier are made directly between the ARL Marketplace User and the Supplier and neither APCO nor any of its licensors are parties to such contracts.

PART C: TERMS THAT APPLY SPECIFICALLY TO ARL MARKETPLACE USERS

- 11. Application of these Terms.** These provisions in this Part C of the Terms apply specifically to ARL Marketplace Users (and their organisations). **For the avoidance of doubt, these provisions in this Part C of the Terms do not apply to Suppliers.**
- 12. ARL Licence.** Subject to these Terms, We grant You a non-exclusive, non-transferable licence (without any rights to sub-license) for the duration of these Terms to use the ARL within Australia and New Zealand to communicate packaging recyclability information on the packaging of Your products that have been assessed through the ARL Program (“ARL Licence”).
- 13. Term of ARL Licence.** Your right to use the ARL under the ARL Licence commences on and from the date that You enter into these Terms and continues for 36 months (**User Initial Term**), unless extended or earlier terminated in accordance with these Terms. You may request the renewal of the ARL Licence prior to the expiry of the User Initial Term or any renewal thereof by notifying Us of Your intention to do so, provided that, at the time of making such request, You (and Your organisation, if applicable) are in full compliance with all provisions of these Terms that apply to Marketplace Users.
- 14. APCO Services.** In consideration for Your compliance with these Terms, We agree to provide or make available to You a set of specific resources to assist with Your enquiries about the use of the ARL and periodic communications to You, as required, regarding changes which may impact the status and accuracy of the ARL already in use.
- 15. Compliance with ARL User Guide.** **You (and Your organisation) must agree to comply with the ARL User Guide.** The ARL User Guide sets out the requirements associated with the use of the ARL. You may access a copy of the ARL User Guide using the links made available on the ARL Marketplace. We reserve the right to amend, modify, update or replace the ARL User Guide from time to time. We may do so by making available the latest version of the ARL User Guide on the ARL Marketplace from time to time and we will provide information about the effective date of the ARL User Guide on

the ARL Marketplace. You acknowledge and agree that it is Your responsibility to check the ARL Marketplace to ensure that You have read, understood and complied with the current version of the ARL User Guide.

16. Compliance with Marketplace governance procedures.

You (and Your organisation) agree to comply with all Marketplace governance procedures as determined by Us, at Our sole discretion, from time to time and notified to You, including via the Marketplace.

These include (without limitation) the ARL system governance procedures set out in the ARL Program Manual (which is accessible via the Marketplace) with respect to the following matters:

- (a) validation that the packaging You source is from a Supplier listed on the ARL Marketplace, or the specifications of the packaging You sourced from other Suppliers;
- (b) entering the correct SKU/UPC details from the Supplier into the Marketplace;
- (c) applying the appropriate label for each separable packaging component; and
- (d) finalising artwork to ensure compliance with Australian and/or New Zealand consumer laws.

17. Use of ARL for lawful purposes. You and Your organisation must only use the ARL for lawful purposes only and You and Your organisation must ensure that the use of the ARL is not illegal or prohibited by law.

18. Compliance checks. By agreeing to these Terms, You acknowledge and agree that You (or Your organisation) may be selected by Us for compliance checks by Us or on behalf of Us in relation to Your packaging at least annually. You agree to cooperate reasonably and in good faith with any such compliance checks. The purpose of such compliance checks will be to assess whether the product packaging You (or Your organisation) use satisfy the requirements for the use of the ARL. Where, as a result of the compliance checks undertaken by or on behalf of APCO, it is determined that Your packaging does not satisfy the criteria for the use of the ARL, you must promptly cease using the ARL on Your packaging until such time We are satisfied (acting reasonably) that the packaging satisfies the criteria for the use of the ARL.

