

EC Credit Control (Aust) Pty Limited – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "ECCC" shall mean EC Credit Control (Aust) Pty Limited its successors and assigns or any person acting on behalf of and with the authority of EC Credit Control (Aust) Pty Limited.
- 1.2 "Client" means the persons or any person acting on behalf of and with the authority of the Client requesting ECCC to provide the Services as specified in any proposal, quotation, order, invoice or other Documentation; and
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by ECCC to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other) and are as described on the invoices, quotation, work authorisation or any other forms as provided by ECCC to the Client.
- 1.4 "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.
- 1.5 "Vouchers" shall mean the debt collection Vouchers supplied by ECCC to the Client for the purposes of lodging Debts to be collected on the Clients behalf by ECCC. The ownership of Vouchers shall be personal to the Client and shall not be transferable to any subsequent Client without the approval of ECCC.
- 1.6 "PPS Vouchers" shall mean the PPS Registration Vouchers supplied by ECCC to the Client for the purposes of lodging a security interest on the Personal Property Securities Register (PPSR). The ownership of the PPS Vouchers shall be personal to the Client and shall not be transferable to any subsequent Client without the approval of ECCC.
- 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 ECCC 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 ECCC for the Services undertaken in recovering a Debt.
- 1.12 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" Cth.
- 2. Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions contained herein, if the Client places an order for the supply of Goods/Vouchers/PPS Vouchers or the Client accepts delivery of any Services.
- 2.2 These terms and conditions are meant to be read in conjunction with EC Web Services Pty Limited's Terms and Conditions of Trade (where applicable). If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.3 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow them to do so. The Client is not insolvent and that this agreement creates a binding and valid legal obligation on them, to meet all of their debts as and when they fall due.
- 2.4 ECCC is appointed as a commercial agent and the Client's agent when instructed to collect outstanding debts on behalf of the Client by undertaking ECCC's usual collection process as outlined in ECCC's "Client Manual" from time to time. Such appointment shall be ongoing until cancelled by the Client giving ECCC not less than ninety (90) days notice in writing.
- 2.5 The Client shall issue debt recovery instructions to ECCC by way of completing ECCC's Vouchers. Alternatively the Client may issue instructions by completing the Voucher on ECCC's website, or any other method as agreed to between ECCC and the Client. The Client acknowledges and agrees that upon completing these Debt recovery instructions, the Client is also instructing ECCC to commence legal action (at ECCC's sole discretion) if ECCC 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.
- 2.6 None of ECCC's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by Management of ECCC in writing nor is ECCC bound by any such unauthorised statements.
- 2.7 The Client acknowledges that overpayments made by the Debtor to ECCC for the repayment of a Debt owed to the Client, shall be returned to the Client by ECCC and it shall be the Client's responsibility to deal with such monies as is appropriate and/or required by law.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW & SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions Act 2003 (WA), the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 22 of the Electronic Transactions Act 2002 (NZ) (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.9 Where ECCC has been provided with an email address from the Client for e-communications, both parties agree to fully comply with all current requirements by law pertaining to electronic messaging.
- 2.10 **Personal Guarantee:** the Client agrees that if they are a director/shareholder (owning at least 15% of the shares) of the Client that they shall be personally liable for the performance of the Client's obligations under this contract.
- 3. Commission**
- 3.1 Commission is due on every dollar recovered in payment of a Debt and is calculated as follows:
- | | 25% plus GST on the first \$10,000.00 | 15% plus GST on the next \$10,000.00 | 5% plus GST on the balance over \$20,000.00 |
|----------------|---------------------------------------|--------------------------------------|---|
| recovered plus | recovered plus | recovered plus | |
- 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 ECCC; or
- (b) an arrangement for payment of a Debt is made by the Client, any representative of the Client, or ECCC; or
- (c) the Client has agreed to credits, or the return of products/goods, or any other matter acceptable to the Client; or
- (d) a recovery, variation of unallocated payment, or settlement agreement (including, but not limited to Contra Deals) is made through any other means where (in ECCC's opinion) commission is due; or
- (e) payment or part payment of a Debt is received by the Client or ECCC, subsequent to the file being closed under written advice, or
- (f) payment or part payment of a Debt is received by the Client or ECCC as a result of any litigation process undertaken, regardless of whether the applicant is the Client or the Debtor, where associated costs are acknowledged and awarded by the Court as part of the sum owed by the Debtor to the Client and this amount is paid; or
- (g) payment or part payment of a Debt is received by the Client or ECCC as a result of any litigation process undertaken by the Debtor.
