

Terms & Conditions

1. DEFINITIONS

In these Terms and Conditions, unless the context implies otherwise:

\$	all amounts or dollars expressed in this Agreement are in Australian Dollars
Agreement	means the Authority submitted by the Client and accepted by DRS together with these Terms and Conditions
Authority	means the authority, order form or application provided and signed by the Client with this Agreement
Business Day	means a day which is not a Saturday, Sunday, public or bank holiday in Ballarat Victoria
Client	means the person, business or entity named as the Client on the Authority
Commission	means the agreed amount or percentage commission that DRS is entitled to charge in respect of the Debt as shown on the Authority
Debt	means the agreed value of a debt (inclusive of GST) owed to the Client and shown on the Authority
Debtor	the person or entity which owes the Debt to the Client as shown on the Authority
Disbursements	means any third party costs expenses fees or charges incurred by DRS in connection with the provision of the Services and for which the Client is liable to pay in addition to Commission
DRS	means DEBT RECOVERY SERVICE PTY LTD A.B.N. 46 151 835 282 of PO Box 1484, Bakery Hill Post Office, Victoria 3354 Australia
Invoice	means each and every invoice issued by DRS to the Client in respect to the Service, which must be a valid tax invoice
Legal Fees	means any and all legal fees expenses charges and third party costs that may become due if the Client authorizes DRS to instigate legal proceedings to recover the Debt
Minimum Settlement	means the minimum amount that DRS may settle a Debt with a Debtor pursuant to clause 3.11 and as specified in the Authority
Service	means the service of collecting a Debt on behalf of the Client for which the Client has engaged DRS
Statement	means any statement issued by DRS to the Client showing the Debt collected (or part thereof) less the Commission or the balance due by the Client
Term	twelve (12) months from the date that DRS accepts the Authority, unless legal proceedings have commenced as part of the Services in which case the term is extended to the day after legal proceedings are completed, withdrawn or ended
Terms and Conditions	means these terms and conditions

2. ENGAGEMENT

- 2.1. These Terms and Conditions shall apply to the Services engaged by the Client from DRS for each Authority for the Term unless expressly waived by DRS in writing.
- 2.2. These Terms and Conditions shall prevail over any conditions on the Client's Authority to the extent of any inconsistency.
- 2.3. DRS is not obliged to commence the provision of the Services until it has received a signed and properly completed Authority and has notified the Client of its acceptance of the Authority.

3. CLIENT WARRANTIES

The Client warrants and covenants with DRS that:

- 3.1. each of them has read and understands these Terms and Conditions;
- 3.2. by completing and submitting the Authority it engages DRS for the provision of Services (subject to acceptance of the Authority by DRS) for the Term;
- 3.3. it is able to pay the Commission, Disbursements and Legal Fees as they become due;
- 3.4. it will notify DRS within one (1) Business Day of a Debt being paid in whole or in part to it whether paid directly by the debtor or on behalf of the debtor;
- 3.5. it will notify DRS immediately of any contact with a Debtor or their representative;
- 3.6. the details and information supplied by it in the Authority and as otherwise requested are true and correct and include all information relevant to the Debt;

- 3.7. the Debtor has not resolved to wind itself up or declare itself bankrupt and there has not been a liquidator appointed in respect of it;
- 3.8. there is no litigation on foot in relation to the Debt;
- 3.9. DRS is the exclusive Service provider in relation to the Debt for the duration of this Agreement;
- 3.10. it shall not negotiate with or contact the Debtor or accept less than total payment of the Debt directly from the Debtor or anyone acting on behalf of the Debtor;
- 3.11. DRS has the Client's express consent to negotiate an amount with the Debtor in settlement of the Debt (without the need to obtain further consent) provided that settlement is not less than the Minimum Settlement Amount;
- 3.12. DRS has the Client's express consent to accept an offer by the Debtor to pay the Debt by instalments over a period of time, not exceeding twelve (12) months (without the need for the Client to further consent to this payment arrangement);
- 3.13. the agreed Commission and the provision of the Service is based on the information provided to it by the Client and referred to in the Authority; and
- 3.14. the person preparing and submitting the Authority is authorised to do so on behalf of the Client.

4. **ACCESS TO INFORMATION**

The Client authorizes and consents to the release to DRS of any information sought by DRS from any bank or financial institution.

