



Bank of Melbourne

EFTPOS Merchant Agreement

Terms and Conditions

About this agreement

This agreement is made up of 4 documents: the Offer, Letter of Confirmation, Payment Solutions Fees and Charges brochure and the Terms and Conditions. These documents only become binding on the Bank and the Merchant when a card transaction is processed through the EFTPOS Merchant facility that has been supplied to the Merchant by the Bank or by the expiration of 14 days from the debiting of your bank account of the Merchant Service Fee.

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1 Meaning of Words

The following expressions used in this Agreement have the following meanings, except where not appropriate in the context:

“Agreement” means the EFTPOS Merchant Agreement Terms and Conditions, Offer, Letter of Confirmation and payment Solutions Fees and Charges brochure.

“Authorised Floor Limit” means the total value of sales or cash the Merchant is authorised by the Bank to make available to a Cardholder on any occasion on a particular Card without the Bank’s consent, where the Card Transaction is not processed by a Terminal.

“Bank” means Bank of Melbourne - A Division of Westpac Banking Corporation ABN 33 007 457 141 AFSL 233714 ACL 233714.

“Card” means a debit card or a credit card referred to in the Schedule or otherwise authorised by the Bank for use in Terminals for the purpose of initiating a transfer of funds through the EFT System but does not mean a Charge Card.

“Cardholder” means a person to whom a Card has been issued or a person who is authorised to use a Card.

“Card Information” means card details including the Card account number, expiry date and Card Verification Number that is stored either in the magnetic strip or printed/embossed on the card surface. A truncated account number featuring the first six and last three digits of the account number is exempt from the definition of Card Information.

“Card Transaction” means any transaction by a Cardholder using a Card including any Credit Card Transaction or Debit Card Transaction.

“Car Rental Company Merchant” means a Merchant whose primary business is the rental of passenger vehicles at either a corporate or franchise location, or at locations of licencees bearing the name of the corporate entity.

“Chargeback” refers to a transaction value that is debited to the bank account the Merchant maintains under this Agreement due to a Cardholder disputing a Card Transaction.

“Charge Card” means a charge card issued under any one of the American Express, Diners Club or JCB Charge Card schemes.

“Communications Provider” means a third party that provides a Communications Service to the Merchant.

“Communications Service” means a service which allows for the capture and switching of transactions via the EFT System by use of either a digital mobile telecommunication service, or dial up or similar telecommunication service.

“Credit Card” means any Card which is issued under license of a Credit Card Scheme.

“Card Scheme” means any association that provides common branding for cards and sets rules and regulations concerning use of those cards. This includes but is not limited to schemes known as Visa or MasterCard®.

“Credit Card Transaction” means a transaction by a Cardholder using a Card for any sales transaction or sales refund transaction where the Cardholder selects the credit account option.

“Debit Card Transaction” means a transaction by a Cardholder using a Card for any sales transaction or sales refund transaction or any transaction by which the Merchant makes cash available where the Cardholder selects the savings or cheque account option.

“EFT System” means the process where, on instructions transmitted through a Terminal, a Cardholder’s bank account is debited and the Merchant’s bank account credited or vice versa as the case may be:

- (i) in relation to goods or services supplied or cash made available by the Merchant to the Cardholder; or
- (ii) with the amount of any refund in respect of goods or services supplied by the Merchant to the Cardholder.

“Fallback Voucher” means any physical coupon used by merchants to imprint/record a card transaction for processing by the Bank. Fallback vouchers are used by merchants authorised to operate an EFTPOS Facility.

“GST” means any tax on the supply of any goods, services, real or personal property or any similar tax.

“Hotel Merchant” means a Merchant whose primary business is to provide accommodation in lodgings.

“Manual Voucher” means any physical coupon used by Merchants to imprint/record a Card Transaction for processing by the Bank. Manual vouchers are used by Merchants authorised to operate a Manual Facility.

“Merchant” means the person or persons named in the Offer as “Merchant”.

“Merchant Operating Guide” means the procedures issued and re-issued from time to time by the Bank to the Merchant.

“PCIDSS” means the Payment Card Industry Data Security Standard which defines the minimum requirements for Merchants authorised to store Cardholder information. In the event that PCIDSS is no longer in operation the Bank will substitute minimum data security standards.

“Personal Information” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

“Privacy Law” means all legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information.

“Small Business” means a business having:

- (i) less than 100 full-time (or equivalent) people, where the business is or includes the manufacture of goods; or
- (ii) in any other case, less than 20 full-time (or equivalent) people,

unless the Merchant enters into this Agreement in connection with a business that does not meet the elements in (i) or (ii) above.

“Terminal” means the electronic terminal or terminals through which instructions may be given for the transfer of funds using the EFT System.

2 Interpretation

For the purposes of this Agreement:

- (a) except in clauses 24(a), (b) and (c) of this Agreement, all transactions to which reference is made in this Agreement are transactions by a Cardholder’s use of a Card;
- (b) Card Transaction information is presented by the completion and delivery of a voucher recording the transaction or by any other form the Bank approves;
- (c) a sale includes the supply of goods or the supply of services or both;
- (d) a Cardholder’s debt to the Merchant for a valid Card Transaction conducted by the Cardholder is extinguished by the Bank’s payment for that transaction under clause 12 of this Agreement;
- (e) any annexure referred to in this Agreement form part of this Agreement;
- (f) the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates;
- (g) the singular includes the plural and vice-versa;
- (h) where the Merchant consists of any two or more persons their obligations under this Agreement are joint and several; and
- (i) the failure by either party to exercise any right under this Agreement does not mean that party has waived that right.

3 Merchant's Undertaking

The Merchant undertakes to the Bank:

- (a) to observe at all times the requirements for Merchants set out in the Merchant Operating Guide;
- (b) to execute any directions and authorities the Bank requires to give effect to any of the Merchant's obligations under this Agreement; and
- (c) not to enter an agreement similar to this Agreement with any other financial institution during the term of this Agreement.

