

Live eftpos

THE FINE PRINT
MERCHANT TERMS & CONDITIONS

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1.0 INTRODUCTION

This booklet sets out the standard terms and conditions applying to the acceptance of Cards under various types of Merchant Facilities provided by us.

If we approve an application from you for a Merchant Facility, we will set up a Merchant Identification Number (MID) for you and send you an offer letter (the "Letter"). Included with the Letter will be:

- this booklet;
- the Merchant Operating Guide;
- the booklet "Protecting Your Business Against Credit Card Fraud"; and
- the booklet "Your Guide to the Payment Card Industry Data Security Standards".

If you accept our offer, as described below, the above listed documents, the Letter, the Application for New Merchant Facility/Upgrade and any Manuals we give you will comprise your legally binding contract with us ("the Agreement").

Please note we have a number of Merchant Facility products. Some of these products require you to enter into an MSA Contract. If we agree to provide you with one or more of these products, your legally binding contract will consist of the MSA Contract and the other documents which we notify you will govern your use of that product(s) (such as, but not limited to, a Product Module).

You may accept the offer contained in the Letter in any of the following ways:

- (a) by commencing to process Transactions through the Merchant Facility;
- (b) taking delivery, either of any Equipment enabling the processing of Transactions under the Merchant Facility, or of any materials to be used by you during the currency of the facility; or
- (c) if you are an eCommerce Merchant, by contacting our Merchant Help desk to obtain a MID and Merchant Category Code.
- (d) if you are a mobile merchant, by receiving your username

If you accept our offer in a manner outlined above, you undertake to us:

- (i) to observe at all times your obligations set out in the Agreement;

(ii) to execute any directions and authorities we require to give effect to any of your obligations under the Agreement; and

(iii) not to enter into any agreement similar to the Agreement with any other financial institution while the Agreement is in operation.

If you do not wish to accept our offer of a Merchant Facility, you must immediately contact us to withdraw your application whereupon we shall cancel your MID. Even if you have not done any of the things set out in sections 1(a), (b) or (c), you will be deemed to have accepted our offer if you have not contacted us to withdraw your application within seven (7) business days after the date of the Letter.

If we approve a subsequent application from you for another type of Merchant Facility, the terms and conditions set out in our letter for that Merchant Facility will apply not the Agreement.

2.0 DEFINITIONS

In this booklet unless the contrary intention appears:

- (a) **“Account”** means any account nominated by you for any purpose under the Agreement (including settlement, Chargeback or billing purposes);
- (b) **“ADC” (being an Account Data Compromise)** means any event whereby Live eftpos or you (or any of your officers or employees), or any Service Provider facilitating the storage, transmission or processing of card payments for or on your behalf, suspect or have confirmation of unauthorised access to Cardholder Data;
- (c) **“Agreement”** has the meaning given to it in clause 1;
- (d) **“Authorisation”** means the response to you authorising a Card to be used for a particular Transaction;
- (e) **“Card”** means:
 - a valid financial Transaction Card issued by a member or affiliate of MasterCard® on which the MasterCard marks appear;
 - a valid financial Transaction Card issued by a member or affiliate of Visa on which the Visa marks appear;
 - a valid financial Transaction Card capable of acceptance under the eftpos mark issued by an Australian bank or financial institution;
 - a Charge Card;
 - any other valid financial Transaction Card that is

issued under any loyalty programme; or
any other financial Transaction Card which we request
you and you agree to honour;

- a valid financial Transaction Card issued by a member or affiliate of American Express on which the American Express marks appear;
- (f) **“Card Scheme”** means the MasterCard, Visa, American Express, Diners Club, Discover, JCB and EPAL or any other Card Scheme provider that the Bank is a member of or participates in;
- (g) **“Cardholder”** means a person to whom a Card has been issued;
- (h) **“Cardholder Data”** means the account information of a Cardholder;
- (i) **“Chargeback”** means a debit entry to your Account processed by us, and is the reversal of a credit previously settled to you, as a result of an invalid Transaction (as described in clause 7.0);
- (j) **“Charge Card”** means a Card issued under any one of the following Card Schemes: American Express, Diners Club, Discover or JCB.
- (k) **“Credit Card Transaction”** means a Transaction where the details of a MasterCard, Visa Card, American Express Card or Diners Card have been presented and the Transaction is processed using either;
- a paper credit card sales voucher;
 - a Terminal without a PINpad; or
 - a Terminal with a PINpad and selecting the “Credit” button on the PINpad; or
 - any bank approved electronic device or internet based interface.

In this booklet, this definition applies even where the ultimate destination of a MasterCard or Visa Card Transaction may be a deposit account;

- (l) **“Debit Card Transaction”** means a Transaction performed using a Card where a cheque or savings account is selected using either a PINpad or an EFTPOS paper sales voucher;
- (m) **“Dynamic Currency Conversion” (DCC)** means a facility which enables Cardholders who have Cards issued by a non-Australian financial institution to elect to pay for goods or services in Australian dollars or their local

currency at the time of the purchase. DCC is only available in a number of selected non-Australian currencies and on eligible Merchant Facilities;

- (n) **“eCommerce Merchant”** means a Merchant who has been authorised by us to accept Credit Card Transactions whilst conducting the sale of goods or services with a Cardholder electronically over the internet or other network;
- (o) **“eCommerce Merchant Facility”** means any method and/or device utilised by you, or by any Service Provider that may be used to engage in the acceptance or transmission of Credit Card Transactions or storage of Credit Card payment details. This definition includes but is not limited to all software, hardware, databases, digital image and physical records used and/or maintained by you and/or the Service Provider(s);
- (p) **“eCommerce Transaction”** means a Credit Card Transaction between you and a Cardholder where the Cardholder sends Card data to you over the internet or other network (including via a Website), regardless of how the data is transmitted from you to us;
- (q) **“eftpos”** means the Electronic Funds Transfer at Point of Sale system;
- (r) **“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;
- (s) **“Electronically”** means electronic communication to your nominated electronic address or making particulars of changes available at our website www.liveeftpos.com.au;
- (t) **“EMV”** (or Europay/MasterCard/Visa) means the method of authenticating credit or debit card payments using a security microchip, containing personal data embedded in the credit or debit card;
- (u) **“EPAL”** means eftpos Payments Australia Limited;
- (v) **“EPAL Scheme Rules”** means the EPAL Scheme Rules published by EPAL on its website from time to time;
- (w) **“Equipment”** includes any Terminal, manual imprinter, sales vouchers, power cords, car adapters, docking cradles, the user and technical manuals and any other materials or items supplied by us from time to time;
- (x) **“Floor Limit”** means the total value of sales or cash out which you are authorised from time to time to make to a Cardholder on any one occasion in respect of any one Card without obtaining an authorisation number from us. We may change your authorised floor limit at any time by

giving notice to you;

- (aa) **“Law”** includes any law, statute, regulation, ordinance, proclamation, by-law, statutory instrument or order, Rules or codes of conduct issued by regulatory bodies;
- (bb) **“Manual”** includes the Quick Reference Guide, User Guide, Merchant Operating Guide and any other practical operating instructions we provide;
- (cc) **“MasterCard”** means MasterCard International Incorporated;
- (dd) **“Merchant Facility”** means the Live eftpos approved facility made available to you to enable you to accept payments using Cards;
- (ee) **“Mobile Merchant”** means a Merchant who has been authorised by us to accept Credit Card Transactions whilst conducting the sale of goods or services with a Cardholder electronically over a mobile device, tablet or internet;
- (ff) **“Multi Merchant”** means one of a number of merchants who have individual merchant agreements with Live eftpos and transact their business through one shared Terminal;
- (gg) **“Multi Merchant Facility”** provides a means whereby one of a number of merchants may process Transactions for their individual businesses through one shared Terminal;
- (hh) **“PAN”** means the Primary Account Number or Cardholder account number commonly located on the front of a Card;
- (ii) **“Payment Gateway”** provides a secure method for authorising Credit Card Transactions over the internet through a system accredited by Live eftpos;
- (jj) **“Payment Review”** A process by which Live eftpos reviews certain potentially high-risk payment transactions;
- (kk) **“PA-QSA”** means Payment Application Qualified Security Assessor;
- (ll) **“PCI PA-DSS”** means Payment Card Industry Payment Application Data Security Standards, developed and updated by the PCISSC from time to time, and applying to software vendors and other vendors developing payment applications that store, process or transmit Cardholder Data, as part of an authorisation or settlement process, where these payment applications are sold, distributed, or licensed to third parties;
- (mm) **“PCI PTS”** means Payment Card Industry PIN Transaction Security;

