



Motorcharge Ltd Merchant Terms & Conditions

Wright Express Fuel Cards Australia Ltd ABN: 33 008 962 132
GPO Box 5342BB, Melbourne, VIC 3001
Tel: 1300 130 113, Fax: (03) 9274 9139, www.motorcharge.com.au



1. **Definitions**
In this Agreement:
- Accountholder** means a person with whom we have agreed to open an account to enable Cardholders to buy goods and services on credit using Cards;
 - Agreement** means these Terms and Conditions, the Application Form and the Merchant Operating Procedures;
 - Application Form** means the application form completed by you when you applied to become one of our merchants;
 - Approved Account** means the account specified by you in the Application Form or notified to us in accordance with clause 12.1;
 - Bearer Card** means a Card issued by us to an Accountholder which does not on its face identify or name the person who is authorised to use the Card and has no signature panel on its reverse side to verify the signature of the person authorised to use the Card;
 - Card** means a card issued by us to an Accountholder which includes a Bearer or Company name and may include a signature panel, vehicle registration or product restrictions;
 - Cardholder** means a person to whom a Card has been issued and who is authorised by us to use that Card;
 - Commencement Date** means the date specified as the commencement date in the Application Form or, if later, the date your application to be one of our merchants is approved by us;
 - Data Receipt Date** means, in relation to a sale:
 - (a) if the Payment Period is one (1) day, the business day on which the details of the sale have been received and processed by us; and
 - (b) if the Payment Period is 9, 23 or 37 days, the Wednesday on which, or following the day on which, the details of the sale have been received and processed by us or, if that Wednesday is not a business day, the previous business day. If details of a sale are received by us after 7 am on a day, they will be deemed to have been received by us on the following business day;
 - EFTPOS** means electronic funds transfer at the point of sale;
 - EFTPOS Receipt** means a receipt printed by an EFTPOS terminal that records a sale;
 - EFTPOS Terminal Hire Agreement** means an agreement under which you agree to hire an EFTPOS terminal from us;
 - EFTPOS Terminal Purchase Agreement** means an agreement under which you agree to purchase an EFTPOS terminal from us;
 - Floor Limit** means the maximum dollar value of any sale that you may make to a Cardholder without our specific authority. The initial Floor Limit is specified in the Application Form;
 - GST** has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - Intellectual Property** means any copyright, trade mark, design, format, logo, know-how or other intellectual property right owned by us, whether registered or unregistered, and provided by us to you;
 - Licence Fee** means a monthly fee at the rate determined by us from time to time which you must pay us for using the Software if you have not entered into an EFTPOS Terminal Hire Agreement or an EFTPOS Terminal Purchase Agreement with us;
 - Merchant** means you;
 - Merchant Card** means a card issued by us to you for the purpose of identifying your sales;
 - Merchant Copy** means an EFTPOS Receipt or copy of a Sales Voucher that you are required to keep in accordance with the Merchant Operating Procedures;
 - Merchant Operating Procedures** means the document entitled 'Merchant Operating Guide' and any other document that explains our procedures for processing sales and payments to you and any other operating procedures relating to the use of Cards (including procedures relating to the use of EFTPOS terminals or Sales Vouchers) issued by us to you from time to time and which form part of this Agreement;
 - Merchant Service Fee** means a fee equal to the dollar amount of sales multiplied by the Merchant Service Fee Rate;
 - Merchant Service Fee Rate** means the percentage specified as the 'Merchant Service Fee Rate' in the Application Form;
 - Merchant Summary** means any form we provide to you to summarise sales using Sales Vouchers;
 - Payment Period** means, in relation to a sale, the number of days specified in the Application Form (in the section headed 'Proposed Payment Plan') after the relevant Data Receipt Date within which we must make payment to you for that sale;
 - Sale** means a sale or supply of goods or services by you to a Cardholder using a Card;
 - Sales Voucher** means stationery supplied by us to you to record manually the details of a sale and which must be signed by the Cardholder and bear an imprint of the Cardholder's Card;
