

Ecommerce Equation Services Terms and Conditions

IMPORTANT TERMS TO NOTE

- **(Term)** This Agreement commences on the earlier of the date you accept our offer and the date you pay us the Price, and continues for:
 - a single initial 30 day 'love it or leave it' period commencing on your Intake Day; and
 - a minimum subscription period of 12 months commencing at the end of the 'love it or leave it', which auto-renews for subsequent 12 month periods.
- **(Termination and termination fees)** Early termination fees will apply if you terminate without cause during a subscription period (i.e. after the end of the 'love it or leave it period'), except for where this is with at least 30 days' notice, prior to the end of the current subscription period (see clauses 1 and 9).
- **(Amendments)** We can amend this Agreement and the Services, noting that you have a right to terminate in each case where you can reasonably demonstrate that the amendment would cause you a material detriment (see clause 20.1).

Capitalised terms used, but not defined in these Terms and Conditions, have the meanings given to them in the Quote which refers to these Terms and Conditions.

'We', 'us' or 'our' refer to Ecommerce Equations and 'you' or 'your' refers to the Customer.

1. ACCEPTANCE AND TERM

1.1 This Agreement comprises of the Quote issued to you and These Terms and Conditions, and commences on the earlier of the date that you accept our offer (whether by clicking accept, signing or otherwise indicating your acceptance) and the date you pay us the Price and continues for:

- (a) a single initial 30 day 'love it or leave it' period commencing on your Intake Day (**LIOLI Period**); and
- (b) a minimum Subscription Period, which will auto-roll over into a new minimum Subscription Period,

in each case, unless terminated by either party in accordance with this Agreement (together, the **Term**).

1.2 For the avoidance of doubt, if you do not terminate this Agreement prior to the end of:

- (a) the single initial LIOLI Period, you will enter into a Subscription Period; and
- (b) the current Subscription Period, you will enter into a new Subscription Period.

1.3 For more information on how to terminate this Agreement, please refer to clauses 8 and 9 (below).

2. SERVICES

2.1 In consideration of your payment of the Price, we agree to provide the Services in accordance with this Agreement and all applicable laws.

2.2 You acknowledge that any dates for delivery notified by us or agreed between the parties, are estimates only. We agree to use reasonable endeavours to provide the Services at the times notified to you or agreed with you from time to time.

2.3 All Services will be delivered online via video conferencing details that we will provide you with. From time to time (in our sole discretion) we may hold optional attendance in-person events. If you wish to attend such in-person events, you will need to pay your own travel, accommodation and other costs associated with attending.

Additional terms and conditions may apply in relation to these events.

- 2.4 If we consider any instruction, request or direction from you to be a variation to the scope of our obligations under this Agreement, or would result in us incurring additional cost or delay, then we will not be obliged to comply unless agreed in writing between the parties.

3. USE OF SUPPLIER RESOURCES

- 3.1 As part of the Services, we may provide you with access to or use of certain training, customer portals, tools, documents, materials, information and other resources (**Supplier Resources**).
- 3.2 During the Term, we grant you a non-exclusive and non-transferable right to access and use the Supplier Resources that we make available to you for the purpose of receiving the benefit of the Services for your internal business purposes, and subject to and in accordance with, the terms of this Agreement (and any applicable usage policy notified by us to you) (**Permitted Purpose**).
- 3.3 You may permit your Authorised Users to use and access the Supplier Resources for the Permitted Purpose, provided you are responsible for their use and access as if it were your own. For the avoidance of doubt, contractors, freelancers and other third-party persons who are not your current employees cannot be Authorised Users or given access to the Services unless we have pre-approved this in writing.
- 3.4 You must ensure that you and your Authorised Users do not:
- (a) reverse engineer, decompile or disassemble any Supplier Resources;
 - (b) develop, modify, enhance or otherwise do anything to the Supplier Resources, except as permitted by this Agreement;
 - (c) upload, distribute or display through the Supplier unlawful, harmful, malicious, threatening, defamatory, obscene, infringing,

offensive, sexually explicit, violent or discriminatory;

