

Diners Club Merchant Terms and Conditions

Effective 1 October 2019

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Introduction

Diners Club offers you a facility to enable Cardholders to buy goods and/or services from you by using a Diners Club Card or Account. These terms and conditions set out your obligations when you accept the offer.

1 Definitions and interpretation

1.1 Definitions

In these terms and conditions, unless the context otherwise requires:

Account means:

- (a) a Diners Club personal, business or corporate card account;
- (b) any other form of credit or charge card account provided by Diners Club that Diners Club notifies to you as being an “Account” under these terms and conditions;

Application Form means the form called “Merchant Agreement” or “Merchant Covered by Agreement” submitted to Diners Club, either directly or through a third party under which you apply to become a Diners Club Merchant;

Approval Code means a four digit number given by Diners Club to you through an Approved Terminal, Approved Electronic Commerce Service or by telephone in relation to a Charge;

Approved Electronic Commerce Service means an Electronic Commerce Service approved by Diners Club;

Approved Settlement File means a settlement file format provided by Diners Club;

Approved Terminal means an EFTPOS terminal or any other electronic payment charging system approved by Diners Club;

Approved Terminal Receipt means a receipt in a form approved by Diners Club and issued to record a Charge incurred by using an Approved Terminal;

Associated Person means each of your directors and officers, or the owners of, or partners in, your business;

Authorisation means, the provision by Diners Club to you of an Approval Code in relation to that Charge;

Authorised Person is an individual that the Establishment has approved to access information in relation to the merchant facility;

Business Day means a day on which banks are open for business in Sydney, except a Saturday, Sunday or public holiday;

Card means a card issued by Diners Club, Diners Club International, Discover Financial Services or any other person that Diners Club, Diners Club International or Discover Financial Services authorises to issue Diners Club cards, including any cards bearing the Diners Club or Discover acceptance mark;

Cardholder means:

- (a) a person who has been issued an individual Card and who is authorised to use that Card; or
- (b) any individual who is authorised by an Organisation in whose name an Organisation Card is issued to use that Organisation Card or to charge the Account linked to that Organisation Card;

Charge means a charge made by a Cardholder against a Card or Account to buy goods or services from you;

Chargeback means a Charge described in clause 8.3;

Commission Fee means the fee payable to Diners Club under clause 6.2;

Commission Rate means the percentage specified as the "Commission Rate" in the Application Form, exclusive of GST, as varied at any time under clause 9.1;

Cryptocurrency means:

A digital representation of value that:

- (a) functions as a medium of exchange, a store of economic value, or a unit of account; and
- (b) is not issued by or under the authority of a government body; and
- (c) is interchangeable with money (including through the crediting of an account) and may be used as consideration for the supply of goods or services; and
- (d) uses cryptography technology to manage and control the creation of new units and the security and authenticity of the transactions; and

(e) is generally available to members of the public without any restriction on its use as consideration other than the need for dedicated networks over which the transactions are conducted;

Delayed Charge means a Charge originated by you and made against a Cardholder's Card or Account to buy goods or services from you, where the amount of the Charge is determined by you after the Cardholder authorises the Charge;

Diners Club means Diners Club Pty Limited ABN 35 004 343 051;

Diners Club International means Diners Club International Limited, a company incorporated in New York;

Diners Club Trademarks means "Diners Club", "Diners Club International", the Diners Club "split circle" logo, and all associated trademarks owned by Diners Club or Diners Club International, whether registered or not;

Direct Credit means the arrangement by which Diners Club pays amounts due under clause 6.2 directly into your Direct Credit Account;

Direct Credit Account means the account you choose under clause 6.4 to have Direct Credit payments made to;

EFTPOS means Electronic Funds Transfer at the Point Of Sale;

Electronic Commerce Service means an electronic trading service (other than an Approved Terminal) facilitating the conduct and management of transactions, including buying and selling goods or services using computer networks;

Establishment "you" or "your" means the establishment described in the "Merchant Details" and "Ownership Details" sections in the Application Form;