 - Site** means a site, branch or outlet at which you carry on business as specified in the schedule to the Application Form or as notified by you to us during the period of this Agreement;
 - Site Establishment Fee** means the 'Site Establishment Fee' specified in the Application Form that is payable by you to us for each new Site at which Cards are accepted in accordance with the terms of this Agreement;
 - Software** means any software in which we own the copyright that is required to enable you to process sales using your EFTPOS terminal and has been downloaded onto your EFTPOS terminal;
 - Taxes** means all stamp duty, financial institutions duty and any other duties or taxes including a goods and services tax, consumption tax or similar tax;
 - Terminal Establishment Fee** means the 'Terminal Establishment Fee' specified in the Application Form that is payable by you to us each time we provide you with an EFTPOS terminal for hire at a Site under an EFTPOS Terminal Hire Agreement;
 - us** means Wright Express Fuel Cards Australia Ltd ABN 33 008 962 132;
 - Warning Bulletin or Hot Card List** means a flag or notice listing Cards that are no longer valid for use that we give you in writing or by electronic means on a monthly, interim or special basis or otherwise; and
 - you** means the person named as the 'Merchant' in your Application Form.
2. **Interpretation**
In these Terms and Conditions:
- (a) words denoting the singular include the plural and vice versa;
 - (b) business day means a day on which we are open for business in Melbourne;
 - (c) a reference to a person includes a company, trust, partnership, unincorporated body or other entity;
 - (d) a reference to a clause is a reference to a clause of these Terms and Conditions;
 - (e) a gender includes all genders; and
 - (f) a reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes or assigns.
3. **Your obligations**
- 3.1 You must:
- (a) at all times comply with your obligations under this Agreement;
 - (b) accept all valid Cards presented by Cardholders;
 - (c) supply goods and services to a Cardholder at the prices at which you would supply the goods and services to the Cardholder for cash;
 - (d) at all times act in good faith when processing a sale and making representations about us, a Card or the services provided by us;
 - (e) use only authorised Sales Vouchers, imprints and equipment provided or approved by us and correctly record the information on them as required by the Merchant Operating Procedures;
 - (f) not advance cash to a Cardholder;
 - (g) establish a fair policy for the exchange or return of goods and give credit upon each return, not in cash but by means of a credit voucher as specified in the Merchant Operating Procedures;
 - (h) obtain prior authorisation from us for any sale which, together with all other sales over the last 24 hour period, would be in excess of the Floor Limit applicable in respect of a particular Card and not split sales which would otherwise be in excess of the limit;
 - (i) not reveal to any Cardholder the Floor Limit or any other restriction on your authority to process sales;
 - (j) perform all obligations to a Cardholder in connection with a sale prior to processing the sale;
 - (k) send the Sales Voucher and a Merchant Summary including details of the sale to us within seven (7) business days after the sale, if a sale is made using a Sales Voucher;
 - (l) settle recorded transactions with us every day you are open for business in accordance with the Merchant Operating Procedures, if a sale is made using an EFTPOS terminal;
 - (m) process a Sale in accordance with the procedures for Sales Vouchers if your EFTPOS terminal is not operating;
 - (n) send all sales refund information and credit vouchers to us within seven (7) business days after the refund or credit transaction;
 - (o) if less than the full purchase price of a sale is paid using a Card, obtain payment in full in cash for
- the balance due at the time the sale is completed. However, where the Cardholder uses a Card to pay a deposit for goods or services, you may (subject always to the terms of this Agreement) accept the Card on a subsequent occasion for payment of the outstanding balance of the purchase price due to you;
- (p) not, either directly or indirectly, process any transaction or present any voucher to us using a Card which was not originated as a result of a sale pursuant to which you actually supplied the goods or services which the Card was used to buy;
 - (q) not process, or attempt to process, any transaction pursuant to this Agreement in any currency other than Australian dollars;
