

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

- 1. Definitions**
- 1.1 "ECCC" shall mean EC Credit Control (NZ) Limited its successors and assigns or any person acting on behalf of and with the authority of EC Credit Control (NZ) Limited.
- 1.2 "Client" means the person/s 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 "Services" shall mean all services supplied by ECCC to the Client and includes any advice or recommendations in relation to credit management (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 (either hardcopy or electronic form) 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 exclusively identifiable to the Client and shall not be transferable to any subsequent Client without the approval of ECCC.
- 1.7 "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 exclusively identifiable to the Client and shall not be transferable to any subsequent Client without the approval of ECCC.
- 1.8 "Debtor" shall mean the person, company, partnership, trust, organisation or any other entity that owes a Debt to the Client.
- 1.9 "Price" shall mean the cost of the Goods or Services as agreed between ECCC and the Client subject to clause 6 of this contract.
- 1.10 "Debt" Shall mean the amount of money that is owed to the Client from the Debtor.
- 1.11 "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.
- 1.12 "Commission" shall mean the fee charged by ECCC for the Services undertaken in recovering a Debt.
- 1.13 "GST" means Goods and Services Tax (GST) as defined within the (Goods and Services Tax Act 1985).
- 2. Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms and Conditions of Trade 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 of Trade are to be read in conjunction with ECCC's "Client Manual", PPS Conditions of Registration and Vouchers or 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.
- 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 additional charges are required to have prior approval granted first by the Client.
- 2.6 Subject to clause 9.1, the Client acknowledges and accepts that ECCC (at their sole discretion) reserves the right to decline to collect any Debts.
- 2.7 None of ECCC's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager of ECCC in writing nor is ECCC bound by any such unauthorised statements.
- 2.8 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.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 26 of Contract and Commercial Law Act 2017 (NZ), Section 9 of the Electronic Transactions Act 2000 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 10 of the Electronic Transactions Act 2011 (WA), Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.10 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.
- 2.11 **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.
- 2.12 **Security and Charge:** Despite anything to the contrary contained herein or any other rights which ECCC may have howsoever:
- (a) where the Client is owner of real property now or in the future, the Client charges all of its rights, title and interest in any land capable of being charged to secure the payment of monies to the Client. The Client agrees that ECCC or ECCC's nominee shall be entitled to lodge, where appropriate, a caveat to secure this charge, which caveat shall be withdrawn once all payments due and payable hereunder have been met; and
- (b) should ECCC elect to proceed in any manner in accordance with this clause and/or its sub clauses, the Client shall indemnify ECCC from and against all ECCC's and own client basis.
- 3. Commission**
- 3.1 Commission is due on every dollar recovered in payment of a Debt and is calculated as follows:
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|-----|----------|---------------------|-------------------------|
| 25% | plus GST | on the first | \$10,000 recovered plus |
| 15% | plus GST | on the next | \$10,000 recovered plus |
| 5% | plus GST | on the balance over | \$20,000 |
- 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 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, a Contra Deal) 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 Policy**
- 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 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 1993 (the "Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act 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 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. 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.
- 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 Body (CRB) records.
- 4.3 Privacy 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:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (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")
- If the Client consents to ECCC's use of Cookies on ECCC's website and later wishes to withdraw that consent, the Client may manage and control ECCC's privacy controls via the Client's web browser, including removing cookies by deleting them from the browser history when exiting the website.
- 4.5 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.
- 4.6 The Client authorises ECCC to:
- (a) assess, collect, retain and use any information about the Client, (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness;
- (b) disclose information about the Client, whether collected by ECCC from the Client directly or obtained by ECCC from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 4.7 The Client shall have the right to request ECCC for a copy of the information about the Client retained by ECCC and the right to request ECCC to correct any incorrect information about the Client held by ECCC.
- 4.8 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.
- 4.9 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.
- 4.10 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 twenty (20) 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 Privacy Commissioner at www.privacy.org.nz.
- 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;
- 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 This agreement is subject, in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded), to the provisions of the Consumer Guarantees Act 1993.
- 6. Price and Payment**
- 6.1 At ECCC's sole discretion, the Price shall be either:
- (a) \$50.00 plus GST per Debt loaded; or
- (b) \$49.00 plus GST per PPS registration loaded; and
- (c) all other Goods/Services provided by ECCC to the Client (including but not limited to, Terms of Trade), shall be as per ECCC's invoice, 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. 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.
- 7.3 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 of Trade (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 that 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 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; or
- (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) Voucher cancellation requests, after the provision of the Services have commenced, will be subject to Commission, where:
- (i) the Voucher/s have been loaded and acknowledged by ECCC and no prior written notice has been received; or
- (ii) the Voucher/s 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 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 3.
- 9.3 No refund or credit will be given for Vouchers/PPS Vouchers purchased, once the cooling-off period of two (2) Business Days has occurred.
- 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 into 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 of Trade 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 of Trade 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 of Trade and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Napier, New Zealand.
- 12.3 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.
- 12.4 The Client agrees that ECCC reserves the right to amend these Terms and Conditions of Trade 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.
- 12.5 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.