PART D: TERMS THAT APPLY SPECIFICALLY TO SUPPLIERS

19. Supplier access

- (a) **Suppliers agree to comply with all ARL Marketplace governance procedures** as determined by Us, at Our sole discretion, from time to time and notified to Suppliers including, without limitation, the ARL system governance procedures set out in the Manual.
- (b) By agreeing to these Terms, You acknowledge and agree that You (or Your organisation) may be selected by Us for compliance checks by Us or on behalf of Us in relation to Your compliance with the ARL Program and these Terms at least annually. You agree to cooperate reasonably and in good faith with any such compliance checks. The purpose of such compliance checks will be to assess whether the Packaging Solutions that You (or Your organisation) list on the Marketplace satisfies the requirements for the use of the ARL. Where, as a result of the compliance checks undertaken by or on behalf of APCO, it is determined that Your packaging does not satisfy the criteria for the use of the ARL, you must promptly cease promoting and offering the packaging through the Marketplace

until such time We are satisfied (acting reasonably) that the packaging satisfies the criteria for the use of the Marketplace.

20. Registration, Reporting and Auditing Obligations

- (a) You are solely responsible for the creation, storage and backup of Your business records pertaining to the listing of products on the ARL Marketplace. You acknowledge and agree that We have no obligation to store, maintain or provide You with a copy of any content or information that you provide, except to the extent required by applicable law.
- (b) You acknowledge and agree that You are responsible for providing to Us in writing (via the APCO Member Centre) annual reports as required by your membership type, within the term of your licence as specified in clause **Error! Reference source not found.** of these Terms.
- (c) At all times during the term of these Terms, You must maintain written copies of all records relevant to Your activities on the ARL Marketplace (including written copies of all records relevant to Your sale and supply of products that You have listed on the ARL Marketplace).
- (d) You acknowledge and agree that You or Your organisation must permit authorised representatives of APCO (**APCO Auditor**) during ordinary business hours, and upon giving of not less than fourteen (14) days' prior written notice, to inspect Your records for the purposes of determining Your compliance with Your obligations under these Terms. You shall give all reasonable assistance necessary to the APCO Auditor to carry such inspections (including, without limitation, the copying of any relevant records by the APCO Auditor).
- (e) If, in the course of such inspection, the APCO Auditor identifies that You are not compliant with Your obligations under these Terms, the APCO Auditor may recommend corrective actions. You must undertake those corrective actions identified by the APCO Auditor in the manner and timeframes reasonably requested by the APCO Auditor. For the avoidance of doubt, this provision does not affect any other rights or remedies that We may have under these Terms and Conditions or at law (including, without limitation, any rights We may have to terminate these Terms and Conditions).

21. Administration of the ARL

If You are not bound by the Australasian Recycling Label Terms & Conditions ("ARL Terms"), the provisions of clause 6 (Administration of the ARL) of the ARL Terms shall apply to You as if those ARL Terms were incorporated into these Terms (save that the complaints procedure shall not apply and references to "APCO Members" shall be read as "Suppliers").

22. Term and Renewal of ARL Licence

If You are not bound by the ARL Terms, the provisions of clauses 2 (ARL Licence) and 7 (Term and Renewal of ARL Licence) of the ARL Terms shall apply to You as if those ARL Terms were incorporated into these Terms (save that references to "continue to use and will for a further thirty-six (36) months use, the Packaging Assessment Tools to conduct packaging assessments for the selection of the correct ARL components" shall be read as "continue to use the ARL Marketplace to access the ARL for use on Packaging Solutions from Suppliers").