- (nn) **“PCIDSS”** means Payment Card Industry Data Security Standards. This refers to the data security standards mandated by Visa and MasterCard to facilitate protection of cardholder payment data from unauthorised access, which is applicable to any persons who stores, processes or transmits card data;
- (oo) **“PCISSC”** means the Payment Card Industry Security Standards Council, being a not-for-profit organisation responsible for the development of the PCIDSS, the PCI PTS and the PCI PA-DSS standards;
- (pp) **“Person”** includes a company or organisation;
- (qq) **“PIN”** means personal identification number;
- (rr) **“PINpad”** means the device designed as part of, or for attachment to, a Terminal and which contains an alpha/numeric function keyboard by which the user nominates an account and enters a PIN;
- (ss) **“PPSA”** means the Personal Property Securities Act 2009 (Cth);
- (tt) **“Primary Merchant”** means the merchant of a Multi Merchant facility who agrees to take full responsibility for the physical terminal in accordance with clause 3.0 of this booklet;
- (uu) **“Quasi-Cash Merchant”** is a merchant who carries out a Quasi-Cash Transaction;
- (vv) **“Quasi-Cash Transaction”** means a Transaction between you and a Cardholder where you sell items that are directly convertible to cash. Examples include (but are not limited to) money orders, traveller’s cheques, precious metals and foreign currency;
- (ww) **“Recurring Transaction”** means when you are authorised to make regular drawings on a Card at predetermined intervals (not to exceed one year between Card Transactions) with the Cardholder’s written authority;
- (xx) **“Rules”** means the Card Scheme rules set by Card Schemes from time to time including the EPAL Scheme Rules;
- (yy) **“Secure Socket Layer (SSL)”** means the encryption technology used on a server that encrypts important data such as credit card numbers and other information when it is being stored or passed from one computer to another;
- (zz) **“Security Interest”** includes any security interest under the PPSA, mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement or other security interest or encumbrance;

- (aaa) **“Sensitive Authentication Data”** includes any full magnetic stripe, PIN verification or code otherwise known as CAV, CVC, CVC2, CVV, CVV2, PVV, PIN and PIN Block data and excludes the information listed in clause 4.12;
- (bbb) **“Service Provider”** means any entity or third party that stores, processes or transmits card data on your behalf or you utilise to assist with the acceptance of card payments including but not limited to Payment Gateways and Web Hosting Providers;
- (ccc) **“Shopping Cart Vendor System”** means the data processing system comprising the hardware, software and telecommunication network utilised by a shopping cart vendor to provide services including any third party systems connected to a shopping cart vendor’s hardware, software and telecommunications network;
- (ddd) **“Small Business”** means a business having:
- (i) less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods, or
 - (ii) in any other case, less than 20 full time (or equivalent) people;
- (eee) **“Subsequent Merchant”** means a merchant who is a member of a Multi Merchant facility and transacts business through a shared Terminal for which the Primary Merchant has full responsibility for the physical Terminal;
- (fff) **“Terminal”** means the hardware used to accept Card payments and the software that is installed on that eftpos hardware, and includes any replacement hardware. **“Software”** includes the operating system, application Software, Live eftpos value added application and the terminal management software, and any updates issued from time to time;
- (ggg) **“Terminal Access Services”** means access to the Live eftpos Transaction network; services that facilitate Transactions, including the provision of the installation, maintenance, repair, training and other services, and the provision of a Terminal (including the right to use the software) of the type and configuration ordered by you;
- (hhh) **“Trade Mark”** means any logo, symbol, trade mark, trade name, service mark, brand name, domain name, company or trading name, trading get up and similar right, whether registered or unregistered, belonging to us or any related body corporate;
- (iii) **“Transaction”** includes a Debit Card Transaction and Credit Card Transaction as well as Sale Refunds as defined in clause 6;

- (jjj) **“Visa”** means Visa Inc.;
- (kkk) **“Website”** means an interface or portal published by a merchant to facilitate an eCommerce Transaction which includes but is not limited to a web page, web portal or smart phone application;
- (lll) **“Live eftpos”, “we”, “us” or “our”** means Live eftpos ACN 150 373 069 and any related body corporate.
- (mmm) **“Web Application”** means the software that your business utilises to advertise the sale of goods and/or services over the Internet;
- (nnn) **“Westpac Group”, “Westpac Bank”** means Westpac Group ABN 33 007 457 141;
- (ooo) **“You”** means the person to whom the letter is addressed. If there is more than one, it includes any one or more of you. Where there is more than one of you, each of you is individually liable under the Agreement. This liability will continue even where one or more of you is not liable or is no longer liable.

3.0 EQUIPMENT

- 3.1 You must at your expense, prepare (and keep prepared) at your premises a site which meets our specifications for the installation of Terminals as outlined in the Merchant Operating Guide (such as a power supply or telephone line if applicable) for the exclusive use of your Equipment.
- 3.2 You will allow (and where applicable reserve the right to permit) at all times our representatives to enter your premises and access the Equipment to install, move, maintain, repair, replace or remove the Equipment or to ensure that you are complying with the Agreement, during business hours or at any other reasonable time. We may disrupt your business activities.
- 3.3 Upon initial installation of a Terminal we will provide training (including via the phone, internet or some other method) on the use of the Terminal to the individual(s) you designate. These people must be available at the time of installation. You are responsible, at your cost, to train all employees, contractors or agents who access the Terminal. You must not permit any untrained or unauthorised persons to operate or otherwise use the Terminal.
- 3.4 If a Terminal malfunctions, or for any reason is not able to process Transactions, you should report it immediately to us. We will endeavour to remedy the problem and may arrange for the Terminal to be repaired or replaced at our discretion. You must not carry out a Transaction using a

malfunctioning Terminal. It is your responsibility to ensure that other means are available at short notice to enable you to continue to process Transactions. These might include the use of a manual card imprinter or identifying to your customers the location of the closest automatic teller machine.

- 3.5 We may supply you with Equipment, Manuals, Card decals and promotional material on agreed terms and conditions from time to time. You shall display prominently at each of your premises all signs, advertising and promotional material we supply to you. You shall not use any advertising or promotional material in relation to the Cards, except as authorised by us.
- 3.6 For the duration of the Agreement you must:
- (a) use and operate the Equipment with reasonable care only in accordance with the user and technical manuals and any instructions provided to you by us and allow only your fully trained staff to operate the Equipment;
 - (b) allow only us or our representatives to maintain, replace (including any upgrades performed by us from time to time) or remove the Equipment;
 - (c) allow us to upgrade the Equipment as required including when industry or security standards change. If you use a Terminal provided by someone else you must upgrade it when we tell you;
 - (d) keep the Equipment under your control and secure, and (unless it is a mobile Terminal) at the premises at which it was installed (or at such other location as is agreed by us);
 - (e) insure the Equipment against theft, loss, damage, vandalism, fire, flood, earthquake, misuse or neglect, for its full replacement value;
 - (f) take proper care of the Equipment. You are responsible for any costs incurred in the replacement or repair of the Equipment due to theft, loss or damage;
 - (g) not process a Card Transaction without presentation of a Card, unless we have given you authority to accept mail and telephone orders (MOTO) from Cardholders or you are an eCommerce Merchant;
 - (h) not process a Transaction by manually keying details into the Terminal unless previously agreed by us or you are an eCommerce or mobile Merchant;
 - (i) use reasonable care to detect forged or unauthorised signatures or the unauthorised use of a Card;
 - (j) immediately alert us, if you suspect that the Equipment

- has been tampered with;
- (k) not modify the Equipment in any way.
- 3.7 Title in the Equipment, Manuals, Card decals and promotional material we provide you remains with us or our suppliers and is not transferred to you. You must not sell, assign or encumber them, nor provide them to any third party. You must not remove any plates, stickers or markers which are used to identify the Equipment and/or the owner of the Equipment. We may, without your consent, give a third party any form of interest in, or security over, the Equipment or all or part of your agreement with us.
- 3.8 We may at any time replace any Equipment with new Equipment. If we replace any Equipment we will notify you promptly of any additional amounts payable by you to us.
- 3.9 The Terminal is supplied strictly to enable you to process Card Transactions under the Agreement, and any other kinds of Transactions which may subsequently be regulated by the Agreement.
- 3.10 We only grant you a non-transferrable non-exclusive licence to use the Equipment solely for your lawful Transactions in Australia.

4.0 PROCESSING TRANSACTIONS

- 4.1 You will accept all valid Cards and process all Transactions in accordance with all applicable Laws, any obligations in the Agreement and any direction of Live eftpos in carrying out activities related to your Merchant Facility.
- 4.2 All Transactions are to be processed in Australian dollars except where you have been approved for Dynamic Currency Conversion (DCC). We may pay you commissions on currency conversion Transactions at the rate we specify from time to time.
- 4.3 You must obtain prior authorisation for the total amount of the sale if it exceeds the applicable Floor Limit when processing Transactions via a Terminal. For all telephone, facsimile or online Transactions you must obtain prior authorisation. You are responsible for verifying the identity of the Cardholder (for example by ensuring that the signature or any other Cardholder authorisation on the voucher is not forged, obtained by fraud or deception, or unauthorised) and that the Transaction is not otherwise invalid (refer to clause 7).
- 4.4 Throughout Cardholder contact, you must prominently and unequivocally inform the Cardholder of your identity

so that the Cardholder can readily distinguish you from any supplier of goods or services to you or other third parties. You must also provide notice to the Cardholder that you are responsible for the Transaction, including the goods or services acquired by use of the Card, as well as for related customer service, dispute resolution and performance of the terms and conditions of the Transaction.

