

1. Definitions

- 1.1 "EMS Admin" means EMS Admin Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of EMS Admin Pty Ltd.
- 1.2 "Client" means the person/s requesting EMS Admin to provide the Services as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 "Services" means all Services supplied by EMS Admin to the Client at the Client's request from time to time.
- 1.4 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by EMS Admin in the course of it conducting, or supplying to the Client, any Services.
- 1.5 "Price" means the price payable for the Services as agreed between EMS Admin and the Client in accordance with clause 2 of this contract.

2. Price and Payment

- 2.1 The Price shall be as indicated on invoices provided by EMS Admin to the Client in respect of the Services supplied.
- 2.2 Time for payment for the Services shall be of the essence and shall be:
 - (a) thirty (30) days following the end of the month in which a statement is delivered to the Client's address for notices; or
 - (b) stated on the invoice, quotation, or any other order forms. If no time is stated then payment will be due seven (7) days following the date of the invoice.
- 2.3 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to EMS Admin an amount equal to any GST EMS Admin must pay for any supply by EMS Admin under this or any other agreement for providing EMS Admin's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

3. Delivery of Services

- 3.1 At EMS Admin's sole discretion delivery of the Services shall take place when:
 - (a) the Services are supplied to the Client at EMS Admin's address; or
 - (b) the Services are supplied to the Client at the Client's nominated address.
- 3.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 3.3 EMS Admin may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 3.4 Any time specified by EMS Admin for delivery of the Services is an estimate only and EMS Admin will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that EMS Admin is unable to supply the Services as agreed solely due to any action or inaction of the Client then EMS Admin shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

4. Risk

- 4.1 Irrespective of whether EMS Admin retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as EMS Admin may repossess the Incidental Items in accordance with clause 5.3(f). The Client must insure all Incidental Items on or before delivery.
- 4.2 EMS Admin reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 4.1.

5. Title

- 5.1 EMS Admin and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
 - (a) the Client has paid EMS Admin all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to EMS Admin in respect of all contracts between EMS Admin and the Client.
- 5.2 Receipt by EMS Admin of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then EMS Admin's ownership or rights in respect of the Incidental Items shall continue.
- 5.3 It is further agreed that:
 - (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to EMS Admin immediately upon request by EMS Admin;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for EMS Admin and must pay to EMS Admin the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for EMS Admin and must pay or deliver the proceeds to EMS Admin on demand.
 - (d) the Client should not convert or process the Incidental Items or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of EMS Admin and must dispose of or return the resulting product to EMS Admin as EMS Admin so directs.
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of EMS Admin;
 - (f) the Client irrevocably authorises EMS Admin to enter any premises where EMS Admin believes the Incidental Items are kept and recover possession of the Incidental Items.

6. Personal Property Securities Act 2009 (“PPSA”)

- 6.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 6.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Incidental Items and/or collateral (account) – being a monetary obligation of the Client to EMS Admin for Services – that have previously been supplied and that will be supplied in the future by EMS Admin to the Client.
- 6.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which EMS Admin may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 6.3(a)(i) or 6.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, EMS Admin for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of EMS Admin;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of EMS Admin.
- 6.4 EMS Admin and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 6.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 6.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 6.7 Unless otherwise agreed to in writing by EMS Admin, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 6.8 The Client must unconditionally ratify any actions taken by EMS Admin under clauses 6.3 to 6.5.
- 6.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

7. Default and Consequences of Default

- 7.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at EMS Admin’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 7.2 If the Client owes EMS Admin any money the Client shall indemnify EMS Admin from and against all costs and disbursements incurred by EMS Admin in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, EMS Admin’s contract default fee, and bank dishonour fees).
- 7.3 Further to any other rights or remedies EMS Admin may have under this contract, if a Client has made payment to EMS Admin by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by EMS Admin under this clause 7 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client’s obligations under this agreement.

8. Privacy Act 1988

- 8.1 The Client agrees for EMS Admin to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by EMS Admin.
- 8.2 The Client agrees that EMS Admin may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client’s repayment history in the preceding two years.
- 8.3 The Client consents to EMS Admin being given a consumer credit report to collect overdue payment on commercial credit.
- 8.4 The Client agrees that personal credit information provided may be used and retained by EMS Admin for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client’s credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 8.5 EMS Admin may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 8.6 The information given to the CRB may include:
- (a) personal information as outlined in 8.1 above;
 - (b) name of the credit provider and that EMS Admin is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;

- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and EMS Admin has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of EMS Admin, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 8.7 The Client shall have the right to request (by e-mail) from EMS Admin:
- (a) a copy of the information about the Client retained by EMS Admin and the right to request that EMS Admin correct any incorrect information; and
 - (b) that EMS Admin does not disclose any personal information about the Client for the purpose of direct marketing.
- 8.8 EMS Admin will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 8.9 The Client can make a privacy complaint by contacting EMS Admin via e-mail. EMS Admin will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

9. General

- 9.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 9.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which EMS Admin has its principal place of business, and are subject to the jurisdiction of the Dubbo Courts in that state.
- 9.3 EMS Admin shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by EMS Admin of these terms and conditions (alternatively EMS Admin's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 9.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by EMS Admin nor to withhold payment of any invoice because part of that invoice is in dispute.
- 9.5 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.