23. Your listings and content

- (a) You grant to us the necessary permissions to enable Us to reproduce and use Your description of products on the ARL Marketplace (**Product Listing**). In particular, You grant to Us a non-exclusive, perpetual, irrevocable, royalty-free, worldwide licence to make available, copy, communicate, display, translate and create derivative works of the Product Listings and any other content, data or information shared by You or on Your behalf, or accessed by Us in connection with the Marketplace, including photos and videos (together with Product Listings, Your **"Supplier Content"**), in connection with the Products. You represent and warrant to Us that You have all necessary rights in the Supplier Content to grant us the licences and rights set out in these Terms.
- (b) You acknowledge and agree that You are at all times responsible for Your Product Listings and Supplier Content, even where We host and display your Supplier Content on the Website. You must ensure that all Supplier Content is true, accurate and complete at all times, including (without limitation) the description, price, applicable taxes or fees, delivery information, required legal disclosures and other relevant content. You are solely responsible for setting the price of the products that are offered via the ARL Marketplace.
- (c) You are responsible for ensuring that Your Product Listings provide Users with the terms, conditions and policies that apply to a proposed purchase of the products from You or Your organisation. You are responsible for displaying, keeping up to date and honouring any sales, returns and/or privacy policies, and all other relevant terms or information (including disclosures) relating to Your Product Listings, including as required by law. Any such terms, information or disclosures do not apply to Us and do not bind Us.
- (d) You are responsible for applicable taxes relating to your products, including any applicable goods and services tax. You are solely liable for all liabilities, including (without limitation) any penalties or interest that may be assessed as a result of the under-remittance or non-remittance of any taxes and fees imposed on the sale of Your products.
- (e) At all times, You must comply with these Terms, and applicable laws, rules and regulations in relation to the sale of products via the ARL Marketplace. You are expressly prohibited from displaying, promoting, offering, marketing or selling counterfeit products through the ARL Marketplace.
- (f) You are responsible for providing customer service to Users in connection with Your products. You are responsible for providing, managing, paying for and fulfilling any after-sales, warranty and customer service, returns, refunds or other accommodations with respect to any products purchased by any User.
- (g) Without limiting the foregoing, You are solely responsible for any defect or non-conformity in any product that you offer for sale through the Marketplace and for complying with any recall or safety alert (or similar direction or notice) with respect to any products that listed on the ARL Marketplace.
- (h) We reserve the right to review, at any time, the Supplier Content and the Product Listings to ensure the integrity of the Marketplace. We may remove or modify any Supplier Content or Product Listings which, in our reasonable opinion, does not conform with the requirements of these Terms (including the Manual). This may include products made of materials or formats that are being phased out across

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Australia or in certain States and/or Territories of Australia. We are not liable to You (or to Your organisation) where We exercise Our rights under this provision to remove or modify any Supplier Content or Product Listings.

- (i) Without limiting the foregoing, where an inspection conducted under clause 20 determines that You (or Your organisation) is not compliant with Your obligations under these Terms, then We reserve the right to disable, hide or otherwise remove Supplier Content or Product Listings until You (or Your organisation) is compliant with the obligations under these Terms.

Part E: Indemnity, Disclaimer and Limitation of Liability

24. Disclaimer

- (a) To the fullest extent permitted by law, We make no representations or warranties of any kind, express or implied about the ARL Marketplace (including that the ARL Marketplace will be uninterrupted or error-free), nor are We liable under any guarantees or for any other remedies available at law, pertaining to the completeness, accuracy, reliability, suitability for any particular purpose or availability with respect to the whole or any part of the ARL Marketplace (**Statutory Liabilities**). You acknowledge and agree that We make the ARL Marketplace (including any content and information on the Marketplace) on an “as is” and “as available” basis.
- (b) Where We are liable under any Statutory Liabilities, and any law avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such Statutory Liabilities, Our liability for any breach of such Statutory Liabilities shall be limited, at Our sole discretion, to one or more of the following:
 - (i) if the breach relates to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the cost of replacing the goods or of acquiring equivalent goods; or the cost of having the goods repaired; and
 - (ii) if the breach relates to services: the supplying of the services again or the cost of having the services supplied again.

You acknowledge and agree that reliance by Us on this limitation of liability is fair and reasonable in all the circumstances.