- 4.5 You are responsible for ensuring that a Transaction is approved or declined before providing a Cardholder with goods and/or services. We take no responsibility and will not provide compensation where goods or services are provided for declined Transactions.
- 4.6 You shall not, either directly or indirectly, process any Transaction or present any voucher to us which was not originated as a result of a Transaction between you and a Cardholder to whom you have actually supplied the goods or services for which the Card was used in payment unless you have been approved by us to process prepayment Transactions and the Cardholder has expressly authorised the Transaction.
- 4.7 You shall not split a Transaction into two or more Transactions on the same Card to avoid having to obtain an authorisation. You will not be considered to be avoiding having to obtain an authorisation by splitting a Transaction in the following instances:
 - (a) when the Cardholder bills a portion of the Transaction to a card and pays the remaining balance by cash or cheque only; or
 - (b) when the goods or services will be delivered or performed after the Transaction date, and one voucher represents a deposit, and the second voucher represents payment of the remaining balance and the second voucher is conditional upon the delivery or performance of the goods or services.
- 4.8 You shall not undertake any Transaction:
 - (a) representing a refinance or transfer of an existing Cardholder's financial obligation to you (whether or not you consider that the obligation is not collectable); or
 - (b) as an alternate way of accepting payment due to the dishonour of a Cardholder's personal cheque.
- 4.9 Where a manual Card imprinter has been provided to you, you must not use the manual Card imprinter at the same time as the Terminal. You can only use the manual Card imprinter if the Terminal is not capable of normal operation (unless previously authorised by us) and the Terminal malfunction has been reported to either our

Helpdesk or if the Terminal has been issued by a third party, the issuer of your Terminal. For each Transaction processed manually by the imprinter, you must obtain all necessary authorisations as instructed by us. You must present all Card Transaction information to us within 3 business days of the Transaction. We may charge the Transaction back to you if there is any delay in providing this information.

- 4.10 If required by law, we will forward to you monthly statements. Statements will take the form of Tax Invoices. This may be in electronic format.
- 4.11 Under no circumstances should you request or allow any Cardholder to disclose their personal identification number (PIN), password or other code or information that can be used to access a customer's account, for you to retain. You should only retain a Card if we ask you to do so. Without limiting your other obligations in this clause 4.11, you will not disclose, give (other to us or unless required by law), buy, sell or exchange a Cardholder's name or Card details to any person.
- 4.12 Subject to the next paragraph, you may only store the following Cardholder Data:
 - (a) PAN rendered unreadable in compliance with the PCI DSS;
 - (b) Cardholder name;
 - (c) card expiry date;
 - (d) extended service code (used for Smart Card processing).

You must store this information securely such that the information cannot be reasonably compromised. You should only store the above Cardholder Data if there is a genuine business need to do so. If the genuine business need no longer exists, the relevant Cardholder Data must be removed in accordance with the PCIDSS.

- 4.13 Under no circumstances will you store Sensitive Authentication Data post Authorisation. All Cardholder Data elements not listed in clause 4.12 are considered to be Sensitive Authentication Data and are not to be stored under any circumstances after Authorisation.
- 4.14 Under no circumstances should you request or use Credit Card details provided via email for payment of the provision of goods or services. If provided, you must immediately securely destroy these details.
- 4.15 You must not process or encourage Transactions through the Merchant Facility that relate to, or are in connection with, the sale of goods or services that are in contravention of the laws of Australia, the laws of your

jurisdiction or the laws of the Cardholder's jurisdiction (including but not limited to the violation of export controls, obscenity laws or gambling laws). You must not offer for sale goods or services, or use or display materials, that are illegal, obscene, vulgar, offensive, dangerous or are otherwise inappropriate. You are required to comply with any industry code of conduct specifically regulating or prohibiting the retention by you of Cardholder's personal identification numbers, passwords or other codes or information that can be used to access a Cardholder's account.

- 4.16 We will not be responsible or liable for any delay that might occur in the processing of payments or any lost Transactions that might occur where the Merchant Facility is not available for any reason. This includes instances where cash-out Transactions are not available.
- 4.17 We are not liable for any loss which you may suffer resulting from our failure to credit an Account due to technical or administrative difficulties relating to the banking system used for the transfer of funds. This also includes instances where you Merchant Facility is unable to settle for any reason.
- 4.18 We may notify you if you have excessive Chargebacks and/ or fraudulent Transactions in any particular category or if a particular category is at risk of exceeding the threshold. You must take immediate action to rectify the situation. Failure to resolve the cause of the problem, in accordance with our instructions may result in Chargebacks or non-compliance Card Scheme fines which may be passed on to you.
- 4.19 If we determine that your conduct in processing Transactions may cause loss to you or Live eftpos, we may require you to replace the card imprinter with a Live eftpos Terminal and/or withdraw any authorisation for card-not present Transactions.
- 4.20 You are required to obtain and hold Cardholder authorisation for all Recurring Transactions and ensure the nominated card is within current validity at all times.

5.0 SURCHARGING

- 5.1 You agree to:
 - (a) charge a Cardholder a price for goods and services comparable to the price you charge for cash for those goods and services; and
 - (b) honour a Card tendered by a Cardholder for the payment of goods or services to be supplied by you to the Cardholder in accordance with the Agreement.

- 5.2 If you charge a fee for Transactions, you must clearly disclose any surcharges that might apply before processing the Transaction.
- 5.3 You must limit the cost of the surcharge to the reasonable cost of accepting the Transaction.
- 5.4 Before a Transaction is completed, you must allow the Transaction to be cancelled, without the cardholder incurring any cost after advising the Cardholder of the total Transaction amount.
- 5.5 You acknowledge that Card issuers may from time to time change the classification of a Card (i.e. standard or premium) and, as a result when applying a surcharge rate to a Cardholder, it cannot be guaranteed that the classification of the Card on which you have based the surcharge will be the same as the classification on which you are charged your merchant service fee in relation to the same Transaction.
- 5.6 You will pay any fines associated with your noncompliance of Scheme surcharging rules.
- 5.7 Live eftpos will not allow any Terminal to automatically surcharge more than the reasonable cost of accepting a transaction

6.0 SALE REFUNDS

- 6.1 You shall establish a fair policy for exchange or return of merchandise and (where applicable) for the handling of disputed amounts, give credit upon each return, not in cash, but by means of a sales refund Transaction ("Sale Refunds") as set out in the Manuals.
- 6.2 Subject to clauses 6.3 to 6.6, you may process Sale Refunds by transferring the amount of the refund from your Account to a Card account. Sale Refunds may only be processed to a Card where there was an initial valid Transaction on that Card. A Sale Refund must not be provided to a different Card, in cash or by cheque. If your Terminal allows Sale Refunds, the Sale Refund should be refunded to the Cardholder through your Terminal. The provisions in clauses 6.3 to 6.6 inclusive do not apply where the Terminal has been supplied by somebody other than Live eftpos. You should refer to the agreement with whoever supplies the Terminal to you for their requirements (if any).
- 6.3 In order to utilise Sale Refunds via a Terminal:
 - (a) you must initiate a password; or

- (b) for some products, we will provide you with a password which you must change immediately on receipt by telephoning our Help Desk.

You may not process a Sale Refund using a Terminal unless you enter the password prior to each Transaction.

- 6.4 Where we have issued you with a password, we shall not be responsible for any unauthorised Sale Refund processed through your Terminal using the password we have issued.
- 6.5 You shall control and be responsible for access to the Terminal Sale Refund password. You should change your password if for any reason you think it has become known to persons other than those who you have authorised to complete Sale Refunds.
- 6.6 We shall not be responsible for any unauthorised Sale Refunds processed through your Terminal, even if those Sale Refunds may cause your Account to be debited by the amount of the Transaction.
- 6.7 If we do not supply electronic Terminals to you we will not be responsible for any unauthorised Sale Refunds processed through your Terminal.