 - (r) not sell, purchase, provide or exchange Cardholder or Accountholder account number information in the form of Sales Vouchers, carbon copies of Sales Vouchers, mailing lists, tapes or any other media obtained by reason of a Card transaction. However, you are not prohibited from providing account number information in the form of Sales Vouchers or any other media to your agent solely for the purpose of facilitating the processing of Card transactions to us on your behalf;
 - (s) pay us:
 - (i) such charges and fees (including the Merchant Service Fee, the Site Establishment Fee and the Terminal Establishment Fee) as specified in the Application Form or set by us from time to time and notified to you;
 - (ii) the full amount of all sales refunds processed by you pursuant to this Agreement, less any charges referred to in sub-paragraph (i) already paid by you in respect of the relevant sales;
 - (iii) any overpayments made by us in respect of sales due to errors or omissions;
 - (iv) any credits made to your account by us in respect of sales which are not valid;
 - (v) any amount we are entitled to charge back to you under clause 5.2;
 - (vi) all amounts due and payable by you under each EFTPOS Terminal Agreement and each EFTPOS Terminal Hire Agreement;
 - (vii) the Licence Fee; and
 - (viii) any other moneys due and payable by you to us under this Agreement, an EFTPOS Terminal Purchase Agreement or an EFTPOS Terminal Hire Agreement;
 - (t) not make any warranty or representation that may bind us or misrepresent the services provided by us to Cardholders or our responsibilities;
 - (u) use reasonable care in each sale to detect forged or unauthorised signatures or the unauthorised use of a Card;
 - (v) permit us to inspect and examine your books of account and records relating to any Card transactions;
 - (w) keep securely copies of all records of sales, including Merchant Copies, and other transactions under this Agreement for 6 years from the date of the relevant sale or transaction; and
 - (x) notify us immediately of damage to, or loss of, property provided to you by us, insure the property for its replacement value and maintain the property at all times in a good state of repair (fair wear and tear excepted).
- 3.2 You are only authorised to accept those types of Cards specified in the Application Form or which we notify you that you are authorised to accept and in respect of which we have not subsequently notified you that we have withdrawn your authority.
- 3.3 You must:
- (a) provide us with such assistance as we may reasonable require relating to our promotional and marketing activities;
 - (b) not use any advertising or promotional material in relation to Cards, except as authorised by us;
 - (c) not refer to the Cards in information or statements relating to the eligibility for, or the availability of, any goods or services supplied by you;
 - (d) advertise in a prominent place at each Site, and in a manner no less conspicuous than the manner in which you advertises other charge or credit cards, acceptance of the Card; and
 - (e) place in a prominent position at each Site promotional and marketing material (including the Card decal insignia) and merchandising provided by us to you from time to time; and
 - (f) not encourage Cardholders to use other credit cards or charge cards held by Cardholders in preference to a Card to buy goods or services from you.
- 3.4 You acknowledge that you have no right, title or interest in the Intellectual Property other than the right to use the Intellectual Property as authorised by us in writing from time to time and the right to use the Software for the purpose of processing sales during the term of this Agreement for a Licence Fee.
- 3.5 You must indemnify us from and against all losses, damages, liabilities, costs and expenses that we may suffer or incur as a result of or in connection with:
- (a) your negligence;
 - (b) any damage to property supplied to you by us;
 - (c) any failure by you to perform any of your obligations under this Agreement;
 - (d) any dispute between you and any Cardholder or Accountholder about the supply, use or quality of goods or services;
 - (e) any claim by a Cardholder or Accountholder against you or us for damages to recover an amount from you or us for misrepresentation, breach of contract or failure of consideration relating to goods or services bought from you;
 - (f) Taxes now or in the future assessed, levied, imposed or collected by any governmental, semi-governmental, administrative, fiscal or judicial body, department or authority in respect of the use of a Card to buy goods or services from you or any charge or any transaction under, or contemplated by, this Agreement; or
 - (g) outages, failures or delays in any of your computer systems or any infrastructure or systems connected to your computer systems or any corruption of data caused by, or in any way attributable to, the use by a Cardholder of a Card.