- (d) remove any trade mark, copyright or other notices applied to or contained in the Supplier Resources (unless approved by us in writing);
- (e) use the Supplier Resources in a way that could interfere with, degrade or deny service to, impair the use of, or subvert the security or privacy of our services, networks, equipment or data or those of another person; and
- (f) distribute, resell or sublicense the Supplier Resources to any third party, use the Supplier Resources as a service bureau or outsourcing offering, or permit any third to view, access or use the Supplier Resources.

4. THIRD PARTY MATERIAL

- 4.1 The Services may include, integrate with, interoperate with, or link through to, Third Party Material.
- 4.2 You acknowledge and agree that:
- (a) we have no control over, and are not responsible for, any Third Party Material (including its accuracy, reliability or completeness);
 - (b) Third Party Material is provided directly to you by the relevant Third Party Material providers, does not form part of the Services and is not governed by this Agreement;
 - (c) you use all Third Party Material at your own risk and you are solely responsible for complying with the Third Party Material terms and conditions and all costs, claims and losses relating to the Third Party Material; and
 - (d) Third Party Material is subject to change, suspension, termination or discontinuation at any time and without notice by the Third Party Material provider, and that this may cause incompatibility with the Services.

5. YOUR RESPONSIBILITIES

- 5.1 You are responsible for ensuring that the Services are suitable for your business purposes and that your use of the Services complies with any laws applicable to you in your jurisdiction and your contractual obligations to third parties.
- 5.2 You agree that you use the Services at your own risk and are responsible for:
- (a) obtaining and maintaining all necessary network connectivity, internet services, devices or hardware required in order to access the Services;
 - (b) obtaining and maintaining all Customer Materials, Third Party Materials and all things necessary to use the Services. If you do not provide the necessary Customer Material to us, you acknowledge that we may not be able to provide our Services (or parts or our Services) to you; and
 - (c) ensuring the confidentiality and security of any account and log in details we issue to you in connection with the Services.

6. PRICE, PAYMENT AND LATE PAYMENT

- 6.1 The Price and applicable payment terms are as set out in the Quote.
- 6.2 Starting from the first anniversary of the end of the LIOLI Period (and without limiting our other rights to vary the Price), the Price will automatically increase by a percentage amount, per year, equal to the lesser of:
- (a) the percentage change in the consumer price index (all groups weighted average of the eight capital cities) of Australia, as published by the Australian Bureau of Statistics, over the preceding 12 month period; and
 - (b) 4%.
- 6.3 Subject to clause 6.4 below, if you fail to pay any of the amounts due and

payable under this Agreement, we may:

- (a) suspend supply of Services; or
- (b) charge interest on all amounts unpaid after the due date, at a rate equal to the lesser of: (i) 4% per annum above the Reserve Bank of Australia's cash rate, calculated daily and compounded monthly; and (ii) the maximum rate allowed by law,

in each case, from the due date for payment until the date that payment is made.

- 6.4 We must, before exercising our rights in clause 6.2 above, give you notice in writing of your failure to pay and provide you with 10 Business Days in which to rectify your failure to pay.
- 6.5 You acknowledge and agree that the interest charged under clause 6.2 above, is a genuine pre-estimate of our cost of funding such overdue amounts and is not a penalty.

7. TAXES AND DUTIES

- 7.1 In addition to the Price, you agree to pay us any tax, duty or charge including without limitation any sales, use, excise, goods or services tax, consumption based or value added tax, stamp duty, withholding tax and other taxes, duties or charges of whatever kind (including fines and penalties) that may be incurred, levied, assessed, charged, payable by or collected in connection with, this Agreement (excluding tax on our income) and any increase in such taxes, duties or charges.