25. Limitation of Liability

- (a) To the fullest extent permitted by law, neither party is liable to the other for any damages or losses arising out of or in connection with use of the ARL Marketplace, including (but not limited to): (a) Your use of or Your inability to use the ARL Marketplace; (b) delays or disruptions in the ARL Marketplace; (c) viruses or other malicious software obtained by accessing, or linking to, the ARL Marketplace; (d) any errors or inaccuracies of any kind in the ARL Marketplace or the content accessible via the ARL Marketplace; (e) the content, actions or inactions of any third party in relation to their use of the ARL Marketplace; (f) a suspension or other action taken with respect to Your Account; or (g) Your reliance on the quality, accuracy or reliability of Product Listings and Supplier Content.
- (b) To the fullest extent permitted by law, neither You nor Us are liable, and each party agrees not to hold the other party responsible, for any special, consequential, incidental, punitive or exemplary damages (including, but not limited to, litigation costs, installation and removal costs, or loss of data, production, profit, revenue or business opportunities)

arising out of Our provision of the ARL Marketplace or Your access to and use of the ARL Marketplace.

Part F: Intellectual Property Ownership and Privacy

26. Intellectual Property Ownership

- (a) You acknowledge and agree that We, or our licensors, retain all intellectual property rights (including, without limitation, any copyright and trade marks) in the ARL, the ARL Marketplace User Guide, or any ARL guidelines and that there is no transfer of title or ownership to You of any intellectual property rights in the ARL, the ARL User Guide or any ARL guidelines.
- (b) You (and Your organisation) must keep intact all copyright and other proprietary notices (or otherwise not alter, obscure, remove or interfere with any copyright and other proprietary notices) affixed to or contained in the ARL, the ARL User Guide or any ARL guidelines. You must not use, reproduce, publish, communicate, adapt, modify, distribute, assign, sell or otherwise deal with the ARL in any way except as expressly permitted by these Terms and Conditions.

27. Privacy Statement

Our Privacy Statement is set out at the APCO website (at www.apco.org.au) and shall apply to You and Your use of the ARL. You represent and warrant to Us that You have obtained the consent, and You consent on behalf of all Your users to, to the collection, use and disclosure of any personal information of Your individual users in accordance with that Privacy Statement.

Part G: Termination

28. Termination

- (a) We may terminate these Terms, Your right to access and use the ARL Marketplace and Your use of the ARL if:
 - (i) You breach any provision of these Terms; or
 - (ii) if We no longer have the right to license the ARL to You.
- (b) Either party may also, at its discretion, terminate these Terms for convenience by giving not less than 30 days' written notice to the other party.
- (c) Upon any expiration or termination of these Terms, Your right to access and use the ARL Marketplace will immediately terminate and, in the case of an ARL Marketplace User, You must cease to apply any Packaging Solutions obtained through the ARL Marketplace to any packaging of Your products within seven (7) days, and You must remove all references to such Packaging Solutions from any online advertising or promotional material in respect of Your products within fourteen (14) days, of the date of expiration or termination. You may continue to sell products with ARL applied prior to the date of expiration or termination of these Terms ("Prior Labelled Products") for

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a period of six (6) months from the date of expiration or termination, after which You must recall and otherwise remove from Your supply chain all Prior Labelled Products.

- (d) Termination of these Terms will not end those provisions that are capable of surviving the ending of these Terms (including, without limitation, clauses 8, **Error! Reference source not found.**, 24, 25, 29 and 31 of these Terms).