4 Cards and Terminals

The Merchant undertakes to the Bank:

- (a) to use a Terminal to process every Card Transaction, unless the Terminal, the EFT System or the Communications Service is inoperative;
- (b) not to process a Card Transaction without presentation of a Card, unless the Bank has given the Merchant authority to accept mail and telephone orders from Cardholders;
- (c) to use reasonable care to detect forged or unauthorised signatures or the unauthorised use of a Card; and
- (d) not to process a damaged Card Transaction by keying the transaction details manually into a Terminal.

5 Cards and Supply of Goods and Services

The Merchant undertakes to the Bank:

- (a) to honour a Card tendered by a Cardholder for the payment of goods or services to be supplied by the Merchant to the Cardholder in accordance with this Agreement;
- (b) to charge a Cardholder a price for goods and services comparable to the price the Merchant charges for cash for those goods and services and if charging an amount in excess of the cash price, to limit that surcharge to an amount comparable to the cost of providing the Card Transaction;

- (c) to inform a Cardholder of the amount of any fee the Merchant charges the Cardholder for a Card Transaction over and above the price the Merchant would charge if the Cardholder paid cash for the transaction at a time that enables the Cardholder to cancel the Card Transaction;
- (d) to establish a fair policy for giving refunds or exchanging goods for sales transactions and give refunds by means of a sales refund transaction, not cash;
- (e) to perform all obligations to a Cardholder in connection with a sale giving rise to a sales transaction prior to processing the sales transaction;
- (f) if less than the full amount of any sale is included in any sales transaction, to obtain cash payment in full for the balance due at the time the sale is completed; and
- (g) not to make any warranty or representation whatsoever in relation to any goods or services supplied by the Merchant which may bind the Bank.

6 Card Security

The Merchant undertakes to the Bank:

- (a) not to disclose, give (other than to the Bank or unless required by law), buy, sell or exchange a Cardholder's name or Card details to any person;
- (b) to not request, retain or store the PIN (Personal Identification Number) of Cardholders;
- (c) Not to store Cardholder Information, either written or electronically, without express permission from the Bank with the exception of Fallback and Manual vouchers;
- (d) Where the Bank has granted permission to store Card Information the Merchant must:
 - (i) Only store such Card Information as is necessary for current and pending transactions. Card Information must not be retained in any format for transactions that have been successfully completed;

- (ii) Store Card Information in a secure environment compliant with the PCIDSS;
 - (iii) When transmitting Card Information encrypt the information at least to the standard specified in the PCIDSS;
- (e) Merchants authorised to use Manual and Fallback vouchers are required to store these vouchers securely such that the Card Information contained cannot be reasonably compromised;
- (f) to destroy all electronic records containing Card Information 18 months from the completion of the transaction, including the final provision of goods and services bought for by the transaction in question;
- (g) to destroy all physical records (including Manual and Fallback Vouchers) containing Card Information 18 months from the completion of the transaction, including the final provision of goods and services bought for by the transaction in question, except where required by law to be retained.

7 Fees and Charges

- (a) The Merchant agrees to pay to the Bank in full without set-off or counterclaim and without any deduction in respect of taxes unless prohibited by law:
- (i) the fees and charges set out in the Offer to this Agreement for use of the Terminals and conducting Card Transactions and as set out in the Payment Solutions Fees and Charges brochure published by the Bank from time to time; and
 - (ii) on demand, the amount of any unpaid debit to the Merchant's bank account maintained under this Agreement (if that account is maintained with the Bank); and

- (iii) on demand, an amount equal to any fees, costs or expenses the Bank must pay an entity conducting a credit card scheme under the rules of that scheme:
 - A. due to a Card Transaction not being a valid Card Transaction or being charged back to the Bank;
 - B. in relation to the Bank maintaining the facilities the Bank supplies the Merchant under this Agreement; and
- (iv) the break term fee (as set out in the Offer to this Agreement), if applicable;
- (v) in the event that fee revenue from combined debit and credit card transaction fee falls below \$27.50 (GST inclusive) per terminal in any one month period, a minimum monthly service fee of \$27.50 (GST inclusive) per terminal;

The obligations of the Merchant under paragraph 7(a) are continuing obligations and continue after this Agreement ends;

- (b) The Bank will meet all costs (other than fees payable by the Merchant under this Agreement) associated with the processing of transactions through the EFT System;
- (c) The Bank may introduce new fees and charges or change the fees and charges payable under this Agreement. If the Bank introduces new fees or charges, it will give the Merchant at least 30 days direct notice in writing prior to the new fee or charge taking effect. The Bank will give the Merchant at least 7 days direct notice in writing of any increase to a fee or charge payable under this Agreement;

The Merchant may request a copy of the current fees and charges payable under this Agreement by contacting the Bank on 1300 603 266;

- (d) Any State or Federal government taxes or charges payable in respect of credits or debits to bank accounts of the Merchant or Cardholders are to be paid or reimbursed by the Merchant or Cardholders respectively.

- (e) The Merchant Service Fee on Credit Cards using a percentage rate is calculated on the total dollar volume of any Credit Card Transactions made between the Cardholders and the Merchant. Any refunds of Credit Card Transactions will not be deducted from this total. The Merchant Service Fee on Credit Cards using an item rate is calculated on each Credit Card Transaction;
- (f) The Merchant Service Fee on debit cards using a percentage rate is calculated on the total dollar volume of any Debit Card Transactions made between the Cardholders and the Merchant. Any refunds of such Debit Card Transactions will be deducted from this total;

The Merchant Service Fee on debit cards using an item rate is calculated on each Debit Card Transaction.