7.0 INVALID TRANSACTIONS

- 7.1 A Transaction is invalid if:
 - (a) the Transaction it records is illegal or you do not have a valid regulatory licence or authorisation to process the Transaction;
 - (b) it was processed after your Merchant Facility or Agreement was terminated in accordance with clause 23 or whilst it was suspended in accordance with clause 28;
 - (c) the Transaction is split into two or more Transactions on the same Card or over two or more cards to avoid having to obtain an authorisation for the total amount of the sale (each Transaction will be invalid);
 - (d) the signature on the voucher or any other Cardholder authorisation on the voucher is forged, obtained by fraud or deception, unauthorised or otherwise invalid;
 - (e) the particulars on the voucher are not identical with the particulars on the Cardholder's copy;
 - (f) the Card relating to the Transaction is not current at the time of the Transaction;

- (g) the voucher presented to us is incomplete or illegible;
- (h) the Card was used without the Cardholder's authority;
- (i) the Transaction did not originate from an act between you and the Cardholder;
- (j) you have not retained your copy of the receipt or voucher signed by the Cardholder for 18 months from the date of the Transaction or you do not produce to us the tally roll receipt or voucher within five business days of a request by us for production of that receipt;
- (k) it is a Credit Card Transaction and:
 - (i) it is not for the supply of goods or service to a genuine customer;
 - (ii) it represents a transfer of funds, not supply of goods or services;
 - (l) it was submitted as a Transaction authorised by us, where an authorisation was never obtained from or given by us;
- (m) it is a Sales Refund and:
 - (i) no corresponding sales Transaction exists for the Card on which the Sales Refund is made or purported to be made;
 - (ii) it represents the payment of wages/salary;
 - (iii) it represents the transfer of funds; or
 - (iv) insufficient funds are available in the Account to cover the refund amount;
- (n) you fail to comply with all messages displayed on the Terminal in relation to the Transaction;
- (o) where the Transaction is not processed by a Terminal:
 - (i) the voucher used is incomplete or illegible;
 - (ii) you imprinted a voucher for the Transaction contrary to a prior message displayed on a Terminal in relation to the Cardholder or the Transaction; or
 - (iii) the voucher does not bear the Card imprint;
- (p) you are unable to demonstrate the validity of the Transaction to our satisfaction;
- (q) you do not observe the Agreement in relation to the Transaction; or

- (r) you do not respond to voucher requests or other supporting information required by us within the timeframes specified by the applicable Rules.
- 7.2 A telephone, mobile, Internet or mail order Transaction is also invalid if the Transaction is not authorised by the Cardholder, or in the case of a standing authority, the authority has expired or was cancelled prior to the Transaction. You acknowledge that authorisations obtained provide no guarantee that the person providing the Card details is the Cardholder.
- 7.3 We may refuse to accept, or may Chargeback, any Transaction if:
- (a) the Transaction is invalid or we consider it to be invalid;
 - (b) the Cardholder claims the Transaction is invalid or disputes liability for any reason;
 - (c) you process a cancelled Recurring Transaction;
 - (d) the Cardholder asserts a claim for set-off or a counterclaim.

Chargebacks may be processed to your Account up to 18 months after the date of the original Transaction.

- 7.4 You undertake to abide by industry best practices to minimise fraud and chargebacks as set out in the Manuals from time to time.

8.0 YOUR ACCOUNT

- 8.1 If you request and we agree, you may use one account for settling transactions you process and one for paying your fees and other amounts you owe us (for example Chargebacks). You must advise us of the details of the Account. We will credit your Account with the amount of the Transactions processed. You must notify us immediately if your Account details change. If your account is with another financial institution, you will need to give us a new Direct Debit Authority. In some circumstances (e.g. eCommerce Merchant Facilities) it will be necessary for Transactions to settle to a Westpac Bank account. You will be advised of this requirement at the time of application.
- 8.2 We can debit your Account, Credit Card or Charge Card (and you authorise us to do so) with the following:
- (a) all service charges, fees and other charges set by us and which are notified to you from time to time;
 - (b) all government charges, duties and taxes (including GST)

- that apply in relation to the Agreement;
- (c) the full amount of all Sales Refund you process, less any charges we have already debited to your Account relating to the Transaction;
 - (d) any overpayments or credits we have made in respect of Transactions due to errors or omissions;
 - (e) the value of Transactions which are invalid;
 - (f) any Chargeback;
 - (g) any moneys paid by us to you for Card Transactions where we are investigating the validity of the Transaction or a suspected Chargeback;
 - (h) any fees, fines or penalties that we are required to pay to Card Schemes pursuant to the Rules as a direct or indirect result of your failure to observe your obligations under the Agreement including any procedures set out in the Manuals;
 - (i) a Card Transaction not being a valid Transaction or being charged back to us;
 - (j) our maintenance of the facilities we supply you under the Agreement;
 - (k) any deficiency in a payment made by you following an audit or a check by us of your Merchant Facility or Account;
 - (l) all penalties and costs incurred by us as a result of an ADC or your non-compliance to the PCIDSS (including your Service Providers) including but not limited to the cost of all forensic investigations as required by us or the Card Schemes;
 - (m) any other money you owe us under the Agreement; and
 - (n) reasonable enforcement expenses under the Agreement, including any amount reasonably incurred by the use of our staff and facilities, in the event of a breach of the Agreement.

If we debit the Account, Credit Card or Charge Card in which there are insufficient funds, then the payment may be reversed and you will be regarded as not having made the payment in which case you must make the payment to us as soon as possible.

- 8.3 You will pay on demand the amount of any debt you owe us under the Agreement which remains unpaid. Should you fail to pay any debt which you owe us we may commence enforcement action and report your default to

- a credit-reporting agency, which may affect your credit rating and your ability to obtain finance in the future. We may also set-off any amount due for payment by you to us against any amount due for payment by us to you.
- 8.4 We can also debit or credit your Account, Credit or Charge Card with the amount of any deficiencies or charges we establish are payable following an audit or check of your Account.
- 8.5 a) If:
- i. we have concerns about your solvency;
 - ii. you are involved in a disproportionately high number of Chargebacks or invalid transactions;
 - iii. we have commenced but not yet concluded reasonable investigations into any claimed Chargebacks or into the validity of any transactions processed by you; or
 - iv. we have concerns about you or your business, we may withhold release of the funds in the Account, or withhold or suspend payment of any money that would otherwise be owing to you, until further notice. We may also establish an Account in your name for the purpose of retaining funds for processing Transactions or Chargebacks.
- b) We may appropriate money you hold in your Account, or any other related Account with us, towards any and all amounts you owe us under the Agreement. If we do this, the balance of your Account will reduce by the amount used for this purpose. We will notify you promptly after exercising our right to appropriate money in your Account.
- 8.6 You are responsible for reconciling your sales and settlements for all Transactions. If you have any concerns about any missing amounts you need to contact us within 7 days from the date of the transaction to have it reviewed. Any disputes raised after this time will not be reprocessed.
- 8.7 You must reconcile the statements that we send you under the Agreement to ensure that payments to and from your Account have occurred in accordance with the Agreement. It is your obligation to check the accuracy of the statements. If you fail to notify us within 3 months of an incorrect fee being processed, and thus an incorrect amount was debited from your account or a payment should have been made to you, then you shall have no claim against us and the account with us will be deemed settled. This includes but is not limited to Terminal rental fees, minimum merchant service fees, termination fees

and transaction fees.

9.0 MY WEB - LIVE EFTPOS ONLINE PORTAL

- 9.1 You agree that if we grant you a logon/s for the purposes of accessing electronic copies of statements and submitting service requests to Live eftpos, that you are responsible for administering and managing access to the site.
- 9.2 We will not be liable for any unauthorised use of your logon/s or for any inaccuracy, error, delay or loss that any User incurs as a result of connecting to, downloading or accessing My Web - Live eftpos online portal, therefore you should keep your logon details secure and confidential. You must notify us of any changes to your users of My Web - Live eftpos online portal. If a User ceases to be employed by you, we must be notified immediately to cancel that user's access.
- 9.3 We reserve the right to suspend a user's access to My Web - Live eftpos online portal if we suspect that they are using My Web - Live eftpos online portal inappropriately or not in accordance with any instructions issued from time to time.
- 9.4 We make no guarantee that information available on My Web - Live eftpos online portal is accurate or correct at the time of viewing. My Web - Live eftpos online portal is subject to system maintenance and availability, therefore users should independently download or record information for their own record keeping purposes.

10.0 HOTEL/MOTEL RESERVATION GUARANTEE & ADVANCE ACCOMODATION DEPOSIT

- 10.1 This section only applies where you have been authorised to accept Credit Card Transactions to guarantee hotel/ motel reservations or advance accommodation deposits.
- 10.2 MasterCard and Visa have each arranged for their members a program that permits their Cardholders to guarantee reservations of hotel or motel accommodation by telephone and make deposits in advance towards accommodation reservations by using their MasterCard or Visa card.
- 10.3 You agree to:
 - (a) handle the reservations in accordance with the Rules;
 - (b) honour these reservations in all circumstances;
 - (c) cancel the reservation and, where necessary, issue a Sales Refund to the Cardholder if the Cardholder cancels

the reservation.

