

EC Credit Control Pty Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "Seller" shall mean EC Credit Control Pty Limited its successors and assigns or any person acting on behalf of and with the authority of EC Credit Control Pty Limited.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Goods" shall mean all Goods supplied by the Seller to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Client.
- 1.4 "Services" shall mean all Services supplied by the Seller to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.5 "Credit Management" shall mean any advice or recommendations given to the Client on the assessment, management, and enforcement of credit given by a Client to a Debtor.
- 1.6 "Vouchers" shall mean the debt collection Vouchers supplied by the Seller to the Client for the purposes of lodging Debts to be collected on the Clients behalf by the Seller. The ownership of Vouchers shall be personal to the Client and shall not be transferable to any subsequent Client without the approval of the Seller.
- 1.7 "Debtor" shall mean the person, company, partnership, trust, organisation or any other entity that owes a Debt to the Client.
- 1.8 "Price" shall mean the cost of the Goods or Services as agreed between the Seller and the Client subject to clause 6 of this contract.
- 1.9 "Debt" shall mean any money that is owed to the Client by the Debtor.
- 1.10 "Contra Deal" shall mean a barter or set-off arrangement as agreed in writing between two or more parties, for the payment or settlement of any Debt.
- 1.11 "Commission" shall mean the fee charged by the Seller for the Services undertaken in recovering a Debt.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Client for the supply of Goods/Services/Vouchers and/or acceptance of Goods/Services/Vouchers by the Client shall constitute acceptance of the terms and conditions contained herein.
- 2.2 The Client warrants that no bona fide dispute exists in respect of the Debt and the Client will indemnify the Seller against any claims arising from any action taken by the Seller, or on the Client's behalf.
- 2.3 The Buyer agrees that each order the Buyer places shall be deemed to be a representation that the Buyer is solvent at the time and are able to meet all of their debts as and when they fall due.
- 2.4 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.5 The Seller is appointed as a commercial agent when instructed to collect outstanding debts on behalf of the Client by undertaking the Seller's usual collection process as outlined in the Seller's "Client Manual" from time to time. Such appointment shall be ongoing until cancelled by the Client giving the Seller not less than ninety (90) days notice in writing.
- 2.6 The Client shall issue debt recovery instructions to the Seller by way of completing the Seller's Vouchers. Alternatively the Client may issue instructions by completing the Voucher on the Seller's web site, or any other method as agreed to between the Seller and the Client. The Client acknowledges and agrees that upon completing these Debt recovery instructions, the Client is also instructing the Seller to commence legal action (at the Seller's sole discretion) if the Seller sees fit to do so. In the event any charges are involved in commencing legal action, all charges will be required to be prior approved by the Client.
- 2.7 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.

3. Commission

- 3.1 Commission is due on every dollar recovered in payment of a Debt and is calculated as follows:

20%	plus GST	on the first	\$5,000.00	recovered plus
10%	plus GST	on the next	\$5,000.00	recovered plus
5%	plus GST	on the balance over	\$10,000.00	
- 3.2 Irrespective of whether collection costs have been recovered (or even added to the amount submitted for collection), and irrespective of any action taken by the Client after submission of the Voucher to recover the Debt, Commission is due when:
 - (a) payment or part payment of a Debt is received by the Client or Seller, or
 - (b) an arrangement for payment of a Debt is made, or
 - (c) the Client has agreed to credits, or the return of product/goods, or any other matter acceptable to the Client, or
 - (d) a recovery, location of unallocated payment, or settlement agreement (including, but not limited to Contra Deals) is made through any other means where (in the Seller's opinion) commission is due, or
 - (e) payment or part payment of a Debt is received by the Client or Seller, subsequent to the file being closed under written advice, or
 - (f) payment or part payment of a Debt is received by the Client or the Seller as a result of any litigation process undertaken, where the Commission amount is acknowledged and awarded by the Court as part of the sum owed by the Debtor to the Client and this amount is paid.
- 3.3 In the event that the Client has (in the Seller's opinion) recovered a Debt by taking action through the appropriate court at the cessation of the Seller's collection process then Commission shall not apply.
- 3.4 The Seller may deduct its respective Commission fees, or any other monies owed by the Client to the Seller (plus GST), out of any monies collected on behalf of the Client.
- 3.5 The Client shall upon receiving payment for a Debt from a Debtor immediately notify the Seller of the Debtor payment. This can be done by phone, fax, e-mail, post, or through the Seller's website.

4. Privacy Act 1988

- 4.1 The Client further warrants that all information provided to the Seller regarding the Debtor has been collected in accordance with the principles contained in the Privacy Act 1988 and that the Debtor has authorised the use or disclosure of that information in any way deemed necessary by the Seller for the purpose of collecting the Debt from the debtor or for the purpose of credit referencing.
- 4.2 The Client further warrants that it obtains the prior consent of any individual, company or other entity prior to requesting the Seller to complete a credit check on that individual, company or other entity.
- 4.3 The Client and/or the Guarantor/s (herein referred to as the Client) agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Seller.
- 4.4 The Client agrees that the Seller may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 4.5 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 4.6 The Client agrees that personal and/or credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Client and Seller or required by law from time to time):
 - (a) the provision of Goods; and/or
 - (b) the marketing of Goods by the Seller, its agents, distributors, business partners or any other third party; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 4.7 The Seller may give information about the Client to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 4.8 The information given to the credit reporting agency may include:

- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
- (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advice that the Seller is a current credit provider to the Client;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of the Seller, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by the Seller has been paid or otherwise discharged.

