

**AAA Mercantile Pty Ltd**  
**Terms & Conditions – as at 1<sup>st</sup> August 2018**

THIS AGREEMENT commences on the date stipulated on the Application Form ('the form'). BETWEEN AAA Mercantile Pty Ltd ('AAA') and the person named on the form: - "Client Name", ('the Client'), WHEREAS: -

- A. AAA provides services at large as mercantile agent and assignee of debts for collection.
- B. The Client desires to appoint AAA as mercantile agent and assignee debts for collection subject to the terms and conditions herein.
- C. AAA will act as mercantile agent and will accept assignment of debts for collection from the Client subject to the terms conditions herein.
- D. In the interpretation of this agreement: -
  - 1. "*Client*" means the Client including its executors' administrators' successors permitted assigns.
  - 2. "*debts for collection*" means debts for collection submitted via the online form, email, or by mail.
  - 3. "*term*" means the initial term of the subscription period and any subsequent or renewed term.
  - 4. "*filing fee*" means a reasonable fee charged by AAA to arrange and file documents at the courts.
  - 5. "*form*" means a paper form or an online electronic form.
  - 6. "*reasonable*" means anything that AAA in its sole discretion deems as fair and reasonable.
  - 7. "*rate*" means the agreed rate under the schedules.
  - 8. Any reference to a person shall also be a reference to an incorporated legal entity and vice versa.
  - 9. Words importing the singular shall be deemed and taken to include the plural and vice versa.
- E. All debts for collection submitted in writing or electronically to AAA are deemed to be absolutely assigned by the Client in writing to AAA.
  - 1. The Client absolutely relinquishes all beneficial interest in all assigned debts.
  - 2. Contingent on recovery, and by way of dividend, AAA agrees to pay the Client the sum of the debt recovered minus the rate which arrears at clause F and which is subject to clauses G - K.
- F. The base rates (excludes GST): -
  - 1. Schedule 1: Company debtors 30%, Individual debtors 35%
  - 2. Schedule 2: Company debtors 20%, Individual debtors 25%
  - 3. Schedule 3: Company debtors 10%, Individual debtors 15%
- G. The base rate is: -
  - 1. Calculated and applied against all individual recovery amounts; and
  - 2. against the entire debt if settled, compromised, or withdrawn by the Client; and
  - 3. payable whether the debtor has paid to AAA or the Client. Where debtor funds are paid direct to the Client, those funds will be remitted to AAA forthwith.
- H. Recovered monies will be applied in the following order: fees, interest, legal costs, debt.
- I. A minimum rate of \$25.00 will apply to individual recoveries of less than \$100.00.
- J. A flat rate of 50% (Including GST) will apply where: -
  - 1. the amount of any individual recovery is less than \$50.00, or
  - 2. where the debtor is bankrupt, liquidated or receiver appointed, or
  - 3. where AAA pays the court fees for any legal action, or where
  - 4. the Client ceases to subscribe.
- K. A service fee at cost plus handling will apply where a debtor pays via credit card, BPay or PostBillpay.

NOW IT IS HEREBY COVENANTED AGREED AND DECLARED as follows: -

- 1. Date of Subscription: - The Client agrees to subscribe AAA on the date described in the form, and such subscription shall commence on the said date.
- 2. The term of Subscription: - The Client agrees to subscribe to AAA for an initial term of 12 calendar months. The initial term shall continue for a period of an additional 12 months unless determined before the initial term ending. The subscription will continue from year to year, and in each case, each term shall be for a period of 12 calendar months and be renewed automatically without either party having to notify the other AND the relationship between the parties shall be by way of a yearly contract from time to time determined at will by either party. If the Client wishes to terminate this agreement, then the Client must give AAA not less than one calendar month written notice in advance. If the Client provides such notice to AAA within three calendar months of the expiration of the initial or renewed term of appointment then in such event this Agreement shall be terminated.
- 3. The extent of Powers of AAA as Agent of the Client: - It is a condition of this Agreement that AAA shall have the following powers upon its appointment.
  - a. All such powers available to agents generally under the common law;
  - b. All such powers granted to AAA under this Agreement;
  - c. To terminate this Agreement forthwith for any reason whatsoever notwithstanding that the termination may be unreasonable whereupon the Client shall be entitled to a refund of amounts payable under this