- 10.4 If there is a dispute, you shall accept a Chargeback where the Cardholder claims he/she cancelled the guaranteed reservation.
- 10.5 The following applies where you have been authorised to accept Credit Card Transactions to guarantee hotel/motel reservations only:
- (a) You agree to provide a confirmation code and (if applicable) a cancellation code, and advise the Cardholder to retain these in the case of a dispute;
 - (b) You must:
 - i. accept all cancellations prior to the specified time;
 - ii. not require cancellation notification more than 72 hours prior to the scheduled arrival date;
 - iii. if the Cardholder makes the reservation within 72 hours prior to the scheduled arrival date, ensure that the cancellation deadline is no earlier than 6.00pm merchant outlet time on the arrival date or date guaranteed;
 - iv. if you require that a Cardholder cancel before 6.00pm merchant outlet time on the date guaranteed, mail or email the cancellation policy, including the date and time that cancellation privileges expire, to the Cardholder;
 - v. if the Cardholder has not claimed or cancelled the hotel reservation service accommodations by the specified time, you must hold the rooms available according to the reservation until check-out time the following day. You may then complete a Transaction receipt that must contain the following:
 - Amount of one night's lodging plus applicable tax;
 - Cardholder's name, account number and expiration date; and
 - The words "No Show" on the signature line of the Transaction receipt.
- 10.6 You shall have the guaranteed room available for the arrival of the Cardholder. If for any reason you are unable to provide the room, you shall provide at no charge a comparable room for one night at some other establishment and a three minute local or long distance telephone call. You shall not have to hold accommodation available for subsequent nights if the Cardholder has failed to appear for their reservation guarantee by

checkout time following the first night of the guaranteed reservation.

11.0 EXPRESS CHECKOUT

- 11.1 This section only applies where you have been authorised to accept Credit Card Transactions to permit express check out from hotels or motels.
- 11.2 MasterCard and Visa have each arranged for their members a program that permits their Cardholders to check out of your establishment at the end of their stay without conducting the usual "checkout" process in person.
- 11.3 You agree to handle the express checkout Transactions as outlined in the Rules. You shall retain and make available to us the itemised hotel/motel bill. All disputes shall be resolved in accordance with the Rules as appropriate.

12.0 VEHICLE & EQUIPMENT RENTAL TRANSACTION

This section only applies to merchants that provide rental for vehicles and other equipment including but not limited to cars, boats, tractors, trucks, ride-on mowers and planes.

- 12.1 Vehicle and equipment rental merchants may not include charges in the rental Transaction that represent any of the following:
 - (a) the vehicle/equipment insurance deductible amount; or
 - (b) an amount to cover;
 - (i) potential or actual damages when the Cardholder waives insurance coverage at the time of the rental;
 - (ii) additional costs which includes but is not limited to, parking tickets, traffic violations or vehicle/ equipment repairs.
- 12.2 A charge for loss, theft or damage must be processed as a separate transaction from the underlying rental Transaction. The Cardholder must authorise the charge after being informed of the loss, theft or damage.
- 12.3 A charge for additional costs must be processed as a separate Transaction from the underlying rental Transaction. For additional costs relating to parking tickets or traffic violations you must support the charge with documentation from the appropriate authority including the license number of the rental vehicle, date, time, and location of the violation, statute violated, and

amount of the penalty.

- 12.4 For additional costs relating to vehicle/equipment repairs you must provide the Cardholder with written confirmation of the damage upon return of the vehicle/equipment, or for vehicles/equipment returned using an express drop off facility a written confirmation receipt must be sent within 5 business days. You must provide a reasonable estimate of the cost of repairs and obtain agreement from the Cardholder prior to processing the Transaction. We recommend that the Transaction be card present and that you verify the identity of the cardholder to minimise the likelihood of Chargebacks. The transaction receipt must include a statement indicating that the estimated amount charged for repairs will be adjusted upon completion of the repairs and submission of the invoice for such repairs. The final amount of the Transaction relating to the repairs may not exceed the Merchant's estimated amount by more than 15 percent. If the actual cost of repairs is less than the estimated amount, you must credit the difference to the Cardholder by processing a refund Transaction to the same Card account within 30 days.

13.0 QUASI-CASH TRANSACTIONS

- 13.1 This clause applies to Quasi-Cash Merchants conducting Quasi-Cash Transactions. To the extent that there is any inconsistency between this clause and the other provisions of the Agreement, this clause will apply.
- 13.2 You must identify the Cardholder as follows:
- (a) where the Card does not bear a photograph of the Cardholder, you must sight positive identification of the Cardholder, and indicate the type of identification sighted, including any serial number, on the Transaction receipt; or
 - (b) where the Card bears a photograph of the Cardholder, you must note on the Transaction receipt that you verified the Cardholder's identity by the photograph on the Card.
- 13.3 You must verify the following:
- (a) the signature on the Card matches the signature on the Transaction receipt and, where clause 13.2(a) applies, on the identification presented; and
 - (b) where clause 13.2(b) applies, the Cardholder resembles the person depicted in any photograph intended to be used as identification on the Card.
- 13.4 You must do the following before completing the Transaction:
- (a) compare the first four digits of the embossed Card account number to the first four digits printed below the

- Card account number; and
- (b) record the printed first four digits on the front of the Transaction receipt.
- 13.5 You must clearly disclose to the Cardholder any commission you charge for accepting a Quasi-Cash Transaction and include in the total Transaction amount, before completing the Transaction.

14.0 TRUSTEES

14.1 This clause applies where you are the trustee of a trust.

14.2 You confirm the following:

- (a) the trust is validly formed. Any relevant trust document is valid and complies with the law;
- (b) any copy of the trust document you have given us is a true and complete copy and discloses everything about the trust;
- (c) you are properly appointed as sole trustee of the trust;
- (d) you have always fully complied with the terms of the trust, and your duties and powers;
- (e) you have a full right of indemnity from the trust assets in respect of the Agreement;
- (f) you have properly signed the application form under the terms of the trust and in accordance with your duties and powers as trustee, or if there is any doubt and all beneficiaries have full legal capacity, you have obtained their consent;
- (g) the Agreement and the Transactions entered into under it are for proper trust purposes;
- (h) you have done everything required under the trust document to enter into the Agreement and the Transactions it contemplates;
- (i) none of the trust assets have been resettled or set aside;
- (j) the trust has not terminated nor has any event for the vesting of the assets occurred.

14.3 You promise the following:

- (a) you will comply with the terms of the trust and your duties as trustee of the trust;
- (b) you will use all equipment and carry out all Transactions

in accordance with the Agreement exclusively for proper trust purposes;

- (c) you will not do anything which may result in the loss of your right of indemnity from the trust assets or the termination of the trust;
- (d) you will remain sole trustee of the trust (with anyone else who signs the application form as trustee);
- (e) if, despite the above, you are replaced or joined as trustee, you will make sure the new trustee becomes bound to our satisfaction by the Agreement or a document and arrangement of identical effect;
- (f) you will not re-settle, set aside or distribute any of the assets of the trust without our consent unless compelled to do so by the current terms of the trust document.

15.0 RECORDS

You shall:

- (a) maintain and retain in your possession (while complying with all applicable security requirements) your books of account and records (including all Transaction information, vouchers and tally rolls) relating to a Transaction for at least 18 months after the Transaction;
- (b) permit us to inspect and examine the books of account and records referred to in paragraph (a);
- (c) not disclose, give (other than to us or unless required by law), buy, sell or exchange a Cardholder's name or Card details to any person (including in the form of imprinted sales vouchers, carbon copies of imprinted sales vouchers, mailing lists, tapes, computer data or any other media obtained by reason of a Card Transaction.) This clause shall not prohibit you from providing Card number information to your agent solely to allow your agent to process Card Transactions to us on your behalf;
- (d) keep all systems and media containing a Card number, Cardholder or Transaction information in a secure manner to prevent access by or disclosure to anyone other than your authorised personnel or agent processing Card Transactions. If the item needs to be discarded, you shall destroy it in a manner which makes the information unreadable;
- (e) provide us with all clear and legible documentation relating to a Transaction when requested. Otherwise we may Chargeback the Transaction to your Account.

16.0 CREDITWORTHINESS OF THE CARDHOLDER

We do not guarantee any Cardholder's creditworthiness or their identity. You waive any right you may have against us by reason of any inference from the fact that a Cardholder has been issued with a Card or that a Transaction has been processed.

17.0 VARIATIONS

We may change the terms and conditions that apply to your Merchant Facility(ies) (including the terms and conditions of the Agreement) at any time and will notify you of any changes as set out in the table below. Use of your Merchant Facility after notification of changes to the terms and conditions will constitute acceptance of those changes.

| Type of change | Time Frame | Method of Notification |
|--|--|--|
| New fee or charge (other than a government charge). | 30 days in advance. | In writing or Electronically. |
| A new or varied government charge that directly or indirectly affects you. | In advance of the change, or as soon as practicable afterwards, unless the change has been publicised by a government agency, government or representative body. | In writing, Electronically or through an advertisement in a major newspaper. |
| Any other term or condition (including a variation of fees and charges). | In advance of the date of the change. | In writing, Electronically or through an advertisement in a major newspaper. |

Advance notice may not be given in some circumstances, for example, when a change is necessitated by an immediate need to restore or maintain the security of our systems or where you cannot be reasonably located.

18.0 Notices

- 18.1 We might provide you notices in writing, including in your statement of account, by facsimile, newspaper advertisement or Electronically depending on the nature of the notice.
- 18.2 You can give us a notice by phone or by posting it in a prepaid envelope to the address in this booklet or by transmitting by facsimile to the number in this booklet. We reserve the right to seek confirmation from you before acting upon any facsimile received.