8 Books of Account and Records

- (a) The Merchant undertakes to the Bank:
 - (i) to retain in the Merchant's possession (while complying with the requirements of section 6 "Card Security") the books of account and records of the Merchant (including all sales and refund transaction information, vouchers and tally rolls) relating to a Card Transaction for the period of not less than eighteen months after the transaction;
 - (ii) to permit the Bank to inspect the Merchant's books of account and records retained under clause 8(a)(i);
- (b) The Bank will forward to the Merchant each month a separate statement showing the amount of all Card Transactions under this Agreement during the previous month. It is the Merchant's obligation to check the statements to ensure the accuracy of the payments to and from the Merchant's account.

9 Set-off

The Bank may from time to time set-off any amount due for payment by the Merchant to the Bank against any amount due for payment by the Bank to the Merchant.

10 Manual Imprinters

For the processing of transactions manually by imprinter, the Merchant undertakes:

- (a) to only use the imprinter if the Terminal, EFT System or Communications Service is inoperative and the malfunction has been reported to the Bank's Help Desk or for Credit Card transactions where the Terminal has responded as card damaged;
- (b) to use only authorised sales and credit vouchers, imprinters and equipment provided or approved by the Bank;
- (c) to obtain prior authorisation for any sale or any Card Transaction in excess of the Authorised Floor Limit and not split sales or Card Transactions, which would otherwise be in excess of that limit; and
- (d) to present all Card Transaction information to the Bank within three business days of the transaction. The Bank may charge the transaction back to the Merchant if there is any delay in presenting the information.

11 Merchant Account

- (a) The Merchant will maintain a bank account in the Merchant's name to which amounts payable by the Bank or by the Merchant under this Agreement may be credited or debited. The Merchant must peruse the statements the Bank sends under Clause 8 (b) to ensure that the payments to and from the account have occurred in accordance with this Agreement.

If the Merchant fails to notify the Bank within 3 months of when a transaction occurred, and thus a payment should have been made to the account, then the Merchant shall have no claim

against the Bank and the account with the Bank will be deemed settled;

- (b) The Merchant authorises the Bank to debit the Merchant's bank account maintained under this Agreement with:
 - (i) all fees and charges set by the Bank and notified to the Merchant;
 - (ii) the full amount of all sales refund transactions presented by the Merchant;
 - (iii) any overcredits made by the Bank in respect of Card Transactions due to errors or omissions;
 - (iv) any Chargeback of a Card Transaction;
 - (v) any moneys paid by the Bank to the Merchant for Card Transactions where the Bank is investigating the validity of the transaction or the validity of a claimed Chargeback of the transaction;
 - (vi) any duties and taxes payable by the Merchant in relation to this Agreement;
 - (vii) any deficiency in a payment made by the Merchant disclosed in an audit or check by the Bank; and
 - (viii) any other moneys due by the Merchant to the Bank under this Agreement;
- (c) The Bank has the right to withhold or suspend payment of any moneys that would otherwise be owing to the Merchant until it has concluded reasonable investigations into any claimed Chargebacks or into the validity of any transactions processed by the Merchant.

12 Bank Settlement Obligations

- (a) The Bank will:
 - (i) accept all valid Card Transactions made by the Merchant under this Agreement; and
 - (ii) credit the Merchant's bank account maintained

under this Agreement with the proceeds of all valid Card Transactions which are sales transactions. The credit is made:

- (1) same day for transactions processed by a Terminal on a day which the Bank is open for business, provided the Merchant maintains a bank account with the Bank and provided settlement of all the Merchant's Terminals occurs either by a manual settlement initiated by the Merchant or an automated settlement initiated by the Bank's systems prior to 9:00pm (EST); and
 - (2) as soon as practicable in any other case. Provided however in the case of vouchers for Card Transactions which are sales transactions that are deposited at a branch of the Bank, the credit is made within a period of time as advised by the Bank to the Merchant from time to time and may take a number of days;
- (b) The Merchant acknowledges that authorisation of a transaction is not a representation by the Bank that the transaction is valid and acceptable or that the transaction is being conducted by a true Cardholder. The transaction may be subject to dispute or a Chargeback.

13 Card Transactions which are Not Valid

A Card Transaction shall not be valid if:

- (a) the transaction it records is illegal;
- (b) the signature on a voucher or authority for completion of a voucher or authority for completion of the transaction is forged or unauthorised;
- (c) the particulars inserted in the voucher recording the transaction are not identical with particulars inserted in the copy given to the Cardholder;
- (d) the Card is not current at the time of

the transaction;

- (e) the Card was used without the Cardholder's authority;
- (f) the transaction did not originate from an act between the Cardholder and the Merchant;
- (g) the Merchant has not retained the Merchant copy of the receipt or voucher signed by the Cardholder for eighteen months from the date of the transaction or does not produce to the Bank the tally roll receipt or voucher within five business days of a request by the Bank for production of that receipt;
- (h) it is a Credit Card Transaction and:
 - (i) it is not for the supply of goods or services to a genuine customer; or
 - (ii) it is for cash out on a credit card account or includes cash out on a credit card account; or
 - (iii) it represents a transfer of funds, not the supply of goods or services;
- (i) it is a sales refund transaction and:
 - (i) no corresponding sales transaction exists for the Card on which the sales refund transaction is made or purported to be made; or
 - (ii) it represents the payment of wages/salary; or
 - (iii) it represents a transfer of funds; or
 - (iv) insufficient funds are available in the bank account the Merchant maintains under this Agreement to cover the refund amount;
- (j) the Merchant failed to comply with all messages displayed on the Terminal in relation to the transaction;
- (k) the transaction is split into two or more

transactions on the same Card to avoid having to obtain prior authorisation (each transaction will be invalid);

- (l) where the transaction is not processed by a Terminal:
 - (i) the voucher used is incomplete or illegible;
 - (ii) the Merchant imprinted a voucher for the transaction contrary to a prior message displayed on a Terminal in relation to the Cardholder or the transaction;
 - (iii) the voucher does not bear the Card imprint; or
- (m) the Merchant has failed to observe this Agreement or the Merchant Operating Guide in relation to the transaction.