8. 30 DAY 'LOVE IT OR LEAVE IT' PERIOD

- 8.1 A party may terminate this Agreement, for any reason and without liability during the LIOLI Period, by providing the other party with written notice.

9. TERMINATION AND SUSPENSION

- 9.1 This clause 9 applies to any termination or suspension after the single initial LIOLI Period ends.

Without liability

- 9.2 A party may terminate this Agreement, for any reason and without liability, on the expiry of the current Subscription Period, by providing the other party with at least 30 days' prior written notice of termination. For example, if the current Subscription Period expires on 1 February, you must provide notice of your intention to terminate to us on or before 1 January or you will enter into a new Subscription Period.
- 9.3 A party may also terminate this Agreement with immediate effect and without liability, on written notice, if the other party:
- (a) commits a material breach of this Agreement and fails to remedy that breach within 14 days of receipt of a notice from the other party specifying the breach and requiring it to be remedied; or
 - (b) becomes subject, or threatens to become subject, to any form of insolvency or bankruptcy proceeding, appoints a liquidator, receiver or administrator, enters into an arrangement with its creditors, ceases to trade or do business in the ordinary course or is otherwise unable to pay its debts when they fall due.
- 9.4 For the purposes of this Agreement, a failure by you to pay any amount due and payable under this Agreement, will be a material breach of the Agreement.
- 9.5 We may also, on reasonable notice, suspend the Services or terminate this Agreement without liability (acting reasonably), if:
- (a) you are behaving, on more than one occasion and after being asked to stop, in way that is offensive to others in the community, or to us or our Personnel; or
 - (b) you are preventing or impeding us from being able to deliver the Services to others, or make the Services available to others.

With liability

- 9.6 You may terminate this Agreement on 30 days' prior written notice, at any time, provided you pay us any applicable Early Termination Fees.

10. CONSEQUENCES OF TERMINATION

- 10.1 On termination or expiry of this Agreement:
- (a) our obligations to supply the Services will immediately cease;
 - (b) you must immediately cease using the Services (including the Supplier Resources);
 - (c) you must immediately pay all amounts due and owing for all Services supplied to you on or before the termination date;
 - (d) you must return or permanently delete (at our reasonable option) all Supplier Resources in your possession and control, and cease accessing and use of all Supplier Resources; and
 - (e) each party will return or permanently delete all Confidential Information of the other, other than to the extent required by applicable law or to evidence compliance with this Agreement.
- 10.2 Where this Agreement has been terminated by us under clauses 9.3 or 9.5, or by you under clause 9.6, you must pay us the Early Termination Fee.
- 10.3 The accrued rights, obligations and remedies of the parties are not affected by termination of this Agreement, and clauses that are intended to survive termination will continue to be effective after termination of this Agreement, including, without limitation this clause 10, and clauses 12, 13, and 14.
- ## **11. CONSUMER LAW RIGHTS**
- 11.1 Certain legislation may confer you with rights, guarantees and remedies in relation to the Services which cannot be excluded, restricted or

modified by law (**Consumer Law Rights**).

11.2 Nothing in this Agreement excludes, restricts or modifies your Consumer Law Rights. You agree that our liability for the Services is governed solely by your Consumer Law Rights and this Agreement.

11.3 If the Services we supply to you under this Agreement are subject to a statutory guarantee, then to the extent permitted by applicable law, we limit our liability for breach of such statutory guarantee to:

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again,

to the extent that you are entitled to such remedies under your Consumer Law Rights.

12. DISCLAIMER

12.1 To the extent permitted by law, you acknowledge and agree that:

- (a) while we provide advice that may sometimes seem personalised, our advice is either general in nature or provided based on the information you provide us, and so you are solely responsible for determining whether any information or advice provided by us as part of the Services is right for you;
- (b) all business decisions come with risks and we do not make any representations, promises, guarantees or warranties as to business outcomes, sales, revenue or profits, performance or other improvements in connection with your use of our Services;
- (c) we do not provide financial or legal advice, and you should seek professional advice as needed as part of implementing any business decisions in connection with the Services. Nothing in the Services is intended to be a replacement or

substitute for professional advice; and

- (d) while we do our best to provide you with the latest information, resources and strategies, information and advice, any information or advice given through or in connection with the Services may not always be accurate or complete.