19.0 Warranties and Indemnities

- 19.1 You must not make any warranty or representation whatsoever in relation to any of your goods or services which may bind us.

- 19.2 The processing of any Transaction by you, or your presentation to us of any voucher (or audit log) shall constitute warranties to us that:
- a) all particulars are true and correct;
 - b) the Transaction and any voucher (audit log) is valid; and
 - c) the sale is not subject to any dispute, set off or counterclaim.
- 19.3 You indemnify and keep us indemnified against, and must pay us on demand against all losses, liabilities, expenses, costs (including legal costs) and damages we may incur or suffer arising out of or in connection with:
- (a) your failure to observe any of your obligations under the Agreement including any procedures set out in the Manuals;
 - (b) a breach of your obligations under the Agreement by any of your Service Providers, officers, employees, advisors or contractors;
 - (c) any failure to pay any charges or fees payable by you under the Agreement;
 - (d) any dispute between you and a Cardholder;
 - (e) any error, negligence or fraud relating to a Transaction by you, your servants, agents, employees or contractors;
 - (f) any damage to, or loss of the Terminals due to your, or your employees', neglect or misuse; or
 - (g) any fees, fines or penalties (including but not limited to Card Scheme fines) that we are required to pay as a direct or indirect result of your failure to observe any of the procedures, requirements or obligations required to be complied with by you under the Agreement.
- 19.4 Each indemnity given by you under the Agreement is a continuing obligation and continues after the Agreement ends. It is not necessary for us to incur expense or make payment before enforcing the relevant indemnity.
- 19.5 With the exception of any guarantees, conditions, rights or warranties that are implied or imposed by law in relation to the Agreement and may not legally be excluded, we give no guarantee, warranty or representation in respect of any Transaction or Terminals and all other terms, conditions or warranties whether expressed or implied are expressly excluded.
- 19.6 You acknowledge that our liability for breach of any condition, right or warranty that cannot be excluded

from the Agreement by law is limited at our discretion to the replacement or the repair of the Terminals, or the re-performance of the Terminal Access Service. In no circumstances will we be liable whether in contract, tort (including negligence) or otherwise to you or persons claiming through you for;

- a) special, consequential or indirect or incidental loss or damage of any kind (including exemplary or punitive damages);
- b) loss of business, profits or income whether actual or anticipated;
- c) any disruption caused by a malfunction of a Merchant Facility or any period when the Merchant Facility is unavailable and you are waiting for a replacement Terminal;
- d) any delay in crediting your Account; or
- e) termination of the Terminal Access Services for any reason. This section applies notwithstanding that we or any of our employees, contractors or agents are aware of the likelihood of such loss or damage.

19.7 Any payments made by you under this clause shall be automatically increased by the amount of any goods and services tax liability incurred by us in respect of those payments.

20.0 FRAUD PREVENTION

20.1 PCIDSS Compliance

- (a) You must ensure your business and any Service Provider acting on your behalf is compliant to the PCIDSS at all times.
- (b) Your merchant classification according to the PCIDSS will be determined at the discretion of Live eftpos.
- (c) All costs in relation to complying with this clause 21.0 will be borne by you.
- (d) In the event that your business suffers or is suspected to have suffered an ADC, we may pass any penalties levied by the Card Schemes on to you and reserve the right to pass on any charges that relate to the investigation of an ADC.

20.2 PCIDSS Validation

- (a) If we determine that you are a Level 1, 2 or 3 merchant under the PCIDSS, you must, upon our request, validate

- your compliance with the PCIDSS on an ongoing basis.
- (b) Validation of compliance to the PCIDSS must be completed within 3 months of notification to you.

20.3 If you use any 'off the shelf' software that stores, processes or transmits Cardholder Data during Authorisation or settlement, you must ensure that it has been certified by a PA-QSA as being compliant with the PCI PA-DSS.

For more information on the PCIDSS refer to the 'Your guide to the Payment Card Industry Data Security Standards' brochure provided with your confirmation letter or on the Live eftpos website www.liveeftpos.com.au.

20.4 You must ensure that any software or hardware you purchase, create or otherwise utilise for the purpose of selling goods or services does not retain its original password before employing it for the acceptance of Transactions. You must also ensure that all system and/or software passwords are changed on a regular basis.

20.5 Account Data Compromise (ADC) Events

You must comply with the ADC procedures detailed in the booklet "Your Guide to the Payment Card Industry Data Security Standards" that we provide to you, immediately upon suspected or known breaches of confidential Card holder Data whether or not the breach has occurred through your Service Provider or otherwise. If your business is suspected of having suffered an ADC or been the subject of Terminal manipulation:

- a) You must give Live eftpos and its agents full access to your systems and databases to facilitate a forensic analysis to ascertain:
- i. what card data has been compromised;
 - ii. what weaknesses in the system permitted the unauthorised access to the database; and
 - iii. whether card data was created, deleted, altered, copied or manipulated in any manner.
- b) If you use the services of an external Service Provider, you must ensure that Live eftpos and its agents are given full access to necessary outsourced components such as databases, web hosting systems, etc.
- c) You must pay all costs in connection with analysing and resolving the ADC.
- d) In order to continue processing Transactions, you will validate to our satisfaction that you are in compliance with the PCIDSS as a Level 1 Merchant within 3 months of the ADC or the event(s) giving rise to the Terminal

manipulation. All costs incurred by you as a result of your compliance with this clause 21 will be borne by you.

20.6 Consent to share information:

- a) Live eftpos may report all ADC events to Card Schemes and their members and may be required to report ADC events to law enforcement agencies and/or Australian regulators. You agree to grant an irrevocable and enduring consent to Live eftpos to disclose details of any such ADC (including information about you or your customers) to the aforementioned bodies.
- b) You agree to irrevocably confer upon Live eftpos the enduring right to contact any Services Providers that enable you to acquire Credit Card Transactions. This clause 21 is limited to the purpose of determining the extent of an ADC, assessing remedies for that ADC and assessing your level of compliance with the PCIDSS.

21.0 FINANCIAL CRIMES MONITORING AND ANTI-MONEY LAUNDERING

21.1 In order for Live eftpos to meet its regulatory and compliance obligations for anti-money laundering and counter-financing of terrorism, we will be increasing the levels of control and monitoring we perform.

21.2 You should be aware that:

- (a) Transactions may be delayed, blocked, frozen or refused where we believe that they breach Australian law or sanctions (or the laws or sanctions of any other country). Where Transactions are delayed, blocked, frozen or refused, Live eftpos and its accredited processors are not liable for any loss your business suffers (including consequential loss) whatsoever caused in connection with the Service;
- (b) we may from time to time require additional information from you to assist us in order to meet our anti-money laundering and counter-financing of terrorism obligations. This information may include "personal information" as defined by the Privacy Act 1988. If we request such information you must provide us with the information immediately, or at least within 24 hours of such a request;
- (c) where legally obliged to do so, we may disclose the information gathered to regulatory and/or law enforcement agencies, other Banks, other members of the Westpac Group, service providers who do things on our behalf or to other third parties; and
- (d) where we have reasonable grounds to believe that a suspicious matter has arisen in relation to the Merchant

Facility, we are obliged to complete and render a report to the Federal Government (AUSTRAC). A suspicious matter includes any Transaction that the Bank believes may be of relevance to the investigation or prosecution of any breach or attempted breach of an Australian law (including laws related to money laundering, tax evasion, financing of terrorism or the proceeds of crime).

- 21.3 You provide Live eftpos the following undertakings and indemnify Live eftpos against any potential losses arising from any breach by you of such undertakings;
- (a) you will not initiate, engage in, or effect a Transaction that may be in breach of Australian law or sanctions (or the law or sanctions of any other country); and
 - (b) the underlying activity/product for which the Service is being provided does not breach any Australian law or sanctions (or the law or sanctions of any other country).
- 21.4 You must not initiate, engage in or effect a Transaction that may be in breach of Australian law (or the law of any other country).

22.0 ASSIGNMENT

- 22.1 The Agreement shall be binding upon the parties, their executors, administrators, successors and assignees. Where you consist of any two or more persons, your obligations shall be joint and several.
- 22.2 You may not assign the Agreement to any other person without our written consent. We may assign our rights or novate our rights and obligations under the Agreement. We may also transfer our interest in the Agreement, or give another person an interest or security in the Agreement without getting your consent. You appoint us and any person authorised by us to be your attorney to sign any document or do anything necessary to give effect to the assignment, novation or transfer contemplated in this clause 24.2.

23.0 TERMINATION

- 23.1 The Agreement commences when you accept our offer in accordance with clause 1 and will continue until such time as it is terminated in accordance with this clause 23.
- 23.2 Notwithstanding the return of Equipment to us, you may terminate this Agreement or use of an underlying Merchant Facility by providing us with 7 days written notice to the address in this booklet. If you fail to provide us the above mentioned notice within that timeframe, your Agreement (including fees and charges) will continue to apply. Should you terminate this Agreement within 6 months of application approval, a \$50 postage/administration fee may apply. This may be waived at Live eftpos' discretion.