- 3.3 In the event that the Client has (in ECCC's opinion) recovered a Debt by taking action through the appropriate court (using a third party external law firm not associated as a contracting partner of ECCC) at the cessation of ECCC's collection process, then Commission shall not apply.
- 3.4 ECCC may deduct its respective Commission fees, or any other monies owed by the Client to ECCC (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 (or any third party) immediately notify ECCC of the Debtor's (or the third parties) payment. This can be done by phone, fax, e-mail, post, or via ECCC's website.
- 3.6 In the event of a liquidator exercising their legal right to clawback any funds considered preferential payments from the Client, and where ECCC has recovered the forgoing funds on the Client's behalf, the Client acknowledges and accepts that any commission paid in connection to that recovered Debt, will not, in any event, be refundable.
- 4. Privacy Act 1988**
- 4.1 The Client warrants that all information provided to ECCC regarding the Debtor (including but not limited to, any individual, company or other entity) has been collected in accordance with the principles contained in the Privacy Act 1988 and that prior consent from the Debtor was obtained for the use or disclosure of that information in any way deemed necessary by ECCC for the purpose of collecting the Debt from the Debtor or for the purpose of credit referencing and/or reporting.
- 4.2 Notwithstanding clause 4.1, where a default has been recorded against any Debtor submitted for collection and the Client subsequently confirms an error on their part that negates the default, the Client shall be liable for all costs incurred by ECCC in removing the default recorded from any Credit Reporting Agency records.
- 4.3 The Client authorises ECCC, its agents, distributors, business partners or any other third party to use the Client's information for the purposes of marketing products and services to the Client.
- 4.4 The Client agrees for ECCC to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by ECCC.
- 4.5 The Client agrees that ECCC may exchange information about the Client with those credit providers and with related body corporates 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 including the Client's repayment history in the preceding two (2) years.
- 4.6 The Client consents to ECCC being given a consumer credit report to collect overdue payment on commercial credit.
- 4.7 The Client agrees that personal credit information provided may be used and retained by ECCC for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Works.
- 4.8 ECCC may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 4.9 The information given to the CRB may include:
- (a) personal information as outlined in 4.2 above;
- (b) name of the credit provider and that ECCC is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and ECCC has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of ECCC, the Client has committed a serious credit infringement.
- 4.10 The Client shall have the right to request (by e-mail) from ECCC a copy of the information about the Client retained by ECCC and the right to request that ECCC correct any incorrect information.
- 4.11 ECCC will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 4.12 The Client can make a privacy complaint by contacting ECCC via e-mail. ECCC will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 5. Client Warranty**
- 5.1 The Client warrants that the amount claimed for collection does not include any debt collection or default costs. If debt collection or default 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 and have been invoiced to the Debtor.
- 5.2 The Client acknowledges and agrees that by submitting any Vouchers to ECCC, the Client warrants that no bona fide dispute exists in respect of the debt referred to on the Voucher, and the Client further indemnifies ECCC against any claims arising from any action taken by ECCC on the Client's behalf.
- 5.3 The Client indemnifies ECCC against any penalty or liability incurred by ECCC for any breach of the above warranties.
- 5.4 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 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 Voucher/PPS Vouchers and any other Goods/Services shall be ECCC's 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 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 ECCC nor to withhold payment of any invoice because part of the invoice is in dispute.
- 6.4 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 ECCC in relation to Goods and/or Services sold by ECCC (or for their use or application) is given in good faith and is believed by ECCC to be appropriate and reliable. However any advice, recommendation, information, assistance or Service provided by ECCC in relation to any Goods and/or Services supplied by ECCC is provided without liability or responsibility on the part of ECCC.