Floor Limit means the maximum Australian dollar value of any Manual Charge that may be incurred with you before you must get Authorisation from Diners Club, being the amount specified in the Application Form as the "Manual Floor Limit", as varied at any time by Diners Club giving you written notice;

GST means the goods and services tax, and has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Individual Card means a Card capable of being issued to an individual which bears the name of that individual;

Individual Charge means a Charge made using an Individual Card or the Account to which the Individual Card is linked;

Loss means any claim, action, damage, loss, liability, cost, charge, expense or payment of any kind;

Merchant Account means a merchant facility given to an Establishment by Diners Club in order for the Establishment to accept transactions on Cards;

Manual Charge means a Charge created when a Cardholder signs a Record of Charge Form which bears the imprint of that Cardholder's Card;

Organisation means a person in whose name an Organisation Card is issued;

Organisation Card means a Card issued to an Organisation which bears the name of only that Organisation or department, division or other part of the Organisation;

Organisation Charge means a Charge made using an Organisation Card or the Account to which the Organisation Card is linked;

Payment Time means:

- (a) the period starting on the date Diners Club receives (or are taken to have received) details of a Charge (other than a Charge processed by an Approved Electronic Commerce Service under clause 9.1(b) and ending on the expiry of the number of days specified as the "Payment Time" in the Application Form; or
- (b) if the Charge is processed by an Approved Electronic Commerce Service, the period starting on the date Diners Club records and processes the Charge and ending on the expiry of the number of days specified as the "Payment Terms" in the Application Form;

Personal Information has the meaning given in the *Privacy Act 1988* (Cth);

Premises means the branches or outlets at which you carry on your business, as specified in the Application Form, and includes any other place

where you carry on business during the period of the agreement;

Processing Guidelines means any information Diners Club issues to you that sets out the procedures you must follow when incurring, crediting or otherwise dealing with Charges to a Card or an Account;

Record of Charge Form means the Diners Club record of charge form that Diners Club issues to you which is to be completed by you and signed by the Cardholder whenever a Manual Charge is incurred;

Refund means a refund of a Charge to a Card or Account;

Secure File Transmission, is the secure file transfer mechanism mandated for the transfer of all sensitive information between you and Diners Club;

Special Warning Bulletin is a flag or notice listing a Card or Account that is no longer valid for use that Diners Club gives you in writing;

Summary of Charges means:

- (a) a Summary of Charges Form; or
- (b) a summary of charges in an Approved Settlement File in accordance with clause 5.2;

Summary of Charges Form means any form Diners Club issues to you to summarise Manual Charges, or mail or telephone order Charges for which you seek reimbursement under these terms and conditions;

Taxes means all stamp duty and any other duties and taxes including, but not limited to, a goods and services tax, consumption tax, value added tax or similar tax, including GST payable in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Web Site means any document, computer file or computer program which you use in connection with an Approved Electronic Commerce Service; and

Withholding Event means any event where:

- (a) you, or your parent company:
 - (1) becomes insolvent;
 - (2) has a receiver or receiver and manager or administrator appointed to it or over the whole or any part of its assets or business;

- (3) has the whole or any part of its assets possessed by any chargee or mortgagee or their agent;
 - (4) makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of its indebtedness; or
 - (5) has any order or resolution made for its dissolution or liquidation, other than for the purpose of solvent amalgamation or reconstruction;
- (b) any owner, director or partner of you is declared bankrupt or becomes unable to pay his or her debts;
 - (c) you participate in, or Diners Club has reasonable grounds to suspect that you are participating in, any fraud against Diners Club, a Cardholder or an Organisation;
 - (d) you have ceased, or intend to cease, trading;
 - (e) an excessive number of Chargebacks are initiated by Cardholders in relation to your account; or
 - (f) you have breached these terms and conditions.

1.2 Interpretation

- (a) In these terms and conditions, unless the contrary intention is stated, a reference to:
 - (1) “these terms and conditions” includes these terms and conditions (as varied at any time under clause 2.3) and the Application Form;
 - (2) “the agreement” is the agreement formed by you accepting Diners Club’s offer to provide the services specified in these terms and conditions and the Application Form; and
 - (3) a person includes a corporation and any other entity the law recognises;
- (b) Headings are only for convenience and do not affect interpretation of these terms and conditions.