12.2 Subject to your Consumer Law Rights and to the extent permitted by law, we exclude all express and implied warranties, and all Services are provided to you without warranties of any kind, whether in statute, at law or on any other basis.

13. LIMITATION OF LIABILITY

13.1 To the maximum extent permitted by law:

- (a) each party excludes any and all liability arising out of or in connection with the Agreement for any Indirect Loss; and
- (b) the total aggregate liability of a party arising out of or in connection with the Agreement in any contract year is limited to the amounts paid or payable in under this Agreement that contract year,

in each case, whether the liability arises in contract, tort, (including negligence) or any other basis in law or equity.

13.2 The limitation of liability in clause 13.1 above, does not apply to:

- (a) your liability to pay the Price and other amounts due and payable under this Agreement; or
- (b) the liability of either party for fraud, gross negligence or wilful default.

14. OUR INTELLECTUAL PROPERTY

14.1 Nothing in this Agreement affects the Intellectual Property Rights that existed prior to the commencement of the Term of this Agreement.

14.2 All Intellectual Property Rights in and to the Services, the output of the

Services and any Supplier Resources, including those in any copy, modification, enhancement, configuration, derivative work or other development of those things (other than Customer Materials), vests or remains vested in us or our licensors. If any such Intellectual Property Right vests in you or an Authorised User, you hereby assign and must procure that each Authorised User assigns, that Intellectual Property Right to us with immediate effect.

- 14.3 You must also take all further steps (including the execution of documents) necessary to give effect to this clause.
- 14.4 You and any Authorised Users do not receive any rights, title or interest to or in the Services or Supplier Resources other than as expressly set out in this Agreement.
- 14.5 You agree to not, and to not knowingly permit others (including your Personnel), to do anything which might infringe or negatively impact the Intellectual Property Rights in the Services and Supplier Resources.
- 14.6 You should immediately notify us if you become aware of any infringement or unauthorised use of the Services or Supplier Resources, or a claim by any person that the Services or Supplier Resources infringe any Intellectual Property Rights.
- 14.7 If the Services or Supplier Resources are the subject of a third party Intellectual Property Rights infringement claim, we may (at our cost and option) procure the right for you to continue using the Services and Supplier Resources, modify the Services and Supplier Resources to prevent further infringement or terminate this Agreement.

15. YOUR CUSTOMER MATERIAL

- 15.1 All rights, title and interests in Customer Material remains vested in you or your licensors.
- 15.2 Where you provide us with Customer Material that is public or intended to

be public (advertisement examples, Instagram posts etc.) you:

- (a) grant us a non-exclusive, transferrable, world-wide, sub-licensable, royalty free, irrevocable and perpetual licence to use and modify these Customer Materials; and
- (b) warrant that you have obtained all consents, licences and approvals and given all notifications necessary to enable us and our Personnel to Process these Customer Materials,

in each case, to the extent necessary to provide our (and our affiliates') products services to you and other customers, for internal business purposes, for marketing and promotion purposes and to prepare and produce Supplier Materials. Where we use such Customer Material, we agree not to represent that we act for or on behalf of you, or are associated with your brand (except where we have your permission).

- 15.3 For all Customer Materials other than that in clause 15.2, you:

- (a) grant us and our Personnel the right to Process this Customer Material; and
- (b) warrant that you have obtained all consents, licences and approvals and given all notifications necessary to enable us and our Personnel to Process this Customer Material,

in each case, to the extent necessary to provide the Services and as otherwise contemplated in this Agreement.