4. **Our obligations**
We will:
- (a) accept all valid sales and sales refunds processed by you under this Agreement;
 - (b) subject to this Agreement, credit to your Approved Account within the Payment Period the full amount of all valid sales processed by us less:
 - (i) an amount equal to the Merchant Service Fee calculated in respect of such sales; and
 - (ii) any amount you are required to pay us under clause 3.1(r) that has not been paid;
 - (c) supply you with Sales Vouchers, equipment, promotional material and other items that we agree to supply you from time to time;
 - (d) send you each calendar month a statement showing the amount of all sales, refunds, credits, charges and fees processed by us under this Agreement during the previous month; and
 - (e) use reasonable endeavours to process sales data received from you in a timely manner.
5. **Invalid sales**
- 5.1 For the purposes of this Agreement, a sale is not valid if:
- (a) it is illegal;
 - (b) it is made using a Card that has a signature panel and the panel has not been signed by the Cardholder;
 - (c) it is made using a Card that has a signature panel and the Sales Voucher or EFTPOS Receipt recording the sale is not signed;
 - (d) it is made using a Card that has a signature panel and the signature on the Sales Voucher or EFTPOS Receipt recording the sale is forged or unauthorised and you should have known or could reasonably have detected that the signature was forged or unauthorised;
 - (e) the particulars inserted in the Sales Voucher or EFTPOS Receipt recording the sale are not identical with the particulars inserted in the copy given to the Cardholder;
 - (f) the Card used for the sale is not current at the time of the transaction;
 - (g) the Card used for the sale is listed on any Warning Bulletin or Hot Card List at the time of the sale;
 - (h) the price charged to the Cardholder for any item of goods or services is in excess of the price at which you would supply the item to the Cardholder for cash;
 - (i) the amount of the sale, when added to the amount of other sales made by you in any 24 hour period and charged to a particular Card, was in excess of the Floor Limit applicable to that Card, unless:
 - (i) you obtained authorisation from us and an authorisation number given by us for that sale has been noted on the Sales Voucher; or
 - (ii) you could not reasonably be expected to be aware that the Floor Limit has been breached;
 - (j) the Sales Voucher or EFTPOS Receipt used to record the sale is incomplete or illegible;
 - (k) you failed to observe this Agreement in relation to the sale;
 - (l) the Card used for the sale was used without the authority of the Cardholder or, in the case

- of Bearer Cards, the Accountholder and the unauthorised use could reasonably have been detected;
- (m) the Sales Voucher or other record of the sale is received by us more than thirty (30) days after the sale took place;
- (n) you are not able to provide to us the Merchant Copy recording the sale within 7 days if we ask for it;
- (o) the Card used for the sale has a designated vehicle registration number printed or embossed on the Card and the goods or services purchased are not for the designated vehicle;
- (p) the Card used for the sale has restrictions on the type of goods or services which may be purchased using the Card or other restrictions printed or embossed on it and the sale contravenes those restrictions;
- (q) it is processed using an EFTPOS terminal and the Card number or truncated Card number appearing on the EFTPOS Receipt is not consistent with the Card number of the Card which is produced;
- (r) the Card used for the sale belongs to you;
- (s) the Cardholder or Account holder refuses to pay all or any amount charged for the sale because the goods or services were defective, returned, not delivered or provided, or not as promised, or for any other reason;
- (t) a payment we receive from a Cardholder or Accountholder in respect of the sale is wholly or partly avoided, or a claim is made to avoid it and that claim is upheld, conceded or compromised under any law (including any law relating to bankruptcy or liquidation);
- (u) the Cardholder or Accountholder asserts a claim of set-off or a counterclaim against you or us in connection with the amount charged for the sale; or
- (v) it is otherwise treated as an invalid sale under this Agreement.