14 Chargebacks

The Bank may refuse to accept or having accepted may charge back any Card Transaction which is a sales transaction or a transaction by which the Merchant made cash available if:

- (a) the Bank considers that the transaction is not a valid Card Transaction;
- (b) the Cardholder disputes liability for any reason; or
- (c) the Cardholder asserts a claim for set-off or a counterclaim.

15 Warranties

The presentation by the Merchant to the Bank of any Card Transaction information or voucher shall constitute warranties to the Bank:

- (a) that all particulars furnished to the Bank are true;
- (b) that the sales transaction, sales refund transaction or voucher is valid; and

- (c) that the sale represented by the Card Transaction information or voucher is not subject to any dispute, set-off or counterclaim.

16 Indemnity

The Merchant agrees to indemnify and keep indemnified the Bank against, and must pay the Bank on demand the amount of, all losses, liabilities, costs (including legal costs) expenses and damages incurred or arising in connection with any breach by the Merchant of its obligations under this Agreement or any breach of the Merchant's obligations under this Agreement by any of its officers, employees, advisers or contractors, or arising from any dispute between the Merchant and any customer in respect of goods or services or the use of the EFT System.

This indemnity is a continuing obligation and continues after this Agreement ends. It is not necessary for the Bank to incur expense or make payment before enforcing this indemnity.

17 Promotional Material

- (a) The Bank will supply the Merchant with decals and insignias for the Cards. The Bank may supply the Merchant with other promotional material at its discretion;
- (b) The Merchant agrees to:
 - (i) display prominently wherever reasonably directed by the Bank decals and other signs advertising the EFT System and the Credit Cards; and
 - (ii) not use any advertising or promotional material relating to the Credit Cards or the EFT System except as authorised by the Bank.
- (c) The Bank grants the Merchant a revocable non exclusive sub-licence to use the EFTPOS Trade Marks in connection with the operation and promotion of EFTPOS Transactions, EFTPOS Cards, EFTPOS Terminals (as those words are defined in the EPAL Scheme Rules) and

accounts and/or other services associated with them subject to the Merchant's compliance with the terms of this Agreement and the Merchant Operating Guide;

- (d) The Merchant acknowledges that EPAL is the owner of the EFTPOS Trade Marks and that its right to use the EFTPOS Trade Marks does not confer any proprietary or other interest in the EFTPOS Trade Marks during or after the termination of the Agreement;
- (e) The Merchant agrees to comply with the EFTPOS Trade Mark requirements as contained in the Merchant Operating Guide and not to use the EFTPOS Trade Marks in a matter that is inconsistent with or detracts from any branding, EFTPOS Trade Mark requirements or marketing messages of EPAL;
- (f) This sub-licence to use EFTPOS Trade Marks:
 - (i) will be revoked immediately on termination of this Agreement; or
 - (ii) may be revoked immediately upon written notice by the Bank,upon which the merchant agrees to immediately cease using EFTPOS Trade Marks and destroy all materials and paraphernalia that include the EFTPOS Trade Marks;
- (g) The Merchant indemnifies the Bank for claims and demands made against or suffered or incurred by the Bank arising directly or indirectly out of the Merchant's use of EPAL's branding and/or EFTPOS Trade Marks where such use is in breach of the EPAL Scheme Rules.

For the purposes of this clause,

"EFTPOS Trade Mark" means all registrations for the EFTPOS logo that are owned by EPAL or any other trademark developed or acquired by EPAL that are contained in your Merchant Operating Guide from time to time;

"EPAL" means EFTPOS Payments Australia Limited;
and

“EPAL Scheme Rules” means the EPAL Scheme Rules published by EPAL from time to time.

18 Terminal and Equipment

- (a) The Bank will supply the Merchant with Terminals, sales, and credit vouchers, imprinters and other related equipment. The Bank may install these goods at its discretion (subject to charges). These goods remain the property of the Bank. The Merchant must not part with possession of these goods without the Bank’s authority;
- (b) The Merchant must ensure that all equipment and materials installed and used by the Merchant as part or in conjunction with the EFT System conforms to standards agreed to by the Bank. The Bank is not liable for any delays in installation or provision of a Terminal or commencement of the EFT System.

19 Communications Service

- (a) The Merchant will pay all costs involved with the provision of a Communications Service, including the ongoing rental of that service.
The Bank is not liable for any delays in the connection of the Communications Service;
- (b) The Merchant must ensure that any Communications Provider it appoints conforms to standards and requirements reasonably stipulated by the Bank from time to time.

20 Maintenance of Terminals

- (a) The Merchant must exercise reasonable care in the use, operation, protection, access to and security of the Terminal and related equipment. The Merchant must allow the Bank or its representative access to the equipment at all reasonable times for maintenance or any other purposes. The Merchant or its representatives must not allow any person except the Bank to service or repair the Terminal;

- (b) The Merchant is responsible for the insurance of the Terminal against any loss or damage to the Terminal arising from theft, vandalism, fire, flood, earthquake or misuse or neglect by the Merchant. The Bank may debit the cost of repairing or replacing the Terminal from the account the Merchant maintains under this Agreement. The Bank may choose whether to repair or replace the Terminal.

Where the Terminal is owned by the Bank, the Bank will maintain the Terminal at its cost in circumstances of normal use or as otherwise agreed.

21 Malfunction or Breakdown of Terminals or EFT System

- (a) The Merchant undertakes to notify the Bank immediately of any malfunction or breakdown of the Terminals or the EFT System or the Communications Service;
- (b) Subject to the Code of Banking Practice, the liability of the Bank to the Merchant under this Agreement will, at the Bank's discretion, be limited to the supplying of the services contemplated in this Agreement again or the payment of the cost of having such services supplied again.