- 7.3 ECCC 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. ECCC shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by ECCC of these terms and conditions (alternatively ECCC's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 7.5 Whilst every care is taken by ECCC in drafting Terms of Trade for the Client, ECCC's liability shall be limited to the Price of the Terms of Trade.
- 8. Default & Consequences of Default**
- 8.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at ECCC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 8.2 If the Client owes ECCC any money the Client shall indemnify ECCC from and against all costs and disbursements incurred by ECCC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ECCC's contract default fee, and bank dishonour fees).
- 8.3 Further to any other rights or remedies ECCC may have under this contract, if a Client has made payment to ECCC, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by ECCC under this clause 8 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 8.4 If for any reason Commission fees are not paid within fourteen (14) days of ECCC's account being rendered, then ECCC reserves the right to withhold action on further Vouchers/PPS Vouchers until the account is paid in full.
- 8.5 Without prejudice to ECCC's other remedies at law, ECCC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ECCC shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to ECCC becomes overdue, or in ECCC's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 8.6 If the Client does not comply with ECCC's terms of payment then ECCC reserves the right to cancel any outstanding Vouchers/PPS Vouchers in the Client's name without refund.
- 9. Cancellation**
- 9.1 ECCC may cancel this contract at any time before the delivery of any Goods or Services by giving written notice. ECCC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 9.2 ECCC will not refund amounts paid for Vouchers/PPS Vouchers or Commission in any circumstances.
- 9.3 If the Client cancels the contract (excluding Vouchers/PPS Vouchers but including Terms of Trade documentation) for which ECCC is providing its Services, then the Client shall be liable to ECCC for any losses or costs incurred by ECCC (including but not limited to, any loss of profits) up to the time of, or as a result of the cancellation, notwithstanding that at ECCC's sole discretion:
- (a) Terms of Trade cancellation will be subject to a fee:
- (i) no fee will apply where notification to ECCC is received via email to termsoftrade@eccreditcontrol.com provided said cancellation is received within the cooling-off period of two (2) business days; and
- (ii) after the cooling-off period, fifty percent (50%) of the Contract Price shall be due and payable, where work has commenced; and
- (iii) where draft documentation is completed and sent to the Client, the full Contract Price is due and payable.
- (b) Where Voucher cancellation requests, after the provision of the Services have commenced, will be subject to Commission, where:
- (i) the Debt Vouchers have been loaded and acknowledged by ECCC and no prior written notice has been received; or
- (ii) the Debt Vouchers that have been loaded and then it is established that the Client or a representative of the Client (including but not limited to, any other collection agency) has subsequently contacted, without prior written notice directly with the Debtor and a payment is received and/or a payment arrangement is entered into then the Commission that ECCC would have otherwise been entitled to under the original contract will be due in accordance with clause 3.
- 10. Intellectual Property**
- 10.1 Any intellectual property rights contained in the design or manufacture of any Goods or Services remain with ECCC. Notwithstanding this, ECCC grants the Client a non-exclusive and non-transferable licence, allowing the Client to reproduce in full, any Terms of Trade documentation that ECCC has supplied the Client (including ECCC'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 ECCC's documentation to any person or entity for any purpose whatsoever, without the prior written consent of ECCC.
- 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 ECCC 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 ECCC for any claims made against it arising from ECCC's use of any document, material or information supplied by the Client.
- 11. Trusts**
- 11.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (Trust) then whether or not ECCC may have notice of the Trust, the Client covenants with ECCC as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not without consent in writing of ECCC (ECCC will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as Trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 12. General**
- 12.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
- 12.2 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.
- 12.3 ECCC shall be under no liability whatsoever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by ECCC of this contract.
- 12.4 The Client indemnifies ECCC and agrees that ECCC shall not be a party to, and/or liable for, any action brought against the Client or ECCC by a Debtor in relation to any Debt that the Client has given to ECCC for collection.
- 12.5 The Client agrees that ECCC reserves the right to amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for ECCC to provide Services to the Client.
- 12.6 These terms and conditions are to be read in conjunction with ECCC's "Client Manual", PPS Conditions of Registration and Vouchers. If there are any inconsistencies between these documents, then the terms and conditions of trade contained in this document shall prevail.
- 12.7 Any monies held in ECCC'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 ECCC.