- 5.2 We may refuse to accept or, having accepted, may charge back any sale if the sale is not a valid sale.
- 5.3 A sale can be an invalid sale even if it has been authorised by us or if we have paid you an amount in respect of the sale.
- 5.4 If we ask you anything about a sale (including asking you to provide copies of any document), you must promptly help us with our enquiry and provide the information requested. If you do not answer our enquiry to our satisfaction within 7 days of the date of the enquiry the sale to which the enquiry relates will be treated as an invalid sale.
- 6. Warranties**
Each time you process a sale, or you provide to us a Sales Voucher or other record of a sale, you warrant that:
- (a) all statements of fact or data entered in the EFTPOS terminal or recorded in the Sales Voucher are true;
- (b) the sale is valid; and
- (c) the sale is not subject to any dispute, set-off or counterclaim.
- 7. Interest**
You must pay to us on demand interest on any amount that you are required to pay to us under this Agreement, including interest under this clause. Interest will be calculated from the day that the amount is due and on the daily balance of the unpaid amount at the average rate charged from time to time by us to Accountholders. Interest will be payable on demand and, if not demanded, on the last day of each calendar month.
- 8. Retention**
We are entitled to retain any moneys that are otherwise payable by us to you in any of the following circumstances:
- (a) Where moneys are payable to you with respect to a transaction or series of transactions where we suspect upon reasonable grounds:
- (i) that the Accountholder, Cardholder and/or you have acted fraudulently; or
- (ii) that the transaction or transactions are not bona fide.
- We may in our discretion retain the whole or any part of those moneys for a period reasonably necessary to enable the transaction or transactions in question to be properly investigated.
- (b) Where moneys are payable to you in respect of a period in which the volume of transactions is considered by us to be exceptional, having regard to the volume of transactions that we would reasonably have expected for the period in question, we may in our discretion retain in a retention account such proportion of those moneys (not exceeding the excess) as we think fit for a period of not more than 60 days.
- (c) On termination of this Agreement we may retain an amount equal to 20% of the average monthly amount of valid sales transactions over the 6 complete calendar months prior to the date of termination or such other sum as we may reasonably consider necessary to be retained by us in order to meet:
- (i) transactions which may be disputed by Cardholders or Accountholders; or
- (ii) amounts that we reasonably believe you may become liable to pay to us under the terms of this Agreement (whether by way of indemnity or otherwise) after the date of termination.
- Without prejudice to any of our rights under this Agreement, we may only retain amounts retained under this paragraph (c) for 90 days from the date of termination of this Agreement.
- All moneys held in a retention account shall be placed on interest bearing deposit and any moneys paid out of a retention account to you will be paid together with the interest accrued on the amount paid out.
- 9. Term and termination**
- 9.1 This Agreement starts on the Commencement Date and continues unless terminated in accordance with clause 9.2.
- 9.2 This Agreement may be terminated:
- (a) by us at any time with immediate effect by written notice to you;
- (b) by you by giving 30 days written notice to us; or
- (c) in the case of a breach of any term of this Agreement by us that we fail to remedy within 14 days of being given notice by you specifying the breach and asking us to remedy it, by you with immediate effect by written notice to us.
- 9.3 Termination of this Agreement will not affect obligations incurred prior to termination. We will not be obliged to accept any sales or sales refunds processed by you after notice has been given by you or us under clause 9.2.
- 9.4 You must promptly return to us any equipment, Sales Vouchers, Card decals, promotional material or other items supplied by us upon the termination of this Agreement.
- 10. Credit worthiness**
To the extent that any representation or assurance concerning the credit worthiness of a Cardholder or an Accountholder may be inferred from the issue of a Card to a Cardholder or an Accountholder, you waive those rights (if any) which you may have against us by reason of the representation or assurance.
- 11. Goods and services tax**
- 11.1 Except as otherwise provided by this clause, all Consideration payable under this Agreement in relation to any Supply is exclusive of GST.
