

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

	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.	4.4	firm not associated as a contracting partner of ECCC) at the cessation of ECCC's collection process, then Commission shall not apply.			
1.2	"Client" means the persons, entities 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:	4.5	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.	8.3	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.	
	(a) if there is more than one Client, is a reference to each Client jointly and severally; and	4.6	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 party's) payment. This can be done by phone, fax, e-mail, post, or via ECCC's website.	8.4	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) in favour of or against ECCC or otherwise suitable for a particular purpose or end use for which the Client may use them.	
	(b) if the Client is a partnership, it shall bind each partner jointly and severally; and	5.1	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 foregoing 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.	9.1	The Client accepts all risk and responsibility for consequences arising from the use of Goods and/or Services, whether singly or in combination with other products.	
	(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and	5.2	Privacy Policy	9.2	Default & Consequences of Default	
	(d) includes the Client's executors, administrators, successors, and permitted assigns.	5.3	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 by the Client in accordance with the Client's obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (the "Act") including Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDIB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation ("GDPR") (collectively, "EU Data Privacy Laws") and that prior consent from the Debtor was obtained for the use 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.	9.3	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 on any funds and/or amounts due at such a rate after any judgment).	
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.	5.4	Furthermore, ECCC acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by ECCC, that may result in serious harm to the Client, ECCC will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.	9.4	If the Client owes ECCC any money, in or ECCC's opinion the Client will be unable to make a payment when it falls due;	
1.4	"Credit Management" shall mean any advice or recommendations given by the Client to the assessment, management, and enforcement of credit given by a Client to a Debtor.	5.5	Notwithstanding clause 5.1, 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 Body ("CRB") records.	9.5	(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	
1.5	"Vouchers" shall mean the Debt collection Vouchers (either hardcopy or electronic form) supplied by ECCC to the Client for the purposes of lodging Debts to be collected on the Client's behalf by ECCC.	5.6	The Client's limitations do extend to ECCC in respect of Cookies ("Cookies") means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer where the Client utilises ECCC's website to make enquiries. ECCC agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:	9.6	(c) the Client receives marketing communications (electronic or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.	
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").	5.7	(a) IP address, browser, email client type and other similar details;	10.0	(a) 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.	
1.7	"Debtor" shall mean the person, company, partnership, trust, organisation, or any other entity that owes a Debt to the Client.	5.8	(b) tracking website usage and traffic; and	10.1	Cancellation	
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.	5.9	(c) reports are available to ECCC when ECCC sends an email to the Client, so ECCC may collect and review that information (collectively Personal Information)	10.2	Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("the Breaching Party") the other party may elect to terminate or suspend the supply of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.	
1.9	"Debt" shall mean any monies that is owed to the Client by the Debtor.	5.10	(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.	10.3	If ECCC, due to reasons beyond ECCC's reasonable control, is unable to deliver any Goods and/or Services as provided in this Contract, then ECCC may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Client. On giving such notice ECCC shall repay to the Client any money paid by the Client for such Goods and/or Services. ECCC shall not be liable for any loss or damage whatsoever incurred by the Client from such cancellation.	
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.	5.11	(e) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.	10.4	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 it is ECCC's sole discretion:	
1.11	"Commission" shall mean the fee charged by ECCC for the Services undertaken in recovering a Debt.	5.12	The Client consents to ECCC being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.	10.5	(a) Terms of Trade cancellation will be subject to: (i) no fee 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; or (ii) where the cooling-off period has expired, the full Price is due and payable.	
2.0	Acceptance	5.13	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):	10.6	(b) Debt Voucher cancellation requests, after the provision of the Services have commenced, will be subject to Commission, where: (i) the Debt Voucher has been loaded and acknowledged by ECCC and no prior written notice has been received; or (ii) the Debt Voucher/s that have been loaded and then it is established that the Client or a representative of the Client (including the Client's customer care team) has subsequently contracted, 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 4.	
2.1	The parties acknowledge and agree that:	5.14	(a) to obtain a consumer credit report;	10.7	(c) the Client will indemnify and hold harmless ECCC for any claims made against it arising from ECCC's use of any document, material or information supplied by the Client.	