5. **ENTITLEMENT TO COMMISSION**

- 5.1. The Commission agreed to in the Authority has been determined based on DRS's prevailing rates at the date of the Authority and does not include Disbursements or Legal Fees which are payable by the Client in addition to Commission.
- 5.2. DRS is not bound by the amount of Commission shown on the Authority if:
 - (a) the Client purports to submit the Authority by email, fax or mail more than 30 days after the date that the Authority was downloaded; or
 - (b) through no fault of DRS, the Services cannot commence within six (6) months of the date shown on the Authority.
- 5.3. Commission will apply in all of the following circumstances after a Debt is created on DRS's system:
 - (a) on all payments received by DRS, its agents, solicitors or representatives at any time (including Debts received up to 120 days after termination of this Agreement);
 - (b) on all payments received by the Client, its agents, solicitors, representatives or insurers during the Term of this Agreement and for 120 days after the end of this Agreement; and
 - (c) on any withdrawal of a Debt by the Client during the Term.
- 5.4. Where the Debtor has entered into a repayment arrangement by instalments, or promised payment to either DRS or the Client (even if those instalments or payments have not been received), Commission will be payable immediately as if the Debt were paid in full.
- 5.5. In the event that the Client:
 - (a) is paid a Debt in whole or in part (whether directly by the Debtor or on behalf of the Debtor); or
 - (b) accepts a return of goods, offset or credit in satisfaction of a Debt,DRS shall be entitled to charge Commission to the Client based on the agreed Debt allowed by the Client in the Authority upon such collection or acceptance by the Client.
- 5.6. Any Commission due to DRS by the Client as a result of the Client receiving payment of the Debt (or part thereof) directly from the Debtor or a representative of the Debtor, will become due within 30 days of the date of the Statement and Invoice issued to the Client by DRS.
- 5.7. The price for the Services shall be the amount shown on the Invoice.

6. **DISBURSEMENTS & LEGAL PROCEEDINGS**

- 6.1. The Client expressly authorizes DRS to perform all acts reasonable and necessary to complete the Services during the Term including:
 - (a) conducting necessary searches or inquiries, and inquire credit card surcharges or bank fees where the Client will become liable for Disbursements; and
 - (b) engaging solicitors (appointed at the discretion of DRS) for legal and enforcement action.
- 6.2. Prior to commencing legal action, DRS will require:
 - (a) the express approval of the Client to proceed to legal action (which approval may be provided verbally); and
 - (b) payment in full of any and all Legal Fees due in connection with legal proceedings.

6.3. If any legal proceedings are defended by the Debtor or a representative of the Debtor, the Client warrants that it will make itself available for any hearing or proceedings that are set down.

7. COMPLETION OF THE SERVICES

7.1. Upon completion of the Services (or if the Service is delivered in parts, upon completion of each part), DRS will:

- (a) within 30 days of receiving cleared funds, forward to the Client, the Debt (or part thereof) collected less the Commission due to DRS; and
- (b) issue a Statement to the Client.

7.2. Any date for the provision of Services (or any part thereof) or delivery of a Statement is an estimated date only.

8. TERMINATION

8.1. This Agreement will be terminated at the end of the Term.

8.2. The Agreement for the provision of the Services will not otherwise be cancelled or amended without DRS's prior consent in writing.

8.3. Should the Client at any time during the Term, instruct DRS whether expressly or by conduct to cease providing the Services for any reason whatsoever, DRS shall be entitled to charge Commission from the date of termination regardless of the ultimate outcome of further collection action as if the Debt has been paid in full.

8.4. Upon termination of this Agreement by the Client:

- (a) DRS and its solicitors or agents shall immediately cease action on all Debts including any legal action;
- (b) the Client must inform all Debtors that they must redirect any payments or instalments to them;
- (c) there shall be no refund of Commission or fees;
- (d) all files relating to the Services shall remain the property of DRS until all Invoices have been paid in full; and
- (e) Commission will still apply on all payments by the Debtor as per clause 5.

8.5. DRS may terminate this Agreement at any time during the Term if all reasonable endeavours to collect the Debt and complete the Services have failed due to no fault of DRS. Upon termination pursuant to this clause, all Disbursements, Legal Fees and other costs (excluding Commission) will become due for payment by the Client in full.

