

TERMS AND CONDITIONS

In this Agreement, Francom Credit Solutions Pty Ltd (ACN 621 022 928), shall be known as **FCS** and you the **Client**.

This document is an Agreement between the Client and FCS.

The legal relationship between the Client and FCS is that of principal and agent respectively and no other relationship shall be construed between the Client and FCS.

The Client submits the debt with FCS electronically. The Client agrees and acknowledges that their electronic signature is the legal equivalent to their manual signature. The Client agrees and acknowledges that use of a key pad, mouse or other device used to select an icon, item, button or similar act/action constitutes their electronic signature, which is the legal equivalent to their manual signature.

By the act of forwarding one or more forms to FCS, or on the Client's instructions to FCS to recover a debt pursuant to this Agreement, the engagement of FCS by the Client shall be deemed to have commenced from the date the Client signs the Terms and Condition or provides instructions to FCS. Should the Client thereafter, at any time, instruct FCS, whether expressly or by conduct, to terminate recovery proceedings for any reason, FCS will be entitled to charge commission from the date of termination, as if the debt were paid in full, regardless of the ultimate outcome of further recovery action. The Client acknowledges that he/she has read and agrees to be bound by these Terms and Conditions and will continue until terminated in accordance with this Agreement.

The Client acknowledges and agrees that they have the authority to enter into these Terms and Conditions on behalf of anyone who has an interest in or has authorisation to access any of the Client's account. The Client acknowledges and agrees that such people will also be bound by these Terms and Conditions.

If any provision, or the application of any provision, of these Terms and Conditions are prohibited, invalid, void, illegal or unenforceable, the provision or part will be severed and will not affect the validity or enforceability of the remaining provisions or parts of these Terms and Conditions.

The Client acknowledges and agrees that these Terms and Conditions supersede all earlier representations and conduct made by, or existing between, the Client and FCS and are expressly excluded in these Terms and Conditions.

Once the Client agrees to the Terms and Conditions, they may be executed in counterparts, each of which shall have the effect of an original document. The Terms and Conditions are binding on the parties only upon execution of a counterpart by each of the parties. The date of the Terms and Conditions will be the date on which the last party executes the Terms and Conditions, as specified in this Terms and Conditions.

If either party has accrued or will accrue any liability or right of action in respect of any act or omission by either party prior to the termination of the Agreement between the Client and FCS, then the termination of the Agreement will not release either party from any liability or right of action. Such right include, but is not limited to, the collection or recovery of any outstanding monies.

No failure to exercise and no delay in exercising any right, power or remedy under the Agreement between FCS and the Client and/or these Terms and Conditions will act as a waiver of that power or right. Neither will any single or partial exercise of any right, power, or remedy preclude any other or further exercise of that, or any other, right, power or remedy.

The Agreement between the Client and FCS can only be varied by written Agreement signed by both the Client and FCS.

All notices under the Agreement between FCS and the Client must be given in writing, where email is sufficient.

The Agreement and these Terms and Conditions are governed by the laws of New South Wales. The Client and FCS submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

1. Commencement

1.1 The Terms and Conditions will commence on the day the Client acknowledges and agrees to the Terms and Conditions and will continue until terminated in accordance with these Terms and Conditions.

1.2 By the act of forwarding one or more forms to FCS, or on the Client's instructions to FCS to recover a debt pursuant to this Agreement, the engagement of FCS by the Client shall be deemed to have commenced.

2. Engagement

- (a) The Client engages FCS through a Debt Submission Channel provided by FCS and FCS agrees to reasonably attempt to collect/recover debts owing to the Client.
- (b) The Client agrees to provide FCS with all information and documentation FCS may need to collect any debt.
- (c) The Client warrants that all information and documentation it provides to FCS in relation to the customer(s) and/or the Debt, written or otherwise, is complete, accurate and correct.
- (d) The Client authorises FCS to receive, endorse, and deposit all monies recovered by FCS, into its trust account on behalf of the Client and to deduct all applicable Fees seven (7) days after FCS has invoiced The Client.
- (e) The Client authorises FCS to negotiate and make offers on Debt Amounts for payment from the Client's customer(s). The Client agrees to not unreasonably hold consent in relation to an offer by the customer(s).
- (f) The Client agrees that they will notify FCS within seven (7) days of receiving any payment from any customer(s) for a Debt assigned to FCS for collection/recovery.
- (g) The Client agrees to meet on demand all necessary and incurred disbursements, including legal and court fees, search fees, and other incidental costs including GST, associated with

collecting/recovering a Debt through legal proceedings, even if the resulting collection/recovery process is only partially successful or entirely unsuccessful.