The Bank is not responsible for installing, operating or maintaining any third party applications the Merchant installs or has installed on the Terminal;

- (c) In the event of the EFT System not operating for any reason, the Merchant may use a paper-based payment system in accordance with the Merchant Operating Guide.

22 Training of Terminal Operators

- (a) The Merchant will use and employ the Terminals only in the manner and for the purposes as the Bank instructs from time to time and not permit any untrained or unauthorised persons to operate or otherwise use the Terminals;

- (b) The Bank may at its discretion provide training or training materials to those persons who will initially operate Terminals for the Merchant, detailing the use of Terminals and the EFT System. The Merchant will use its best endeavours to ensure that such persons attend such courses or review materials of instruction as the Bank may provide.

23 Transaction Limits

The Merchant acknowledges that issuers of Cards may impose limits on the monetary amount and number per day of transactions a Cardholder may effect with any Merchant through the EFT System throughout Australia. The limits will be notified to the Merchant by the Bank from time to time.

24 Charge Cards

- (a) The Bank may program the Terminals to accept transactions by a Charge Card issued under a charge card scheme in which the Merchant participates, provided the Merchant informs the Bank in writing of the Merchant's merchant number for that charge card scheme;
- (b) The Bank's only obligation to the Merchant in relation to any Charge Card transaction conducted through a Terminal, is to transmit the particulars of the transaction to the person, body corporate or association conducting the scheme under which the Charge Card was issued;
- (c) The Bank makes no representations and gives no assurances whatsoever in relation to:
 - (i) the credit worthiness of any person presenting a Charge Card; or
 - (ii) the performance of any agreement or arrangement between the Merchant and any person, body corporate or association conducting a charge card scheme.

25 Creditworthiness of a Cardholder

The Bank does not guarantee any Cardholder's creditworthiness. The Merchant waives any right which the Merchant may have against the Bank by reason of any inferred representation or assurance from issuing of a Credit Card to a Cardholder.

26 Term and Termination

- (a) This Agreement commences for the term specified in the Offer when the Merchant or a representative of the Merchant's business processes a Card Transaction through the EFTPOS Merchant Facility or by the expiration of 14 days from the debiting of your bank account of the Merchant Service Fee. After the expiry of the term, this Agreement shall automatically renew for a 12 month period on the same terms and conditions except that the Merchant may terminate this Agreement giving 30 days written notice to the Bank;

In the event no term is specified in the Offer, the Merchant may terminate this Agreement by giving 30 days written notice to the Bank.

- (b) The Bank may terminate this Agreement at any time without cause by giving written notice to the Merchant. Termination will be effective immediately;
- (c) Termination of this Agreement does not affect any obligations incurred prior to termination;
- (d) Without prejudice to any right or remedy of the Bank, if the Merchant terminates this Agreement during the term, the Merchant must pay to the Bank the break term fee as set out in the Offer to this Agreement. For the purposes of this clause, the Merchant is taken to have terminated this Agreement if:
- (i) the Merchant gives the Bank a notice of termination; or
 - (ii) the Bank determines in its reasonable discretion that the volume of transactions indicates the Merchant's intention to terminate this Agreement;

- (e) If this Agreement terminates, the Merchant authorises the Bank to disclose to any card scheme the fact the Agreement terminated and the reasons for this Agreement terminating.

The Merchant acknowledges that the information concerning termination of this Agreement will be available to any member of the card scheme(s) and may be used to assess subsequent applications for merchant facilities.

27 Return of Equipment

- (a) The Merchant must return to the Bank all Terminals and related equipment including fallback stationery and imprinters, guides, stationery and promotional material supplied by the Bank, on termination of this Agreement. The Merchant authorises the Bank to enter the premises where these goods are kept and take possession of these goods without notice to the Merchant in the event these goods are not returned in accordance with this clause;
- (b) The Bank will charge a fee for the Terminal if the Terminal is not returned and this fee will represent the replacement cost of the Terminal.

28 Notice of Change

The Merchant undertakes to immediately notify the Bank if there are any changes to:

- (a) the details contained in the Merchant's Letter of Offer and Letter of Confirmation for the facilities the Bank supplies under this Agreement;
- (b) the ownership or control of the Merchant's business including any delegation by way of power of attorney;
- (c) the nature of the Merchant's business;
- (d) the Merchant's trading name, address or telephone number; or
- (e) the Merchant's ability to meet liabilities as and when they fall due.

29 Third Party Terminals

If the Terminal is to be supplied by a third party then the Merchant must:

- (a) first obtain the Bank's approval to use the third party's Terminal;
- (b) pay all costs and expenses relating to the installation and maintenance of the Terminal;
- (c) inform the Bank prior to the Merchant's dispossession of the Terminal;
- (d) comply with the terms of any agreement in relation to the Terminal.

The provisions of clauses 18(a), 18(b), 20 and 21(b) of this Agreement do not apply insofar that a Terminal is supplied by a third party to the Merchant.

30 Notices

Any notice must be in writing and signed on behalf of the person giving it. The notice may be:

- (a) the details contained in the Merchant's Letter of Offer and Letter of Confirmation;
- (b) sent by prepaid post and is taken to be given on the date it would have been delivered in the ordinary course;
- (c) sent by fax and is taken to be given on the date the machine from which the fax was sent produces a report indicating it was sent; or
- (d) given by any other means permitted by law and the Code of Banking Practice.

31 Assignment

This Agreement is binding on the parties, their executors, administrators, successors and assigns provided that the Merchant may not assign this Agreement without the prior written consent of the Bank. The Bank may assign its rights or novate its rights and obligations under this Agreement.