9. DEFAULT

9.1. In the event where the Client fails to pay to DRS the Debt balance on the Statement forwarded to the Client within 30 days from the date of the Statement, DRS shall be entitled to charge an account keeping fee calculated at its prevailing rate every month in which there is a Debt balance outstanding.

9.2. The current account keeping rates that will be charged on an overdue payment equal to interest at the rate of 14% per annum on all amounts not paid by the Client by the due date for payment, with interest calculated from the due date until the date that payment in full is received as cleared funds by DRS.

9.3. In addition to clause 9.1, the Client shall be liable for all legal costs and disbursements incurred by DRS arising from the default calculated on the indemnity basis.

9.4. DRS, its agents or solicitors shall have the right without notice to cease providing the Services (including legal action) if an Invoice is overdue. Reinstatement of the Services shall be solely at the discretion of DRS.

10. RIGHTS OF DRS

10.1. In the event where the Client does not cash a cheque sent to it within six (6) months of the cheque being sent to it by DRS, DRS shall be entitled to cancel the cheque and retain the monies.

10.2. DRS shall be entitled to destroy its file and all documents and particulars provided by the Client in relation to any Debt upon the expiration of thirty days from the date a Statement is sent to the Client advising either of the payment of the Debt or that DRS has closed the file.

10.3. DRS shall always retain the right to contact any Client's Debtor at any time, even after the Services have been completed or the Debt has been withdrawn.

10.4. DRS shall be entitled to vary these Terms and Conditions at any time upon the giving of one (1) month's notice in writing to the Client detailing such changes.

10.5. DRS reserves the right to refuse to act as agent against or provide Services in relation to any one or more Debtors and may at any time by notice in writing, cease to act for the Client in relation to any one or more Debts.

11. INDEMNITY

Should DRS suffer loss or expense due to misleading, false or insufficient details being supplied by the Client (either on the Authority or upon request by DRS), the Client will indemnify DRS in full for such loss or expense.

12. **LIMITATION OF LIABILITY**

- 12.1. DRS shall be bound by no covenants, representations or warranties other than those specified in this Agreement.
- 12.2. To the maximum extent permitted by law, DRS disclaims any and all liability for loss or damage to person or property including any consequential loss, damage or costs.
- 12.3. Certain legislation may imply warranties or conditions or impose obligations on DRS which cannot be excluded, restricted or modified except to a limited extent. These Terms and Conditions must be read subject to any such statutory provisions. If such statutory provisions apply, then to the extent that DRS is entitled to do so, its liability shall be limited, at its option, to:
 - (a) the rectification of the Services; or
 - (b) the payment of the cost of rectifying the Services.

13. **NOTIFICATIONS**

The Client must notify DRS of:

- 13.1. any change to its contact details (as set out in the Authority); and
 - 13.2. any change in its accounts payable contact
- at least 14 days prior to any of those changes taking place.

14. **PRIVACY**

Any personal or confidential information obtained by DRS shall be obtained, held and used only in accordance with DRS's Privacy Policy which is available on the website at www.debtrecovers.com.au/policy/privacy_policy.pdf.

15. **GUARANTEE**

Each owner, partner or director of the Client jointly and severally:

- 15.1. guarantees to DRS the prompt payment of all amounts due to DRS by the Client from time to time;
- 15.2. guarantees that the Client will comply with these Terms and Conditions;
- 15.3. promises to comply with these Terms and Conditions personally, and will, without limitation:
 - (a) personally pay to DRS any amount which the Client is obliged to pay upon demand by DRS; and
 - (b) personally comply with any of the obligations to be complied with by the Client.

16. **WAIVER**

If DRS does not insist on strict performance of any term, warranty or condition of these Terms and Conditions, this will not amount to a waiver of any other term, warranty or condition, or of any rights DRS may have.

17. **SUBCONTRACTING**

DRS can sub-contract the whole or any part of the Services.

18. **NOTICES**

Any notice to be given by one party to the other under these Terms and Conditions must be sent by email or prepaid registered mail to the other party's email address or postal address (as the case may be). No notice will be taken to have been given until it is actually received.

19. **GOVERNING LAW**

These Terms and Conditions shall be construed in accordance with and shall be governed by the laws for the time being in force in Victoria.