- (h) The Client agrees that FCS reserves the right to refuse any collection/recovery matter referred to it by the Client, at its sole discretion.
- (i) FCS reserves the right to cease acting, at any time and for any reason whatsoever, on any collection/recovery matter referred to it by the Client at its absolute sole discretion.
- (j) During the period FCS is acting for the Client, the Client covenants that FCS acts on its/their behalf exclusively and the Client shall not negotiate with or contact the customer or accept less than total payment directly from the customer.
- (k) If any debt collection/recovery managed by FCS is compromised in any way, the Client agrees that the fees payable by the Client to FCS shall be based on the full Debt Amount. A debt collection/recovery is deemed compromised when a Client interferes with the ability of FCS to collect/recover a Debt Amount through their normal processes and procedures.

3. Services

3.1 The services that FCS agrees to provide to The Client include, but are not limited to, one or a combination of the following:

- (a) Locating or Skip Tracing the Client's customer(s).
- (b) Correspondence with the Client's customer (s).
- (c) Issuing demands to the Client's customer(s).
- (d) Negotiating with the Client's customer(s).
- (e) Liaising with the Client's customer(s) solicitors or representatives.
- (f) Instructing third parties to correspond with the Client's customer(s), including field calls.
- (g) Instructing solicitors (as per Section 4 of this Terms and Conditions) to commence legal proceedings.
- (h) Any other services usually provided by a debt collection/recovery agent, at the discretion of FCS.

4. Legal Services

4.1. Should FCS be unsuccessful in collecting/recovering a debt, it may, at its sole discretion, choose to commence legal proceedings to recover the Debt by referring it to a legal practice.

4.2. Should FCS determine that a matter is potentially viable for legal proceedings it may, at its sole discretion, recommend that legal proceedings be commenced to the Client.

4.3. FCS shall provide the Client the opportunity to accept or reject the commencement of legal proceedings.

4.4. The Client grants a limited power of attorney to FCS to engage a law firm on the Client's behalf, for the purpose of commencing legal proceedings to recover a Debt from the Client's customer(s).

4.5. FCS will tender all and any legal work to one or many of FCS's legal partners.

4.6. One or many of FCS's legal partners will provide a fixed price quote to FCS. FCS will examine such quotes and select a law firm at its sole discretion.

4.7. The Client will be liable for all disbursements and legal fees regardless if a Debt is successfully recovered, either in whole or in part by FCS or FCS's legal partners.

4.8. If legal action is commenced FCS's legal partners will provide an Umbrella Costs Disclosure and Costs Agreement to the Client before commencing to act and/or represent the Client.

5. Continued Services

5.1. FCS and the Client agree that these Terms and Conditions shall apply to any and all Debt(s) referred to FCS by the Client for collection/recovery from time to time, unless both parties agree in writing that another Terms and Conditions shall apply.

5.2. The Client agrees and acknowledges that FCS may choose, at its sole discretion, to keep a debt collection/recovery matter open, or to close such matter, regardless of whether the Terms and Conditions is terminated until such a time as the Debt Amount, fees and costs incurred are fully paid.

5.3 The Client agrees and acknowledges that FCS may choose, at its sole discretion to terminate this Agreement, at any time and for any reason whatsoever.

6. Fees & Disbursements

6.1. If the Client refers a Debt(s) to FCS for collection/recovery, and payment is at any time made to the Client, FCS, or a third party, FCS's fees are payable by the Client based on the amount received.

6.2. If the Client refers a debt(s) to FCS for collection/recovery, and the Recovered Debt Amount is less than, or more than, the Debt amount, the fees payable to FCS by the Client shall be based on the Recovered Debt Amount.

6.3. If the Client accepts goods or services in lieu of payment from the debtor(s), the fees payable by the Client to FCS shall be based on the full Debt Amount.

6.4. In the event where a Client accepts a return of goods, offset or credit in satisfaction of a claim FCS shall be entitled to charge commission based on the agreed value allowed by the Client to the customer.

6.5. If the Client becomes aware that the customer(s) have paid the Debt Amount prior to assigning the

Debt to FCS, the fees payable to FCS shall be based on the full Debt Amount.

6.6. If the Client is aware that the customer(s) is bankrupt or in Liquidation at the time of assigning the Debt to FCS for collection/recovery, the fees payable by the Client to FCS shall be based on the full Debt Amount.

6.7. If any collection/recovery managed by FCS is compromised in any way, the Client agrees that the fees payable by the Client to FCS shall be based on the full Debt Amount. A collection/recovery is deemed compromised when a Client interferes with the ability of FCS to collect/recover a Debt Amount through their normal processes and procedures.

6.8. FCS's fees and the right of FCS to recover unpaid Fees is a debt due and payable by the Client and shall survive the termination of the Terms and Conditions.

6.9. The Client agrees that it is liable to reimburse FCS for all disbursements incurred by FCS in the course of providing the Services covered by the Terms and Conditions.