32 Variation

The Bank reserves the right to vary the terms of this Agreement by giving the Merchant notice in writing. Other than variations which introduce or increase fees or charges, the variation begins no earlier than the date on which the Bank notifies the Merchant by advertisement in the national media or local media or in writing to the Merchant. If the Bank introduces or increases a fee or charge, the Bank notifies the Merchant in accordance with clause 7(c) of this Agreement.

33 Privacy Law

- (a) The Merchant agrees to comply with:
 - (i) any Privacy Law by which it is bound; and
 - (ii) any other privacy requirement notified by the Bank;
- (b) The Merchant acknowledges that it does not rely on any information or representation supplied by the Bank to the Merchant as advice regarding compliance with the Privacy Laws;
- (c) The Merchant warrants that it is aware of the Privacy Laws which apply to the Merchant in respect of this Agreement, and also warrants that, after the enquiry, it is not aware of having breached any of those Privacy Laws;
- (d) The Merchant agrees that the Bank may obtain from and disclose to any person who is a Card issuer or who is involved in any credit card scheme, information about the Merchant for any purpose relating to the operation of those schemes. The Bank's rights under this clause continue after this Agreement ends;
- (e) The Merchant authorises the Bank to obtain from any card scheme information ("Merchant's history") relating to facilities the Merchant obtained or is obtaining from other suppliers;
- (f) The Bank uses information about the Merchant's history and personal information about the Merchant, including information about the

Merchant collected from third parties, for any one or more of the following purposes:

- (i) to assess and process the Merchant's application for facilities the Bank supplies under this Agreement;
 - (ii) to administer and manage the facilities the Bank supplies to the Merchant under this Agreement;
 - (iii) to facilitate the Bank's internal business operations, including fulfilling any legal requirements and systems maintenance and testing;
- (g) The Merchant acknowledges and agrees that the Bank may disclose information about the Merchant that the Bank collects from the Merchant's application, the Merchant's history or conduct of the facilities the Bank supplies the Merchant under this Agreement, in the following circumstances:
- (i) to the Bank's external service providers (some of which may be located overseas) that provide services for the purposes only of the Bank's business, on a confidential basis (for example, without limitation, mailing houses);
 - (ii) to any person who is a card issuer, card scheme operator or otherwise involved in any credit card scheme, for any purpose relating to the operation of those schemes (for example, Visa, MasterCard and card fraud detection agencies). This information may include information about terminating facilities made available to the Merchant and the reasons for that termination.

Another service provider may use this information (amongst other things) to determine whether or not to make facilities available to the Merchant; and
 - (iii) if the Merchant requests the Bank to do so or if the Merchant consents or where the law requires or permits the Bank to do so;

- (h) The Merchant acknowledges and agrees that the Bank may also use the Merchant's personal information or give access to personal information about the Merchant to any member of the Westpac Group to:
 - (i) assess the Merchant's total relationship and product holding with the Westpac Group, analyse products and customer needs and develop new products; and
 - (ii) inform the Merchant of products and services provided by any member of the Westpac Group or by preferred providers which the Bank considers may be of value or interest to the Merchant, unless the Merchant tells the Bank not to do so.

34 GST

- (a) The Bank may increase the amount ("original amount") of any fee or other consideration payable by the Merchant which has not been specified to include GST by an additional amount so that the total amount payable by the Merchant is equal to the original amount plus the amount of any GST liability payable by the Bank on the total amount;
- (b) The Merchant must pay at any time and in any manner requested by the Bank any amount which the Bank decides to be necessary to reimburse the Bank for any direct or indirect increase resulting from any GST in the cost to the Bank of:
 - (i) making, maintaining or administering; or
 - (ii) any action relating to any property connected with; or
 - (iii) carrying on any business connected with the supply of any facilities or property under, this Agreement or any facilities provided under this Agreement.

35 Suspension of Merchant Facilities

The Bank may suspend the facilities it supplies the Merchant under this Agreement without notice to the Merchant, if the Bank considers the Bank could suffer a loss or be subject to fraud if it continues to supply the facilities. The Bank will inform the Merchant as soon as practicable after the Bank suspends the Merchant's facilities under this clause.

Whilst the facilities are suspended, the Merchant will not submit Card Transactions for processing and the Bank will not process any Card Transactions the Merchant submits.

36 Hotel and Car Rental Transactions

- (a) A Hotel Merchant may estimate the value of Credit Card Transactions for authorisation based on the following:
- Cardholder's intended length of stay at check-in-time
 - room rate
 - applicable tax
 - service charge rates;
- (b) The Hotel Merchant must inform the Cardholder that one night's lodging will be billed if the Cardholder has not either:
- registered by check-out time the day following the scheduled arrival date; or
 - properly cancelled the reservation;
- (c) The Hotel Merchant must provide a confirmation code and advise the Cardholder to retain it in case of dispute;
- (d) If the Cardholder cancels accommodation booked by use of a Credit Card, the Hotel Merchant must provide a cancellation code and advise the Cardholder to retain it in case of a dispute;

- (e) If the Cardholder has not claimed or cancelled the accommodation, the Hotel Merchant may complete a transaction that must contain the following:
- amount of one night's lodging
 - Cardholder name, account number and card expiry date; and
 - the words 'No-Show' on the signature line of the transaction receipt;
- (f) A Car Rental Company Merchant may estimate the value of Credit Card Transactions for authorisation based on the following:
- Cardholder's intended car rental period
 - rental rate
 - applicable tax
 - mileage rates;
- (g) For a delayed or amended charge transaction, a Hotel Merchant or a Car Rental Company Merchant must:
- create a transaction receipt that includes the words 'Signature on File'
 - send a copy to the Cardholder at the address shown on the rental contract or folio;
- (h) A Hotel Merchant or Car Rental Company Merchant may process delayed or amended charges if the Cardholder has consented to be liable for delayed or amended charges for a Hotel reservation or a Car Rental;
- (i) The Hotel Merchant or the Car Rental Company Merchant must process the delayed charge within 90 days of the transaction date.