- 15.4 You also grant us a non-exclusive, world-wide, perpetual and royalty-free licence to aggregate and anonymise Customer Material we receive from you or on your behalf, and use this data to provide the Services and Supplier Resources to other customers, operate and develop

our business, and for any other purposes.

- 15.5 You must make regular back-ups of all Customer Material stored or Processed in the Supplier Resources.

16. PRIVACY

- 16.1 Each party agrees to comply with Privacy Laws when Processing any Personal Information in connection with this Agreement.
- 16.2 If you provide us with access to Personal Information under this Agreement, we will process it in accordance with our Privacy Policy.

17. CONFIDENTIALITY

- 17.1 Each party (**Recipient**) must ensure that it keeps confidential and does not use or disclose any Confidential Information of the other party (**Discloser**) except as permitted by this clause.
- 17.2 The Recipient may disclose the Confidential Information of the Discloser:
- (a) to its related bodies corporate, Personnel and professional advisers who need to know the Confidential Information for the purposes of the Agreement and who are subject to binding obligations of confidence at least as stringent as those set out in this clause;
 - (b) to the extent required by law or the rules of any stock exchange; and
 - (c) with the prior written consent of the Discloser.

18. COMMUNICATIONS AND MARKETING

- 18.1 When we send you notices, these will be through our usual means of communication with you.
- 18.2 You can contact us by using the details we provide to you, as updated from time to time.
- 18.3 From time to time, you may be asked if you would like to subscribe to

receive electronic marketing messages.

- 18.4 If you subscribe, you:

- (a) consent to receive our marketing emails and other marketing communications.
- (b) may opt-out of receiving electronic marketing messages by contacting us with this request. Once opted out, you will no longer receive electronic marketing messages but may continue to receive other forms of communications from us (for example, important service messages).

19. EXPORT CONTROL AND ANTI-BRIBERY AND CORRUPTION

- 19.1 You must comply and must ensure that each Authorised User complies with all export control, anti-bribery and anti-corruption laws applicable in the jurisdictions where the Services are provided, and you must ensure that any agents and Personnel employed by you comply with all such laws.
- 19.2 You agree that you will not export, re-export, transfer in-country or otherwise distribute the Services in violation of any export control laws or regulations of the United States or Australia, or any other relevant export control laws.

20. GENERAL

- 20.1 (**Amendments**) We may amend these Terms and Conditions or the Services in our absolute discretion by posting an updated version on our Website, provided that we provide you with prior written notice of amendments that are likely to cause you any material detriment. If you can reasonably demonstrate to us that any amendment of this Agreement causes you any material detriment, then you may terminate this Agreement by written notice to us within 30 days of the notification of the amendment. If you terminate the Agreement under this clause, we will provide you with a pro-rated refund of the Price you have pre-paid in relation to any period of your Subscription

Period on and after the effective date of termination. To avoid doubt, no Early Termination Fees are payable in respect of any such termination by you.

- 20.2 **(Set-off)** We may set-off or withhold the Early Termination Fee from any amounts owing to us by you in connection with this Agreement.
- 20.3 **(Severance)** If a clause in this Agreement is held to be void, invalid, illegal or unenforceable, that clause is to be read as narrowly as possible to allow it to be valid or enforceable, failing which, that clause (or that part of the clause) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that clause or the other clauses in this Agreement.
- 20.4 **(Governing law)** This Agreement is governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives the right to object to proceedings being brought in those courts.
- 20.5 **(Further assurances)** Each party agrees to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and its obligations under it.
- 20.6 **(Relationship of the parties)** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the parties.
- 20.7 **(Counterparts)** This Agreement may be executed in one or more counterparts that will together form one instrument.
- 20.8 **(Assignment)** Neither party may assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). You agree, however, that we may assign or transfer any debt owed by you to us,

arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.

- 20.9 **(Force majeure)** Neither party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.
- 20.10 **(Subcontracting)** We may subcontract our obligations under this Agreement, including all or part of the provision of the Services, provided that we remain responsible for the acts and omissions of these subcontractors as if they are our own.