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Agreement and the quantum shall be directly proportional to the remainder term;

- d. In the event of the Client making any untrue statement misrepresentation or engages in any conduct with AAA which is misleading, false, or which may or may not cause AAA financial loss. AAA may terminate this Agreement forthwith, and the Client is not entitled to any refund for any subscriptions paid to AAA whatsoever, and further AAA shall be entitled to such legal and equitable remedies including but not limited to damages enforceable against the Client;
  - e. To appoint in its absolute discretion such solicitor's agents and third parties as it deems fit for the proper exercise of its duties in the commission of the services for and on behalf of the Client;
  - f. To require the Client to pay any agreed costs forthwith or in advance thereof;
  - g. If the Client terminates this Agreement AAA shall in his absolute discretion be entitled to retain such subscription fees as have been paid to AAA without having to refund the whole or any part thereof;
  - h. AAA reserves the right to amend the rates payable to AAA by the Client at any time. In such event, the new rates and the effective date will appear on the AAA website. The Client deems this action as having given the Client notice of AAA's intention to amend the rate and in such event unless the Client objects in writing to the same within the two weeks of the effective date then the new rate shall be payable by the Client. The Client agrees that it is their sole responsibility to check the AAA website from time to time to make themselves aware of any changes.
  - i. To invest all monies held on behalf of the Client and to be entitled to property in all the interest income derived therefrom or applied to any debt without being liable to account to the Client;
  - j. To demand payment from the Client in advance of any agreed service provided or cost incurred by AAA for all estimated costs and disbursements anticipated by this Agreement;
  - k. To be entitled to charge and or deduct in full any agreed amounts payable to the Client in respect of debt collecting or assignment or any other AAA fee in any of the following events, namely: -
    - i. Upon recovery of a debt in full or part by the Client or AAA or such agent of either party;
    - ii. When the Client withdraws, settles or comprises its claim against the debtor and where no recovery is made (due to the debtor's incapacity to pay, or to a court judgment or otherwise) then in such event AAA shall be entitled to charge a fee for the management of the dispute for services rendered moreover, such payments shall be based on time expended by AAA in attending to all such matters not exceeding 25 per cent of the Supreme Court scale;
  - l. To waive the Client's right to require solicitors to submit an itemised bill of costs in the taxable form in respect of any legal services rendered. The Client shall indemnify AAA for any loss occasioned by the revocation of the authority to appoint solicitors or about the waiver of the requirement to submit the said itemised bill of costs.
4. Charges Payable by the Client: The Client shall be liable to pay the following charges to AAA:
- a. Such mercantile agent, debt collection and general business and advisory service subscription fees and or rates as having been agreed upon between the parties;
  - b. Such reasonable handling fees or administration fees to cover the cost of attending to the management of any file or any process about it if this does not include any out of pocket expenses and disbursements incurred by AAA;
  - c. Such reasonable out of pocket expenses and expenditures incurred by AAA including any cost which has increased due to circumstances beyond the control of AAA;
  - d. All legal costs and disbursements not hereinbefore referred to incurred by AAA in the reasonable prosecution of any matter in which AAA had express or implied authority to instruct solicitors;
  - e. All charges payable by the Client shall always be payable in advance to AAA;
  - f. In the event that the Client terminates this Agreement in circumstances where debt recovery has already been rendered, but collection has not been finalised; AAA shall be entitled to charge the rate where it can be shown that the debt was recovered (directly or indirectly or paid to a third party or in-kind) within 12 calendar months of the termination. Moreover, where AAA is in the process of finalising collection or settlement of debts or where debts have not been collected then AAA is entitled to either finalise the same where the collection is reasonably imminent.
5. Exclusions: AAA will not bear any responsibility liability or risk in respect of the following:
- a. The negligent acts of omission or commission or those of its officers' agents or employees or by contingencies beyond its control in procuring compiling collecting interpreting reporting communicating or delivering information contained in responses to enquiries by the Client;
  - b. Any consequential loss or damages incurred by the Client or any third party or any person about those matters referred to in this clause and relying upon the same. Moreover, if some liability may attach to AAA then it is at this moment agreed by the parties herein that the full extent of liability of AAA shall never exceed the cost of having the said information supplied by AAA to the Client;
  - c. The correctness completeness merchantability or fitness for a purpose for information or matter supplied by the Client to AAA. Moreover, in the event, that this does occur AAA shall be entitled to charge additional

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costs to the Client to remedy check and substantiate any such information so supplied without obtaining the further consent of the Client.

d. The legal costs of the Client incurred during the recovery of any debt of the Client or AAA.