37 Governing Law

This Agreement is to be governed by and construed in accordance with the laws of Victoria.

38 Code of Banking Practice

- (a) The relevant provisions of the Code of Banking Practice apply to this Agreement, if the Merchant is an individual or a Small Business;
- (b) In accordance with the Code of Banking Practice, on the Merchant's request, the Bank will make available to the Merchant information about:
 - (i) account opening procedures (including Financial Transaction Reports Act requirements);
 - (ii) the Bank's obligations regarding the confidentiality of the Merchant's information;
 - (iii) complaint handling procedures;
 - (iv) bank cheques;
 - (v) the advisability of the Merchant informing the Bank promptly if the Merchant is in financial difficulty; and
 - (vi) the advisability of the Merchant reading the terms and conditions applying to a banking service.

Annexure to EFTPOS Merchant Agreement Mail/Telephone Ordering

Bank's approval required for Mail/Telephone Ordering

A Credit Card Merchant may accept orders for goods or services from Credit Cardholder's and charge the amount of the sale against a Credit Card account number on the telephone request of the Cardholder or by way of letter/fax/order form from the Cardholder but only with the Bank's approval.

WARNING

Mail/Telephone transactions offer very little protection to the Merchant. The onus is on the Merchant to prove that the person making the request is the authorised holder of the credit card. All Cardholder disputes will be dealt with in accordance with the rules and regulations applying to Credit Card Schemes and could result in a Chargeback to the Merchant's account. Again, the onus is on the Merchant to prove that the Cardholder ordering the goods or services is genuine and that they receive the said goods or services.

Terms and Conditions of Mail/Telephone Ordering

The Bank authorises the Merchant to accept Mail/Telephone ordering ("MOTO") on the basis of its existing EFTPOS Merchant Agreement and is varied as follows:

1. The applicable MOTO procedures issued to the Merchant and reissued from time to time, form part of the Agreement.

2. Insert new sub-clause 5(h):

The Merchant undertakes to the Bank:

(h) to establish a fair policy for the handling of MOTO so as to minimise the possibility of Cardholder disputes and the unauthorised usage of Cards.

3. Amend clause 13(b) so it now reads as:

A Card Transaction shall not be valid if:

(b) the signature on a voucher or authority

for completion of a voucher or authority for completion of the transaction is forged or unauthorised or, in the case of a MOTO, the transaction is not authorised by the Cardholder.

4. The Merchant undertakes to abide by industry best practices to minimise fraud and chargebacks. The Merchant also acknowledges that settlement funds may be withheld pending investigation of fraud or excessive chargebacks as determined by the Bank or approved Credit Card Schemes.
5. For Card Transactions initiated over the telephone, the Merchant undertakes to give the Cardholder the following information at the time of the transaction:
 - (a) a receipt number;
 - (b) the amount of the Card Transaction;
 - (c) the type of transaction (e.g. purchase, refund, credit, debit);
 - (d) the Card number; and
 - (e) the Merchant's name.

MOTO Procedures

General Procedures

On receiving a Mail/Telephone order where a Credit Card is the means of payment, a Merchant should have a written record of the following details (to be stored in accordance with section 6 Card Security):

- Credit Card Account Number
- Expiry Date
- Full Name (as it appears on the card)
- Full Address (home address only, not business or post office boxes)
- Telephone Number
- Details of Goods or Services
- Price of Goods or Services
- Delivery Instructions
- Date of Transaction.

Verify the Information

For Telephone ordering the Merchant is not required to obtain the Cardholder's signature and for Mail ordering

the Merchant is not required to compare the Cardholder's signature with that on the Credit Card. A Merchant should attempt to reduce the risk to himself/herself to some degree by verifying the authenticity of the information given to him/her by the customer. The Bank recommends the Merchant adopt the Fraud Prevention procedures as a means of verification of Customer details.

Delayed Deliveries

Where there is going to be a delay of more than five days in dispatching the goods or providing services ordered by telephone, the Merchant should not bank the summary of Mail/Telephone order transaction forms until the day of dispatch.

For further assistance, please contact the Merchant Helpdesk on 1300 603 266.

Goods to be shipped

For goods to be shipped the Merchant may obtain authorisation on any day up to 7 calendar days prior to the date the merchandise is shipped. This authorisation is valid if the amount of the sales transactions is within 15% of the authorised amount, provided that the additional amount represents shipping costs.

Fraud Prevention

To minimise the possibility of fraud, Credit Card Merchants should adopt the following procedure when processing a Mail/Telephone order transaction:

- (i) Obtain the credit card number, the full name of the Cardholder and the expiry date of the card;
- (ii) Record the name of the caller, it may not be the legitimate Cardholder;
- (iii) Obtain a delivery address and a contact telephone number. (Be especially careful of situations where the caller places a large order and then gives a Post Office Box as a Delivery Address along with a mobile phone as a contact number. Suggest to the caller that it is company policy not to call mobile phones due to costs and ask if they have an alternate contact number.);
- (iv) Ask the caller to hang up so that you can call back and verify the order. If the caller cannot do this for any reason (e.g. call is being made from a public telephone),

then you should insist that the goods cannot be despatched until the call is verified;

- (v) After the call is terminated, wait for a short period of time then call the given contact number and ask for the caller and confirm details of the order. Record the time and date that you spoke with this person;
- (vi) For Manual Transactions call the Authorisation Centre 1300 301 831 for authorisation prior to dispatch of any goods regardless of transaction amount (Mail/ Telephone have a floor limit of \$0.00);
- (vii) If a person who has ordered goods by mail or telephone notifies you that they will be attending your premises to collect the goods, advise them that they will be required to present the Credit Card to you at that time.

If they cannot do this, or they provide a reason why they are unable to, contact your bank immediately so that the sale can be confirmed with the legitimate Cardholder.