5. Client Warranty

- 5.1 The Client warrants that the amount claimed for collection does not include any debt collection costs. If debt collection costs are sought, they must be:
 - (a) separately identified.
 - (b) properly recoverable by reason of notification to the Debtor at the time of supply/sale.
 - 5.2 The Client indemnifies the Seller against any penalty or liability incurred by the Seller for any breach of the above warranties.
 - 5.3 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or any of the Fair Trading Acts of each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable (including any substitute to those Acts or re-enactment thereof).
- ## 6. Price and Payment
- 6.1 The Price for Vouchers and any other Goods/Services shall be the Sellers current Price at the date of sale.
 - 6.2 Time for payment shall be of the essence and will be stated on the invoice. If no time is stated then payment shall be due fourteen (14) days from the statement date.
 - 6.3 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable.

7. Disclaimer

- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client.
- 7.2 Any Credit Management advice, recommendation, information, assistance, or Service provided by the Seller in relation to Goods and/or Services sold by the Seller (or for their use or application) is given in good faith and is believed by the Seller to be appropriate and reliable. However any advice, recommendation, information, assistance or Service provided by the Seller in relation to any Goods and/or Services supplied by the Seller is provided without liability or responsibility on the part of the Seller.
- 7.3 The Seller also makes no express or implied warranty or statement and expressly negates any implied or expressed warranty (other than as may be imposed by statute) that the Goods and/or Services will be suitable for a particular purpose or end use for which the Client may use them.
- 7.4 The Client accepts all risk and responsibility for consequences arising from the use of Goods and/or Services, whether singularly or in combination with other products. No claims for consequential damages will be entertained.
- 7.5 Whilst every care is taken by the Seller in drafting Terms of Trade for the Client, the Seller's liability shall be limited to the Price of the Terms of Trade.

8. Default & Consequences of Default

- 8.1 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller from and against all the Seller's legal costs and disbursements for collection or attempted collection of the defaulted amount calculated on a solicitor and own client basis.
- 8.2 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of twenty percent (20%) per annum which rate shall apply after as well as before any judgment.
- 8.3 In the event that the Buyer's payment is dishonoured for any reason the Buyer shall be liable for any dishonour fees incurred by the Seller.
- 8.4 If for any reason Commission fees are not paid within fourteen days of the Seller's account being rendered, then the Seller reserves the right to withhold action on further Vouchers until the account is paid in full.
- 8.5 If the Client does not comply with the Seller's terms of payment then the Seller reserves the right to cancel any outstanding Vouchers in the Client's name without refund.

9. Cancellation

- 9.1 The Seller may cancel this contract at any time before the delivery of any Goods or Services by giving written notice. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 9.2 The Seller will not refund amounts paid for Vouchers or Commission in any circumstances.
- 9.3 The Client may cancel the delivery of Goods (excluding Vouchers but including Terms of Trade documentation) within forty-eight (48) hours of the date of this agreement subject to payment of a cancellation fee of twenty-five percent (25%) of the Price of the Goods. In the event the Client wishes to cancel the delivery of Services, then the Client shall be liable for all reasonable costs incurred by the Seller up to the time of, or as a direct result of the cancellation.

10. Intellectual Property

- 10.1 Any intellectual property rights contained in the design or manufacture of any Goods or Services remain with the Seller. Notwithstanding this, the Seller grants the Client a non-exclusive and non-transferable licence, allowing the Client to reproduce in full, any Terms of Trade documentation that the Seller has supplied the Client (including the Seller's Copyright notice), for the purpose of providing it to the Client's customers, as part of the credit managing of the Client's business. The Client shall only grant their customer the right to retain a copy as a record of the dealings between the Client and their customer. Except as allowed herein the Client agrees not to supply the Seller's documentation to any person or entity for any purpose whatsoever, without the prior written consent of the Seller.
- 10.2 The Client warrants that the Client holds all necessary intellectual property rights in any document or material, (including, but not limited to, terms and conditions of trade), that are supplied to the Seller for its provision of Goods and Services and that there is or will be no infringement of any rights or entitlements held by any third party.
- 10.3 The Client indemnifies and holds harmless the Seller for any claims made against it arising from the Seller's use of any document, material or information supplied by the Client.
- 10.4 Until such time as the Seller has received or been tendered the whole of the Price the property right in any Goods or Services remain with the Client.

11. General

- 11.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 11.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the State of New South Wales and are subject to the jurisdiction of the courts of the State of New South Wales.
- 11.3 The Seller shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Seller of this contract.
- 11.4 The Client indemnifies the Seller and agrees that the Seller shall not be a party to, and/or liable for, any action brought against the Client or Seller by a Debtor in relation to any Debt that the Client has given to the Seller for collection.
- 11.5 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Client of such change.
- 11.6 These terms and conditions are to be read in conjunction with the Seller's "Client Manual" and Vouchers. If there are any inconsistencies between these documents, then the terms and conditions of trade contained in this document shall prevail.
- 11.7 Any monies held in the Seller's trust account shall be done so on a non interest bearing basis. The Client shall have no claim on any interest earned on any monies deposited by the Seller.
- 11.8 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Seller.