2.2	(a) they have read and understood the terms and conditions contained in this Contract; and	6.0	(b) allow the CRB to create or maintain a credit information file about the Client or the credit information related to the Client.	10.8	Trusts	
2.3	(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods/Vouchers/PPS Vouchers or the Client accepts delivery of any Services.	6.1	(c) whether the credit provider is a licensee;	10.9	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 or as an agent for a trust ("Trust") then whether or not ECCC may have notice of the Trust, the Client covenants with ECCC as follows:	
2.4	Unless otherwise agreed, the cooling-off period is two (2) business days from the date the contract is signed.	6.2	(d) type of consumer credit;	10.10	(a) The Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;	
2.5	These Terms and Conditions of Trade are to be read in conjunction with ECCC's Terms and Conditions of Trade posted on ECCC's website. If there are any inconsistencies between these documents, then the Terms and Conditions of Trade contained in this document shall prevail.	6.3	(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);	10.11	(b) The Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be 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, the trustees and 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;	
2.6	The Client warrants that it has the power to enter into this contract and has the authority to make the commitments to allow them to do so. The Client is not insolvent, and that this contract creates a binding and valid legal obligation on them, to meet all of their debts as and when they fall due.	6.4	(f) details of any previous 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 the Client in full and the Client has not committed a serious credit infringement.	10.12	(c) The Client will not during the term of the Contract 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 movement or distribution of capital of the Trust; or (iv) any resettlement of the trust fund or trust property.	
2.7	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.		(g) information that, in the opinion of ECCC, the Client has committed a serious credit infringement.	10.13	General	
2.8	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 Client's website, or any other method as agreed to between ECCC and the Client.		5.12	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.	10.14	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 the party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
2.9	The Client acknowledges and agrees that:		5.13	The Client makes a privacy complaint by contacting ECCC via e-mail. ECCC 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 may make a complaint to the Information Commissioner at www.oaic.gov.au .	10.15	Notwithstanding this clause 10.14, all the terms and conditions of the contract shall remain in force and effect, and the contract shall be deemed to have been made on the terms and conditions of the contract as if this clause had not been included.
2.10	(a) upon completing these Debt recovery instructions, the Client may instruct ECCC to commence with legal action against the Debtor. In the event that charges are involved in commencing legal action any additional charges are required to have prior approval granted first by the Client; and		6.0	Client Warranty	10.16	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.
2.11	(b) 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; and		6.1	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:	10.17	The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable.
2.12	(c) Voucher/PPS Vouchers expire one (1) year from the date of sale. For the avoidance of doubt, the date shall be deemed to be the date the tax invoice is raised between ECCC and the Client that these vouchers were sold on; and		6.2	(a) properly recoverable by reason of notification to the Debtor at the time of supply/sale and have been invoiced to the Debtor.	10.18	Disclaimer
2.13	(d) the ownership of the Vouchers/PPS Vouchers shall be exclusively identifiable to the Client and shall not be transferable to any subsequent Client without the approval of ECCC.		6.3	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.	10.19	The Client hereby disclaims any right to rescind or cancel the contract or sue for damages or to claim restitution arising out of any inadvertent misrepresentation made by the Client to ECCC.
2.14	Subject to clause 2.13, the Client authorises and accepts that ECCC (at their sole discretion) reserves the right to decline to collect any Debt loaded. 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.		6.4	The Client indemnifies ECCC against any penalty or liability incurred by ECCC for any breach of the above warranties.	10.20	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,
3.0	Security and Charge					
3.1	On ECCC consideration of ECCC agreeing to supply the Goods and/or provide its Services, the Client grants ECCC a security interest by way of a floating charge (registerable by ECCC pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent and to the use set out in the representation made under this contract for provision of the Goods and/or Services under this contract and/or permit ECCC to appoint a receiver to the Client in accordance with the Corporations Act 2001 (Cth).					
3.2	The Client indemnifies ECCC from and against all ECCC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ECCC's rights under this clause.					
3.3	In the event that the Client defaults or breaches any term of this contract and as a result, the security provided in clause 3.1 as applicable, is deemed insufficient by ECCC to secure the repayment of monies owed by the Client to ECCC, the Client hereby grants ECCC a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).					
4.0	Commission					
4.1	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 recovered plus 15% plus GST on the next \$10,000.00 recovered plus 5% plus GST on the balance over \$20,000.00					
4.2	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;					
	(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 product/goods, or any other matter acceptable to the Client, and the Client has agreed to a recovery, location 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;					
	(e) payment or part payment of a Debt is received by the Client or ECCC, subsequently that the Client has agreed to the recovery;					
	(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.					
4.3	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					