- 11.2 To the extent that any Supply by us under this Agreement constitutes a Taxable Supply, the Consideration payable by you to us will be increased by the applicable amount of GST (GST Amount), which will be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.
- 11.3 Any GST Amount must be paid by you to us at the same time and in the same manner as the relevant Consideration is paid or given under this Agreement, without any right of set-off or deduction (unless otherwise provided in this Agreement).
- 11.4 If this Agreement requires you to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by us (Relevant Expense), the amount which you must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which we are entitled in respect of the Relevant Expense, together with any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by us to you.
- 11.5 We must provide a valid Tax Invoice to you at or prior to the time of payment of any GST Amount.
- 11.6 To the extent that any Adjustment occurs in relation to a Taxable Supply by us, we must issue an Adjustment Note to you within 28 days of becoming aware of the Adjustment and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.
- 11.7 In this clause 11, Adjustment Event, Adjustment Note, Consideration, Supply, Taxable Supply and Tax Invoice have the meanings given to those terms in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (C'th).
- 12. Recipient Created Tax Invoice Agreement**
- 12.1 You may make Taxable Supplies to us in accordance with this Agreement.
- 12.2 We may issue Recipient Created Tax Invoices in respect of such supplies (RCTI).
- 12.3 You must not issue Tax Invoices in respect of such supplies.
- 12.4 You acknowledge that you are registered for GST when you enter into this Agreement. You must immediately notify us if you cease to be registered.
- 12.5 We acknowledge that we are registered for GST when we enter into this Agreement. We must immediately notify you if we cease to be registered.
- 12.6 We will issue a copy of an RCTI to you within 28 days of you making any Taxable Supply under this Agreement.
- 12.7 We will not issue a document that would otherwise be a RCTI on or after a date when we or you have failed to comply with any of the requirements of *A New Tax System (Goods and Services Tax) Act 1999 Clauses of Recipient Created Tax Invoice Determination (No. 1) 2000* (the Determination).
- 12.8 You must immediately notify us if you fail to comply with any requirement of the Determination.
- 12.9 To the extent that any Adjustment occurs in relation to a Taxable Supply by you, we must issue an Adjustment Note to you within 28 days of becoming aware of the Adjustment and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.
- 12.10 In this clause 12, Adjustment, Adjustment Note, Recipient Created Tax Invoice, Taxable Supply and Tax Invoice have the meanings given to those terms in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (C'th).
- 13. Your Approved Account**
- 13.1 If you change your Approved Account, you must give us at least 7 days prior written notice of the change and the details of your new account. We are not liable for any loss, liability, cost or expense you incur or are required to pay as a result of us transferring funds to an Approved Account that is no longer current.
- 13.2 If we ask you to do so, you must complete, sign and promptly return to us a direct debit authority in the form provided to you by us authorising us to:
- (a) debit your Approved Account to correct any error relating to any payment that we make to your Approved Account; and
- (b) debit from your Approved Account an amount equal to the amount of any invalid sale.
- 14. You must notify us of certain matters**
- 14.1 You must promptly notify us in writing if:
- (a) you stop carrying on business at a Site or start carrying on business other than at a Site;
- (b) you cease to carry on business or transfer your business to another person;
- (c) you restructure your business (for example, change of owner or Director) or register your business under a new ABN;
- (d) (if you are a company) an administrator, receiver, receiver and manager, liquidator or similar officer is appointed or an order is made for your administration, winding-up or dissolution or steps are taken towards this (for example, a resolution is passed or an application is made to a court); or
- (e) (if you are a natural person) you commit an act of bankruptcy or enter into an assignment, arrangement or composition with any creditors.
- 15. Notices**
- 15.1 Any notice under this Agreement must be legible and may be posted, faxed or sent by email.