21. DEFINITIONS

- 21.1 The following capitalised words have the meanings set out below:
- (a) **Agreement** has the meaning given in the Quote, and if not specified, has the meaning in clause 1.1;
 - (b) **Authorised Users** means any user who accesses or uses the Services through your subscription, provided they are one of your current employees;
 - (c) **Business Day** means a day when banks are open for business in the city in which an action is required or a notice is delivered;
 - (d) **Confidential Information** means information that is marked or designated as confidential or which, by its nature is or should be confidential, including relating to the business or affairs of a party or its related bodies corporate, including the terms of this Agreement and excluding any information that is in the public domain (other than as a result of a breach of this Agreement);
 - (e) **Consumer Law Rights** has the meaning given in clause 11.1;

- (f) **Customer Materials** means any data, content, or other materials which are owned or controlled by you or an Authorised User and provided to us or uploaded, transmitted or otherwise processed through the Services (and in particular, the Supplier Resources);
- (g) **Discloser** has the meaning given in clause 17.1;
- (h) **Early Termination Fee** has the meaning given in the Quote, and if no amount is specified in the Quote, 70% of the remaining unpaid Price for the remainder of the Subscription Period;
- (i) **Force Majeure Event** means any incident, event, act or omission beyond the reasonable control of that party, including any acts of God, strikes, civil strife, riots, wars, fire, explosion, storm, flood, earthquake, failure of communications networks (including the Internet), subsidence, pandemics or epidemics;
- (j) **Indirect Loss** means loss of profit, loss of revenue, loss of anticipated savings, loss of opportunity, loss of sales, loss of use, loss or corruption of data, loss of reputation, loss of goodwill, or loss of contract and any loss that does not arise naturally or according to the usual course of things from a breach, act or omission relating to the Agreement;
- (k) **Initial Term** has the meaning given in clause 1.1;
- (l) **Intake Day** means the date notified to you by us as the date that the Services commence;
- (m) **Intellectual Property Rights** means intellectual property rights, including existing and future copyright, rights in designs, patents, semiconductors and circuit layouts and rights in trade marks, trade names and service marks, in each case, whether registered or unregistered and existing in Australia or elsewhere in the world and whether created before or after the date of the Agreement;
- (n) **LIOLI Period** has the meaning given in clause 1.1(a);
- (o) **Personal Information** means information about an identified individual or an individual who is reasonably identifiable, including 'personal information', 'sensitive information' and 'health information' as defined in applicable Privacy Law;
- (p) **Personnel** means, in respect of a party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us;
- (q) **Price** means the price payable for the Services set out in the Quote, as may be amended in accordance with this Agreement.
- (r) **Privacy Law** means the privacy laws applicable to a party, including the *Privacy Act 1988* (Cth);
- (s) **Privacy Policy** means our privacy policy found here: <https://www.ecommerceequation.com.au/privacy>;
- (t) **Process** means to collect, store, access, use, copy, adapt, modify, store, reformat, transform, compile, disclose or perform any other set of operations on, data or information (including the Customer Materials and any Personal Information).
- (u) **Quote** means the quote that we provide to you, which upon your acceptance, creates a binding contract in accordance with the terms of this Agreement. A template is attached.
- (v) **Recipient** has the meaning given in clause 17.1;
- (w) **Services** means the services described in the Quote, and

- which include the Supplier Resources;
- (x) **Subscription Period** means a 12 month period commencing upon the end of the LIOLI Period or a relevant anniversary of this date, during which you commit to the acquire the Services.
 - (y) **Supplier Resources** has the meaning given in clause 3.1;
 - (z) **Term** has the meaning given in clause 1.1;
- (aa) **Third Party Materials** means content, data, products, software, functionality or services owned or controlled by third parties, which are delivered through or in connection with, or integrate with the Services; and
 - (bb) **Website** means our website available at ecommerceequation.com.au.