7. Invoices, Trust Monies & GST

7.1. All invoices issued by FCS are payable upon the receipt of invoice.

7.2. The Client agrees that should payment not be made by the due date, a debt collection equal to thirty(30) percent of the amount due will be included in the total amount owing and interest at the rate of three (3) percent per annum shall accrue on any outstanding amount compounded on a daily basis from the due date and the total amount shall be payable to FCS by the Client as a debt due and owing.

7.3. The Client agrees that any Recovered Debt Amount will not be paid out by FCS until fourteen (14) days after the last day of the calendar month it was received by FCS.

7.4. Should FCS choose to pay out any Recovered Debt Amount prior to the timeframe mentioned above, it does so at its sole discretion.

7.5. The Client agrees that FCS may allocate any funds it holds in its trust account on behalf of the Client to offset any previously issued invoices that are owing by the Client to FCS.

7.6. FCS may from time to time request The Client to place money in its trust account to account for professional costs and disbursements.

7.7. If any amounts payable by the Client are subject to GST, then The Client is liable to pay the applicable GST on that amount.

8. Warranties & Indemnity

8.1 The Client makes the following warranties to FCS:

- (a) All Debt Amounts are due and owing by the customer(s) to the Client.
- (b) The Client has provided FCS with complete, true and accurate details of the customer(s).
- (c) All information that the Client provides to FCS is complete, true and accurate.
- (d) The Client shall indemnify and keep indemnified FCS for any damage arising from any and all information that the Client provides which may be incorrect, false and/or misleading.
- (e) The Client indemnifies and will keep indemnified (on a full indemnity basis) FCS from and against any and all claims, liabilities, obligations, expenses or damages that FCS may suffer or incur as a result of, or in connection with, these Terms and Conditions

9. Limitation of Liability

9.1 FCS expressly excludes any liability to the full extent of the law for consequential loss, incidental or indirect damages, due to, or arising from, the Services provided by FCS. Where the law precludes such exclusion and implies certain conditions and warranties into this Terms and Conditions, the liability of FCS for breach of such conditions or warranties shall be limited to the amount paid by the Client in respect of the Services with regards to the specific Debt Amount assigned to FCS.

10. Privacy Authority & Consent

10.1 The Client acknowledges and agrees to allow FCS to undertake the following activities to the extent permitted by law:

- (a) Provide any items of the Client's and its customer(s) personal information described in section 18E of the Privacy Act 1988 to a credit reporting agency.
- (b) Obtain a consumer credit report about the Client and its customer(s) from a credit reporting agency to assess the Credit Application or proposed guarantee or collect overdue payments.
- (c) Give credit worthiness information about the Client service providers to assess the Client's credit worthiness or applications for credit, or to notify defaults of the status of the credit.

10.2 The Client acknowledges and agrees that they may request access to their personal information held by FCS. The Client consents to FCS accessing its personal information for the purposes of carrying out the Services.

10.3 The Client warrants that they have obtained express permission from its customer(s) to refer customer information, which may include personal information, to FCS or any other credit reporting agency and that the Client has not breached any Terms and Conditions with the customer(s) or applicable legislation by doing so.

10.4 The Client agrees and consents to FCS sharing its personal information with FCS's related companies and services, which may engage in direct marketing activities to the Client from time to time. The Client may choose to unsubscribe to such marketing activities directly with the related companies and services.

11. Termination

11.1. FCS may terminate this Terms and Conditions upon the happening of any of the following events:

- (a) The Client fails to pay FCS's invoices by the Due Date and FCS has issued the Client with a letter of demand which the Client has not complied with.
- (b) The Client has been placed into administration or is the subject of a bankruptcy or winding up proceedings.
- (c) The Client may terminate these Terms and Conditions immediately if FCS, by notice in writing to the Client, carries its Fees.
- (d) These Terms and Conditions shall terminate by either party giving the other party one (1) month's written notice.
- (e) For a period of (45) days after receiving written notice, the Client will be liable to advise FCS of any payments the client receives from the customer(s) and FCS will be entitled to charge commission based on the amount paid to the Client by the customer(s). If a payment is received from the customer within this period, please refer to Section 8 of these Terms and Conditions.

Definitions

The following definitions shall apply to the Agreement between the Client and FCS:

- a) **Customer** means the party or parties (individual or company) that owes a debt(s) to the Client.
- b) **Debt or Debt Amount** means any debt the Client has referred to FCS for collection/recovery in accordance with this Agreement.
- c) **Fees** means the amount payable by the Client to FCS for services provided in accordance with the Agreement. All Debt recovered from FCS attracts a twenty (30) percent commission of the total Debt Amount. All GST levied on the commission shall be borne by the Client and FCS shall provide a Tax Invoice to the Client.
- d) **Recovered Debt Amount** means any amount of a Debt Amount that has been recovered by FCS, the Client or a third party during, or after a debt has been referred to FCS by the Client in accordance with this Agreement.
- e) **Services** means the services referred to in this Agreement