It is dangerous practice to allow someone to collect goods from your premises after a Telephone order has been placed, without the credit card being presented and a card print obtained;

- (viii) Deliveries should always be made by your carrier or by courier engaged by you, not by your customer.

Ensure that the person making delivery, does in fact deliver the goods to a person inside a premises (that is, they should knock on the door, and make sure that the person collecting the goods comes from inside the premises). They should also obtain the signature of the person taking delivery.

Drivers of the delivery vehicle should be suspicious of the people who approach them outside a delivery address (e.g. on verandahs when they arrive at the address, or if they are met outside on the footpath). Deliveries should not be made to parks or to car parks.

If delivering to a business premises, ensure that the person is on staff at the premises, request proof of identity if necessary and always obtain a signature as proof of delivery;

- (ix) Under no circumstances should goods be left at unattended premises;

- (x) The Fraud Prevention tips listed above are some examples of risk minimisation strategies associated with Mail/Telephone Merchant Facilities. They are not intended to be a complete and definitive coverage of all aspects of Mail/Telephone fraud and fraud prevention, but rather a list of issues that might affect Merchants. Merchants should be vigilant as fraud can be carried out in many ways. Please refer to your Merchant Agreement for full terms and conditions of your facility. Bank of Melbourne is not responsible for any loss or damage suffered by any part in reliance on these tips.

If you have any doubts or feel uneasy with the situation when processing a Mail/Telephone order transaction, speak to your supervisor, contact your Bank or Authorisation Centre (1300 301 831) and press 1 for extension 500 to confirm your actions before completing the sale and despatching the goods. Please note that if an authorisation is gained from the Authorisation Centre, the sale cannot be completed via the terminal - the sale must be banked manually as per instructions above.

Annexure to EFTPOS Merchant Agreement

Direct Debit Request Service Agreement

BANK OF MELBOURNE - Merchant Services
ABN 33 007 457 141 AFSL 233714 ACL 233714,
GPO Box 2030, MELBOURNE VIC 3001. User IDs; 161505,
161506, 161698, 161699, 161700, 161715, 161726, 161727, 161739,
161740, 161757, 161758, 161738, 161420, 029590, 029137,
004434, 161430, 161651, 161667, 161499 161666, 055489,
106600, 161514, 162805, and 000439.

You have entered or are about to enter into an arrangement under which you make payments to us. You want to make those payments by use of the Direct Debit System.

This agreement sets out the terms on which we accept and act under a Direct Debit Request (“your Direct Debit Request”) you give us to debit amounts from your account under the Direct Debit System. It is additional to the arrangement under which you make payments to us.

Please ensure you keep a copy of this agreement as it sets out certain rights you have against us and certain obligations you have to us due to giving us your Direct Debit Request.

When we are bound by this agreement:

1. We agree to be bound by this agreement when we receive your Direct Debit Request complete with the particulars we need to draw an amount under it.

What we agree and what we can do

2. We only draw money out of your account in accordance with the terms of your Direct Debit Request.
3. We give you a statement of the amounts we draw under your Direct Debit Request every month.
4. On giving you at least 14 days notice, we may:
 - change our procedures in this agreement;
 - change the terms of your Direct Debit Request; or
 - cancel your Direct Debit Request.

5. You may ask us to:
 - alter the terms of your Direct Debit Request;
 - defer a payment to be made under your Direct Debit Request by sending a letter to Merchant Support, GPO Box 2030, Melbourne VIC 3001; or by contacting the Merchant Helpdesk on phone number 1300 603 266.
6. You may:
 - stop a drawing under your Direct Debit Request;
 - cancel your Direct Debit Request by contacting the financial institution that manages the account your payments are debited from; or send a letter to Merchant Support, GPO Box 2030, Melbourne VIC 3001; or by contacting the Merchant Helpdesk on phone number 1300 603 266.
7. You may dispute any amount we draw under your Direct Debit Request by: Contacting the financial institution that manages the account your payments are debited from; or send a letter to Merchant Support, GPO Box 2030, Melbourne VIC 3001; or by contacting the Merchant Helpdesk on phone number 1300 603 266.
8. We deal with any dispute under clause 6 of this agreement as follows:
 - We investigate the dispute promptly;
 - We determine whether or not to accept the claim and pay the disputed amount; or
 - If we do not accept liability for all or part of the disputed amount, we provide you with full particulars of reasons including evidence of our authority to debit your account.
9. If the day on which you must make any payment to us is not a business day, we draw on your account under your Direct Debit Request on the next available business day.
10. If your financial institution rejects any of our attempts to draw an amount in accordance with your Direct Debit Request, we reserve the right to keep seeking that payment and additional amounts that are outstanding in accordance with your agreement.

11. We will not disclose to any person any information you give us on your Direct Debit Request, which is not generally available, unless:
 - you dispute any amount we draw under your Direct Debit Request and we need to disclose any information relating to your Direct Debit Request or to any amount we draw under it to the financial institution at which your account is held or the financial institution which sponsors our use of the Direct Debit System or both of them;
 - you consent to that disclosure; or
 - we are required to disclose that information by law.

What you should consider

12. Not all accounts held with a financial institution are available to be drawn on under the Direct Debit System.
13. Before you complete your Direct Debit Request, it is best to check account details against a recent statement from your financial institution to ensure the details on your Direct Debit Request are completed correctly.
14. Please enquire of your financial institution, if you are uncertain when your financial institution processes an amount we draw under your Direct Debit Request on a day which is not a business day.
15. It is your responsibility to ensure there are sufficient clear funds available in your account, by the due date on which we draw any amount under your Direct Debit Request, to enable us to obtain payment in accordance with your Direct Debit Request.
16. We request you to direct:
 - all requests to stop or cancel your Direct Debit Request to us or your financial institution; and
 - all enquiries relating to any dispute under Clause 6 of this agreement to us or your financial institution.



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Australian credit licence 233714.

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