2 Merchant Agreement

2.1 Acceptance of this agreement

You accept the offer and agree to be bound by these terms and conditions when you accept a Diners Club Card or Account as payment for goods or services bought from you.

2.2 Varying these terms and conditions

Diners Club may change the terms and conditions applicable to your Account, including changes to any condition, fees and charges. We may tell you about a change by writing to your last known address, by advertisement in a newspaper or in other ways allowed by applicable laws.

2.3 Ending your agreement

This agreement continues until you or Diners Club ends it by giving written notice to the other. The notice takes effect on the date it is given.

2.4 Continuing obligations

All your payment and confidentiality obligations to Diners Club and all Diners Club's rights including its right of set-off, withholding, reimbursement and indemnity under these terms and conditions continue after the agreement ends.

3 Card Acceptance

3.1 A Valid Card

A Card is only deemed valid if:

- the presenter of the Card is the person whose name is printed on the Card;
- the Card, and in particular the signature panel, is not visibly altered or mutilated;
- the Card contains a three (3) digit number, not embossed, but printed on the signature panel;
- the printed account number on the Card matches the detail on the printed receipt.

3.2 Honouring the Card

You agree to accept all Cards, in accordance with this Agreement and without discrimination, in payment for goods and services sold at your Establishment. You will not make any statements or take any action to make Cardholders feel unwelcomed or embarrassed if they wish to use the Card.

3.3 Card Surcharging

Merchants that charge Cardholders a fee or surcharge for using the Card agree to:

- (a) clearly notifying Cardholders of your intention to charge such a fee or surcharge; and
- (b) not surcharge Cardholders by more than the cost of acceptance incurred as a result of accepting the Card.

3.4 Advertising Displays

You agree to display our signs, decals or other identification of the Card prominently at your Establishment during the term of this Agreement. You accept and you agree not to display any signage that discourages Diners Club Card acceptance.

3.5 Service Marks and Trade Marks

Except as noted herein, nothing in these Terms and Conditions or the Agreement as a whole gives either you or us the right to use the other party's name, trade name, trademarks, service marks, logos, taglines or other proprietary designations ("Marks") in advertising, promotional materials or other materials of any kind unless the other party expressly approves of such use in writing.

3.6 Forms of Card Acceptance

You may accept a Card in person at point of sale, over the Internet, over the telephone, or via mail order.

3.6.1 In-Person

Diners Club will accept Charges for purchases made in-person provided that:

- (a) The Card must be presented for all in-person Charges;
- (b) If you have an Approved Terminal or any other electronic Authorisation equipment at your Establishment, the Card must always be processed through the Approved Terminal except where the Approved Terminal is not operating;
- (c) If a Charge request is processed manually, the following procedures are followed:
 - (1) Obtain a voice Authorisation;
 - (2) Obtain the Cardholder's signature on the paper receipt and compare it to the name

printed on the Card and to the signature on the back of the Card;

- (d) If the chip and magnetic stripe on the Card is unreadable, the following procedures are followed:
- (1) Key the transaction and expiry date into the Approved Terminal (if available) for Authorisation approval;
 - (2) Obtain the Cardholder's signature on the paper receipt and compare it to the name printed on the Card and to the signature on the back of the Card;
 - (3) Where you do not get an Approval Code through the Approved Terminal, you follow the procedures in clause 5.3 for processing Manual Charges.
You must not engage in another transaction for that customer unless it is processed as a manual transaction;
- (e) You must not reduce the original transaction amount to gain automatic authorisation.

3.6.2 Internet

Diners Club will accept Charges for purchases made via the Internet provided that:

- (a) Authorisation is obtained for the Charge;
- (b) your Web Site displays at all times your policy on privacy and the handling of Personal Information;
- (c) your Web Site complies with any relevant laws and industry codes of conduct or practice;
- (d) your Web Site does not contain material that is defamatory or obscene or infringes any copyright or other intellectual property rights or which may adversely affect Diners Club's name, reputation or business; and
- (e) you comply with any technical specifications provided to you by Diners Club.