Part H: Dispute Resolution

29. Dispute Resolution Procedure

- (a) The parties agree to follow the procedure set out in this clause in relation to any dispute arising out of these Terms.
- (b) If a party has a dispute or complaint against APCO, then that party (**Notifying party**) must notify APCO in writing of the dispute or complaint. The Notifying party must ensure that the notice contains specific details identifying the nature of the dispute or complaint.
- (c) Both parties must within five (5) business days of the receipt of the dispute notice meet and use their reasonable endeavours to resolve the dispute or complaint to the mutual satisfaction of both parties as soon as reasonably practicable. Each party must be represented by an individual authorised to settle the dispute or complaint on behalf of the party that he/she represents.
- (d) If the parties are not able to reach resolution of the dispute or complaint within a reasonable period of time (in any event being no more than ten (10) business days after the date of receipt of the dispute notice) (**Dispute Period**), then the dispute or complaint may be submitted to mediation.
- (e) The mediation must be conducted in Sydney, New South Wales, Australia.
- (f) The Resolution institute Mediation Rules (as at effective date of these Terms) as amended by this clause shall apply to the mediation, except where they conflict with this clause.
- (g) If the parties have not agreed upon the mediator within five (5) business days after the expiry of the Dispute Period, then the parties agree to appoint as mediator the person nominated by the Chair of the Resolution Institute (**Chair**) or the Chair's nominee.
- (h) The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.
- (i) If the mediation does not resolve the dispute or complaint within twenty (20) business days (or such longer period as the parties may agree) after expiry of the Dispute Period, then either party may commence a court action or proceedings.
- (j) A dispute or complaint between a Marketplace User and a Supplier shall be determined in accordance with the terms of the contract of sale between the Marketplace User and the Supplier. For the avoidance of doubt, APCO is not required to become involved in the resolution of dispute or complaint and the parties may not invoke the dispute resolution procedure set out in this clause to resolve a dispute or complaint between the Marketplace User and Supplier. Each party to the

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dispute or complaint releases and holds APCO harmless in relation to any loss or damage suffered or sustained as a result of a contract entered into between a Marketplace User and a Supplier for the purpose of products promoted on the Marketplace.

- (k) Nothing in this clause 29 prevents either party from seeking urgent interlocutory relief from a court of competent jurisdiction or by such other manner as is appropriate in the circumstances, or any party from exercising its right to terminate these Terms in accordance with its provisions.

Part I: General Provisions

30. Notification of Changes

- (a) We reserve the right to change these Terms, the ARL Marketplace User Guide and the design of the ARL at Our sole discretion from time to time by giving You not less than thirty (30) days' notice of the change.
- (b) Notice will be given to You by way of email communication or by posting on the ARL Marketplace website. Your continued use of the ARL following such communication of a relevant change will represent Your agreement to be legally bound by such change.
- (c) If You do not agree to any notified change of these Terms, you may terminate these Terms by written notice to APCO at any time during the thirty (30) day notice period.
- (d) No modification or amendment to these Terms will be binding on Us unless they are agreed in a written instrument signed by a duly authorised representative of APCO or posted on the ARL Marketplace on behalf of APCO. Email does not constitute a written instrument for the purposes of this provision.

31. General provisions

- (a) If We waive, in whole or part, any rights available to us under these Terms on one occasion, this does not mean that those rights will automatically be waived on any other occasion. Any such waiver shall be in writing and shall be limited to the scope of the waiver set out therein.
- (b) If any provision of these Terms is held to be invalid, unenforceable or illegal for any reason, it is to be read down to give it as much effect as possible, or if it is not capable of having any effect at all, it is to be severed from these Terms, in which case, the remainder of these Terms shall nevertheless continue in full force. Without limiting the foregoing, it is the intention of the parties that no provision that would be an unfair contract term under the Australian Consumer Law form any part of these Terms and, if any provision of these Terms would, but for this paragraph (b), be held to be an unfair contract term under the Australian Consumer Law, such provision is severed from these Terms as if the provision never formed part of these Terms and the remainder of these Terms shall continue in full force.

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- (c) The laws governing these Terms and Conditions will be the laws in the State of New South Wales, Australia and You irrevocably submit to the non-exclusive jurisdiction of the courts of that State.
- (d) APCO makes no representation that the ARL Marketplace is appropriate or available for use outside of Australia. Those who access or use the ARL Marketplace from other jurisdictions do so at their own risk and are entirely responsible for compliance with all applicable laws and regulations, both in Australia and overseas.
- (e) We may be required to provide you with certain communications, notices, agreements, statements or disclosures in writing regarding the ARL or the ARL Marketplace. You consent to receive such communications electronically from Us rather than in paper form.
- (f) We are not the agent for either an ARL Marketplace User or Supplier for any purpose in relation to these Terms or Your use of the ARL Marketplace or the ARL.
- (g) These Terms shall not be assignable by You, either in whole or in part. We reserve the right to assign Our rights and obligations under these Terms without notice to You.