- 23.3 It is your obligation to reconcile your bank account after termination of this agreement and notify us of any discrepancies.
- 23.4 If for any reason there are discrepancies in your Account then our maximum aggregate liability to you for reimbursement will be limited to one month's worth of the monthly applicable charges.
- 23.5 We may terminate the Agreement or use of an underlying Merchant Facility at any time and for any reason. The grounds on which we may do so include, but are not limited to, the following:
- (a) a Merchant Facility does not comply with the Rules;
 - (b) we consider your ratio of Chargebacks to sales, whether by number or dollar value of Chargebacks, to be excessive;
 - (c) you have substantially changed your line of business, or the types of goods or services that you supply to your customers or clients without first notifying us and receiving consent;
 - (d) we have concerns about your solvency, or the solvency of your business;
 - (e) we have concerns about your ability to meet or repay the amounts of any Chargebacks that have been received, or that are likely to be received in the future conduct of your business;
 - (f) you have a significant adverse credit event recorded against you;
 - (g) we have reasonable grounds to suspect that you have fraudulently processed Transactions, or have knowingly allowed fraudulent Transactions to be processed through your merchant facility;
 - (h) you or any of your Services Providers are not compliant with the PCIDSS;
 - (i) you or any Service Provider that you use has suffered an ADC.
- 23.6 We will endeavour to give you verbal or written notice before we terminate the Agreement or facility. If we are unsuccessful in contacting you, we can choose to continue to terminate the Agreement or Merchant Facility. However, we will give you subsequent written confirmation that the Merchant Facility has been terminated.
- 23.7 We may terminate the Agreement on the grounds that you have not processed Transactions through your Merchant Facility for a period of six (6) months. Under

- these circumstances we will advise you, in writing, of our intention to terminate and will allow you a period of 14 days from the date of our letter in which to contact us. After that time, we may terminate the Agreement or Merchant Facility without further notice.
- 23.8 Termination will be effective immediately and we are not obliged to accept any Transactions you process after the Agreement or facility is terminated.
- 23.9 You warrant to cease to use the Terminal Access Services immediately if this Agreement is terminated, we will be entitled to terminate the availability of the Terminal Access Services to you if that occurs.
- 23.10 For clarity, termination of a Merchant Facility or the Agreement does not affect any obligations incurred prior to termination. Clauses 6, 7, 8, 15, 19, 23 and 24 survive termination.
- 23.11 On termination of the Merchant Facility or the Agreement you will immediately return all relevant Equipment. Fees and charges will continue to be incurred by you until the Equipment is returned to us. Merchants are required to pay for a tracking number at the post office. However postage is free by using the reply paid service. You authorise us to enter the premises where the Equipment is kept and take possession of the Equipment without notice to you in the event the Equipment is not returned to us immediately in accordance with this clause 23.11.
- 23.12 A combined terminated merchant file is a list containing the business name and the names and identification of principals of merchants that have been terminated by acquiring financial institutions. You consent to us providing information about you and any persons named in your application for a Merchant Facility to Westpac Group, to MasterCard, Visa or any other Card Scheme for addition to the file if the Agreement is terminated (this may include sending information overseas). You acknowledge that this information will be available to any member of the Card Scheme(s) and may be used to assess subsequent applications for Merchant Facilities. You shall indemnify us against all claims, actions, suits, losses, defaults, damages and liabilities resulting from the inclusion of you or your principals on this file.
- 23.13 Without prejudice to any right or remedy of ours, we are entitled to charge you a termination fee for termination of the Agreement, at our discretion. You must promptly pay any such termination fee after we notify you of it.

24.0 RE-ESTABLISHMENT FEE

- 24.1 Re-establishment fee:
Unless this Agreement has been terminated by Live eftpos, you may re-establish your agreement with Live eftpos at any time. A \$50 administration fee will apply.

25.0 PRIVACY LAW

- 25.1 You agree to comply with:
- (a) any privacy laws by which you are bound; and
 - (b) any other privacy requirement notified by us to you.
- 25.2 You acknowledge that you do not rely on any information or representation supplied by us to you as advice regarding compliance with the Privacy Laws.
- 25.3 You warrant that you are aware of the Privacy Laws which apply to you in respect of this Agreement, and also warrant that, after the enquiry, you are not aware of having breached any of those Privacy Laws.
- 25.4 You agree that we may obtain from and disclose information to any person who issues a Card or Card Scheme for any purpose relating to the operation of your Merchant Facility that we deem necessary. Our rights under this clause continue after the Agreement is terminated.
- 25.5 You authorise us to obtain from any Card Scheme information ("your history") relating to facilities you obtained or are obtaining from other suppliers.
- 25.6 We use information about your history and personal information about you, including information about you collected from third parties, for any one or more of the following purposes:
- (a) to assess and process your application for facilities we supply under the Agreement;
 - (b) to administer and manage the facilities we supply to you under the Agreement; and
 - (c) to facilitate our internal business operations, including fulfilling any legal requirements and systems maintenance and testing.
- 25.7 You acknowledge and agree that we may disclose information about you that we collect from your application, your history or conduct of the facilities we supply you under the Agreement, in the following circumstances:
- (a) to our external service providers (some of which may be located overseas) that provide services for the purposes only of our business, on a confidential basis (for example, without limitation, mailing houses);

- (b) to any person who is a card issuer, Card Scheme operator or otherwise involved in any Card Scheme, for any purpose relating to the operation of those schemes (for example Visa, MasterCard, EPAL and card fraud detection agencies). This information may include information about terminating a Merchant Facility 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;
- (c) to persons who you inform us supply services related to your Merchant Facility (including but not limited to Ingenico, Hypercom, Verifone, American Express or Diners Club); and
- (d) if you consent or where the law requires or permits us to do so.

25.8 You acknowledge and agree that we may also use your personal information or give access to personal information about you to any member of Live eftpos to:

- (a) assess your total relationship and product holding with Live eftpos, analyse products and customer needs and develop new products; and
- (b) inform you of products and services provided by any member of Live eftpos or by preferred providers which we consider may be of value or interest to you, unless you tell us not to do so.

25.9 You acknowledge and agree that we may also use your personal information or give access to personal information about you to any member of the Westpac Group to:

- (a) assess your credit worthiness and provide required approval of your Merchant Facility
- (b) for any other reason we deem necessary

26.0 CHANGES

26.1 You must notify us within 14 days of any changes in your company, trading name or address. You can do this by writing to us at the address in this booklet, by transmitting by facsimile to the number in this booklet or via email to support@liveeftpos.com.au. You must continue to notify us of any changes for a period of 12 months after the Agreement is terminated for any reason. We will not be responsible for any errors or losses where we have not received adequate prior notice.

- 26.2 You must not substantially change your line of business, or the types of goods or services that you supply to your customers or clients, without first notifying us and receiving our written consent. In addition, you must notify us immediately if the ownership or control of your business (including any delegation by way of power of attorney) or your ability to meet liabilities as and when they fall due changes. The new owner will need to apply for a new Merchant Facility with us if they wish to continue using our merchant services.

27.0 THIRD PARTIES

- 27.1 You will not present to us any sales vouchers accepted on behalf of any third party without our prior approval.
- 27.2 We may pay a fee or commission to a third party who introduces you to us.

28.0 GST

- 28.1 We may increase the amount ("original amount") of any fee or other consideration payable by you under the Agreement which has not been specified to include GST by an additional amount so that the total amount payable by you is equal to the original amount plus the amount of any GST liability payable by us on the total amount.
- 28.2 You must pay at any time and in any manner requested by us any amount which we decide to be necessary to reimburse us for any direct or indirect increase resulting from any GST in the cost to us of:
- i. making, maintaining or administering;
 - 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:

the Agreement or any facilities provided under the Agreement.
- 28.3 For the purposes of the Agreement, "GST" has the meaning given by the GST Law. "GST Law" has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act does not exist for any reason, means any Act or regulation imposing or relating to the imposition or administration of a goods and services tax in Australia.

29.0 SUSPENSION

- 29.1 We may suspend the facilities we supply to you under the Agreement without notice to you if we:

- i. consider that we could suffer a loss as a result of your Merchant Facility continuing to operate;
- ii. think we could be subject to fraud if we continue to supply the facilities;
- iii. become aware of an event listed in clause 23.5;
- iv. are unable to contact you to discuss a matter relating to the use of your Merchant Facility.

We will inform you as soon as practicable after we suspend your facilities under this clause.

29.2 Whilst the facilities are suspended, you will not submit Card Transactions for processing and we will not process any Card Transactions you submit.

30.0 JURISDICTION

The Agreement shall be governed by and interpreted in accordance with the laws of New South Wales.

31.0 USE OF TRADE MARKS

31.1 You agree:

- a) to obtain our prior written consent before using any Trade Mark (which consent may be granted or withheld by us in our sole discretion);
- b) to comply with any Trade Mark use guidelines or directions provided by us to you from time to time;
- c) not to take any action which will adversely affect the value of the goodwill attached to the Trade Marks and/or our business.