- 15.2 A notice is treated as given to you:
- (a) if faxed to you at the fax number set out in the Application Form or the fax number last notified by you to us, on receipt by us of confirmation of successful transmission of the notice;
- (b) if posted in a prepaid envelope addressed to you at your address specified in the Application Form or the address last notified by you to us, 2 business days after the date it is posted; or
- (c) if sent by email to you at the email address set out in the Application Form or the email address last notified by you to us, when sent to your computer system or your email account, but if delivery or receipt is on a day which is not a business day or is after 5 pm (your time), it is treated as given to you at 9 am on the next business day.
- 15.3 A notice is treated as given to us:
- (a) if faxed to us at the fax number set out below or the fax number last notified by us to you, on receipt by you of confirmation of successful transmission of the notice;
- (b) if posted in a prepaid envelope addressed to us at our address set out below or the address last notified by us to you, 2 business days after the date it is posted; or
- (c) if sent by email to us at our email address set out below or the email address last notified by you by us, when received by us, but if delivery or receipt is on a day which is not a business day or is after 5 pm (Melbourne time), it is treated as given to us at 9 am on the next business day.
- Our current address and fax number are:
Level 3, 283 Camberwell Road,
CAMBERWELL, Vic 3124
Fax: (03) 9274 9139
Email: menquiries@wrightexpress.com.au
- 16. Assignment**
- 16.1 You may not assign or transfer any of your rights or obligations under this Agreement without our prior written consent.
- 16.2 You must not sub-contract the performance, or appoint an agent to perform, all or any of your obligations under this Agreement without our prior written consent.
- 16.3 You will remain fully responsible for the performance of all your obligations under this Agreement and all costs incurred in relation to any sub-contractor or agent you engage.
- 16.4 We may assign or transfer this Agreement without your prior consent.
- 17. Matters outside our control**
Neither party will be liable to the other for any delay in the performance of its obligations under this Agreement if the delay in performance is caused by industrial action, accident or other acts or circumstances outside the control of the party concerned. Each party undertakes to use all reasonable endeavours to remove the cause of the delay as quickly as possible.
- 18. Confidentiality**
- 18.1 The terms of this Agreement and all information provided by a party to the other party under this Agreement ("Confidential Information") are confidential and each party must keep all Confidential Information confidential and must not disclose the Confidential Information to any person other than:
- (a) to an employee whose duties require such disclosure;
- (b) if required by law, judicial order or in accordance with the rules of any relevant stock exchange; or
- (c) to a potential assignee of the disclosing party who has entered into a deed in favour of the other party undertaking to keep the Confidential Information confidential on terms no less onerous than the terms of this clause 16.
- 18.2 Without limiting the generality of clause 16.1, you must keep the Merchant Service Fee confidential and must ensure that the Merchant Service Fee is not disclosed to any person other than an employee whose duties require such disclosure and who has entered into a deed in favour of us undertaking to keep the Confidential Information confidential on terms no less onerous than the terms of this clause 16.2.
- 19. Joint and several liability**
Where you consist of two or more persons, your obligations under this Agreement are joint and several.
- 20. Variation**
We may vary the terms of this Agreement (including the Merchant Operating Procedures) at any time by giving you written notice of the changes. The changes come into effect on the day specified in the notice.
- 21. Set-off**
- 21.1 We may set-off any amounts that you owe to us under this Agreement or any law or regulation against any amounts due and payable by us to you under this Agreement.
- 21.2 If there is no amount against which we can set-off an amount due and payable by you to us under this Agreement, you must pay the amount you owe to us within 2 Business Days of demand.
- 22. Our certificate is conclusive**
Any statement or certificate specifying the amount you owe us under this Agreement signed by one of our employees is conclusive evidence of the amount of your liability to us at the date of the statement or certificate, unless there is an obvious error.
- 23. Severability of provisions**
Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- 24. No Waiver**
No failure to exercise or delay in exercising any right under this Agreement by either party will operate as a waiver of that right, nor will any single or partial exercise of any right prevent any other or further exercise of that or any other right.
- 25. Governing Law**
This Agreement is governed by and must be construed in accordance with the laws of Victoria. You submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.