6. Priority of Payment of AAA Charges: AAA shall be entitled to priority of payment of all its fees charges and disbursements payable under this Agreement by the following terms and conditions:

- a. AAA in its discretion shall be entitled to demand at any time and from time to time payment of any such fees in advance of any such service or disbursement being rendered or incurred;
- b. AAA in its absolute discretion shall be entitled to withdraw forthwith, or at any time and from time to time any such fees (as may be held by AAA in a bank account or otherwise) in such manner as AAA is entitled to charge under the terms and conditions of this Agreement;
- c. AAA in its absolute discretion shall be entitled to debit and credit any such amount (as AAA may subjectively believe it is entitled to account for) in any account or statement forwarded to the Client at any time and from time to time. Moreover, such account and or statement so forwarded to the Client shall be prima facie evidence of its correctness, and there shall be a presumption of the same, but this shall be subject to such proper adjustment after that as may be reasonable in the circumstances;
- d. AAA in its absolute discretion shall be entitled to receive payment of its fees in respect of any amounts of money held by AAA in priority to any other payment due to the Client;
- e. All money held in any bank account by AAA on account of the Client at any time and from time to time shall be subject to the security granted to AAA under this Agreement. The security shall be such that the Client does at this moment encumber the same in favour of AAA (to the full extent of the total debt payable to AAA by the Client). The security is on the proviso that the said payment was made before any act of insolvency by the Client. Moreover, as of the date the money was paid, the money shall after that forthwith be subject to this security (in favour of AAA). Furthermore, it will thereby amount to such sufficient security to grant it priority over any other competing creditor or interest to the fullest possible extent whatsoever, AND any withdrawal or payment of the whole or any part thereof shall not as a consequence thereof be construed as a preferential payment under the laws of insolvency generally.

7. Payment of Accounts: AAA shall be entitled to render accounts either in advance or arrears AND:

- a. This clause is a fundamental clause of this Agreement;
- b. If the Client defaults in the payment of any single account then, in the sole discretion of AAA, the whole amount payable by the Client in respect of all matters shall become payable forthwith;
- c. Payment of any subscription fee payable under this Agreement is a condition precedent;
- d. AAA shall be entitled, in his sole discretion, to charge interest on any unpaid account which is payable by the Client AND the Client shall be required to pay interest on the same at the rate of ONE PER CENTUM per month until the whole of the outstanding account has been paid;
- e. AAA is entitled to hold all property as security for payment of any outstanding account payable by the Client, and the date of commencement of this security shall be the date in this Agreement.

8. AAA's Remedies: - In the event, the Client defaults in respect of any one or more of the clauses of this Agreement is made by the Client: - AAA shall be entitled forthwith to terminate this Agreement and or suspend the operation of this Agreement for a period not exceeding six calendar months. Additionally, AAA is entitled to payment of all costs and or disbursements incurred by AAA and or institute legal proceedings and or enforce or execute against such collateral security (if any) as AAA deems fit.

9. Time: Time shall be of the essence in all things in this Agreement.

10. Severance: - If any of the provisions of this Agreement shall be in contravention of any subordinate statutes legislation common law and or equity. In such event, such provision/s shall be severable from this Agreement and shall be null and void and shall not be enforceable by either party to this Agreement AND the balance and remainder of this Agreement shall remain unaffected.

11. Notices: - Any notice to be given under this Agreement shall be in writing. The notice shall be served by leaving such note at the address of such party as described herein (by sending such notice by personal or postal service or email or facsimile transmission) or such new address notified (in writing) by the parties. Where there is more than one party, then service on one party shall be deemed to be duly served on both or all the parties.

12. Entire Agreement: This Agreement contains and embodies the whole and only agreement between the parties. There are merged herein all prior, and collateral representations promises and conditions regarding the same and any representation promise guarantee or condition not incorporated herein shall not be binding upon either party unless the same is in writing and executed by both parties notwithstanding any oral agreements to the contrary.

13. Jurisdiction: The State and the Laws of South Australia shall have absolute jurisdiction about all matters contained herein.