32.0 PERSONAL PROPERTIES SECURITIES ACT

32.1 If we determine that this Agreement (or a Transaction in connection with it) is or contains a security interest for the purposes of the PPSA, you agree to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which we ask and consider necessary:

- a) to provide more effective security over the Equipment or any other personal property over which we have a Security Interest;
- b) to ensure that a Security Interest created under or connected with this Agreement is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;

- c) to enable us to apply for any registration, or give any notification, in connection with any Security Interest created under or connected with this Agreement so that the Security Interest has the priority we require;
- d) to enable us to exercise our rights in connection with any Equipment or any other personal property over which we have a Security Interest;
- e) to bind you and any other person intended to be bound under this Agreement; or
- f) to show whether you are complying with this Agreement.

32.2 You agree:

- a) that we may fill in any blanks in this Agreement or any document relating to it (such as Corporations Act forms, financing statements or financing change statements);
- b) that we may, at your expense, apply for any registration, or give any notification, in connection with any Security Interest created under or connected with this Agreement and for whatever class of collateral we think fit. You consent to any registration or notification by us, and agree not to make an amendment demand;
- c) not to register a financing change statement in respect of a Security Interest created under or connected with this Agreement without our prior written consent;
- d) not to register, or permit to be registered, a financing statement or a financing change statement in relation to any Equipment in favour of a third party without our prior written consent;
- e) that we need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA, or any other provision of the PPSA notified to you by us after the date of this Agreement;
- f) that you may not exercise any rights under sections 142 and 143 (reinstatement of security) of the PPSA;
- g) that neither we nor any receiver (or receiver and manager) appointed by us need give any notice required under the PPSA (including a notice of a verification statement); and
- h) that you will not disclose or permit any party to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7)(b) or (e) of the PPSA applies.

32.3 In this clause 31, terms in italics have the meaning given to them in the PPSA.

33.0 HOLDS ON FUNDS

- 33.1 We may hold funds in your account for a variety of reasons as set out below. We will notify you if we place a hold on any funds in your account.
- 33.2 We hold funds to review and mitigate any actual or reasonably anticipated risk of us or our users being adversely affected.
- 33.3 We hold funds when:
- a) We need to ensure the integrity of a transaction;
 - b) We believe that there's a risk associated with you or your account; or
 - c) You receive a dispute, claim, Chargeback or Reversal in relation to any funds received into your account;
 - d) You are a new Merchant and have a limited history
- 33.4 Before holding funds, we consider:
- a) Information we receive from related third parties;
 - b) Whether the funds are related to an irregular or unusual transaction; and
 - c) Other related information.
- 33.5 Holds are usually placed for 30 days.
- 33.6 Funds may be held for longer than 30 days if:
- a) You receive a dispute, claim or Chargeback relating to the transaction subject to the hold; and/or
 - b) We have taken another action permitted under this Agreement, for example if we believe there is an increased risk associated with your account.
- 33.7 We may release a hold earlier than 30 days where we reasonably believe that the relevant transaction has completed successfully.
- 33.8 Funds held for disputes may not be released until we consider the issue resolved.

- 33.9 You will not have access to held funds until the hold is released. You direct us to make any payments or refunds from held funds to a person entitled to them in accordance with this Agreement.
- 33.10 We may remove held funds from your account in accordance with this Agreement.
- 33.11 Funds subject to a hold may be subject to a subsequent Chargeback or claim, even after the hold has been released.
- 33.12 If a transaction is subject to Payment Review, we will place a hold on it and provide notice to the Merchant. Transactions may be subject to a Payment Review because:
- a) We have reasonable suspicion that a the Payment Method being used is in breach of this Agreement; or
 - b) For other reasons as determined by us in our reasonable discretion.

We will conduct a review and either complete or reverse the payment.

- 33.13 Transactions that complete Payment Review may still be reversed under the terms of this Agreement
- 33.14 A transaction subject to Payment Review is not a representation by us as to the commercial dealings, character or reputation of a party to the transaction.

34.0 LIMITING TERMINAL ACCESS SERVICES

- 34.1 If we have reason to believe that your account is not being used in line with this Agreement, we may limit or close your account.
- 34.2 If we hold a reasonable belief that there is an increased risk associated with your account, we may limit your access for up to 180 days. We may take these actions beyond 180 days if we reasonably believe the risk still exists or are prohibited by law from releasing funds or unrestricting your account.
- 34.3 The following is a non-exhaustive list of events which may lead to your account being limited:
- a) Reports of unauthorised or unusual Credit Card or Charge Card use associated with the account;
 - b) Reports of unauthorised or unusual bank account use associated with the account;

- c) Abuse by a buyer of the Chargeback process provided by the buyer's bank or Credit Card provider;
- d) Multiple disputes received regarding non-despatch of merchandise, non-delivery of services, merchandise not as described or problems with merchandise shipped;
- e) Receipt of potentially fraudulent funds;
- f) Facilitation of fraudulent activity;
- g) Excessive disputes or Chargebacks;
- h) Attempts to "double dip" by receiving funds in a dispute both from us and through a Chargeback or a refund from the seller or a third party;
- i) Refusal to cooperate in an investigation;
- j) Initiation of transactions considered to be cash advances or assisting in cash advances;
- k) Material breaches of this Agreement or its incorporated policies;
- l) A risk assessment of your account conducted by us;
- m) The name on your bank account not matching your trading name;
- n) Return of an incoming electronic funds transfer for insufficient funds or incorrect bank details;
- o) Reports from credit agencies of a high level of risk;
- p) Use of your account is deemed by us, Westpac Group, Visa, MasterCard, American Express or any other Scheme to constitute abuse of the Credit Card system or a violation of Credit Card rules, including using our system to test Credit Card behaviours;
- q) The occurrence of an Insolvency Event; and/or
- r) Any other activities which we reasonably deem as high risk

34.4 In assessing a risk, we will investigate your account and consider the reasonable risk of a Chargeback, a breach or likely breach of this Agreement, or other potential losses occurring to us or our users.

34.5 If access to your account is limited, you will be notified and may be requested to provide information relevant to your account, a transaction or your identity.

- 34.6 Following our investigation, if we reasonably believe there is no longer a risk, we will restore your account, subject to any other actions we may take in accordance with this Agreement.
- 34.7 If we reasonably believe a risk still exists, we may:
- a) Return funds to the buyer and restore access to your account;
 - b) Continue to limit your account to protect us against the risk of Chargebacks or because we may be prohibited by law from releasing funds or unrestricting your account; or
 - c) Terminate your account by giving you notice and returning any funds held in your balance to you minus funds in dispute. If you are later determined to be entitled to funds in dispute we will return those funds to you.

35.0 RESERVES

- 35.1 We will continually monitor your account and assess it for initial and ongoing risk.
- 35.2 We, in our sole discretion, may place a reserve on funds where we reasonably believe there may be a higher than acceptable level of risk (based on the information available to us at the time of taking the reserve and what in our sole discretion we regard as an acceptable level of risk to us). The reserve helps protect us and our users from the risk of financial or other loss.
- 35.3 If we place a reserve on funds, the funds will be shown as "pending."
- 35.4 If your account is subject to a reserve, we will notify you of the terms of the reserve.
- 35.5 If our risk assessment changes we will change the terms of the reserve accordingly and provide you with notice of the new terms.
- 35.6 In the event you do not agree to the terms of the reserve you may terminate your account, unless otherwise prohibited under this Agreement. However, if your account is closed for any reason, we have the right to hold the reserve for up to 180 days.
- 35.7 We may also limit or delay payments to you, set-off amounts from your balance and/or require that you, or a person associated with you, enter into other forms of security arrangements with us in order to manage risk.
- 35.8 You will, at your own expense, undertake any further action required to establish a reserve or other form of security.

36.0 WHAT TO DO IF YOU HAVE A PROBLEM OR DISPUTE

36.1 Getting your complaint heard:

We aim to resolve your complaint at your first point of contact with us. So please raise your complaint with any of the people handling your banking. You can contact us during usual business hours from anywhere in Australia, by:

Telephone: 1300 780 788

E-mail: support@liveeftpos.com.au

Fax: 1300 882 858

37.0 DAMAGED, LOST OR STOLEN EQUIPMENT

You are responsible for your equipment. If equipment is damaged, lost or stolen, you will be charged for their replacement.

38.0 INTERPRETATION

For the purposes of this Agreement:

- (a) Transaction information is presented by the completion and delivery of a voucher recording the Transaction or by any other form Live eftpos approves;
- (b) a sale includes the supply of goods or the supply of services or both;
- (c) 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;
- (d) the singular includes the plural and vice-versa;
- (e) the failure by either party to exercise any right under this Agreement does not mean that party has waived that right; and
- (f) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency.

Things you should know:

This information is current as at October 2013 and is subject to change. © 2013 Live eftpos ACN 150 373 069.


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