3.6.3 Telephone/Mail Order

Diners Club will accept Charges for purchases made by Mail or Telephone Order (including via Automated Voice Response Systems) provided that:

- (a) Authorisation is obtained for the Charge;

- (b) if the order is to be shipped or delivered more than thirty (30) days after the original Authorisation, you obtain a new Approval Code before shipping or delivering the merchandise. The Charge may not be submitted for payment until the order is shipped;
- (c) if the charge is not processed electronically you write on the Record of Charge Form the date upon which the goods or services relevant to the Charge are dispatched or delivered;
- (d) where the Charge is processed manually you write the words “Mail Order”, “Telephone Order” or “Signature on File” as appropriate on the Record of Charge Form in the panel designated for the Cardholder’s signature;

3.7 Recurring Billing

If you offer recurring billing for a series of separate purchases, Cardholders must accept terms of the continuous authority arrangement which include:

- (a) the Cardholder’s name;
- (b) the Card number and signature;
- (c) the Cardholder’s billing address;
- (d) the frequency of the recurring billing Charges e.g. weekly, monthly, quarterly; and
- (e) a statement that the Cardholder may cancel the Continuous authority arrangement at any time.

You must retain confirmation of the continuous authority arrangement for 12 months from the date you submit the last Recurring Billing Charge.

Before submitting to us each recurring billing Charge, you must obtain Authorisation and submit to us a listing in form and content agreed by us, which shall include details of your Establishment, the Cardholder and the Recurring billing Charge in question or complete a Record Of Charge Form.

3.8 Prohibited Charges

Unless otherwise agreed with Diners Club you shall not accept the Card for purposes of transactions other than bona fide purchases by Cardholders of goods and services from you. This means, by way of example and not limitation, that you may not accept the Card for any of the following:

- (a) gambling goods or services;

- (b) goods or services for which the provision thereof is illegal (e.g. drug trafficking);
- (c) sales where the amounts charged do not correspond with the price of the goods or services purchased or rendered;
- (d) sales made under a name which is different from the name of your Establishment;
- (e) sales made by a third party i.e. not your Establishment;
- (f) cash or travellers cheques;
- (g) damages, losses, penalties, fines, charges, costs or fees of any kind which are in addition to the value of the Charge for the goods or services originally purchased or tendered; or
- (h) amounts which do not represent a bona-fide sale of goods or services at your Establishment;
- (i) subject to clause 7, overdue amounts, or amounts covering returns or stop payment cheques;
- (j) amounts which represent a refinancing of any debt; and
- (k) Cryptocurrency transactions.

4 Authorisation of Charges

You must observe the following procedures for obtaining Authorisation for a Charge from us:

- (a) If you have an electronic terminal at the location of the Charge, you must use the terminal to obtain Authorisation from us;
- (b) If you do not have a terminal or if your terminal is not working for any reason, you must obtain Authorisation manually from us by telephoning our Authorisation centre before the Charge is completed unless the amount of the Charge is below the Floor Limit;
- (c) Each request for Authorisation shall be for the total original Charge, including applicable taxes;
- (d) Authorisation shall not be deemed or construed to be a representation, promise or guarantee that we will accept the Charge, nor that the person incurring the Charge is the Cardholder;
- (e) You must obtain Authorisation for all Internet, Mail and Telephone Order Charges regardless of the amount;

- (f) You must not evade Authorisation by the submission of two or more Charges for a single transaction or by making more than one request for Authorisation for a single transaction.

5 Processing and Submission of Charges

5.1 Processing of Charges

You must process each Charge in accordance with the procedure as notified to you from time to time.

5.2 Electronic charge processing and submission

You may process and submit a Charge electronically at the:

- (a) time that you receive an Approval Code via an Approved Terminal or Approved Electronic Commerce Service; or
- (b) end of day with an Approved Settlement File sent using Secure File Transmission.

5.3 Manual charge processing and submission

- (a) You must process and submit a Charge manually if:
 - (1) you do not have an Approved Terminal or Approved Electronic Commerce Service; or
 - (2) you have an Approved Terminal or Approved Electronic Commerce Service but it is either not operating or Diners Club stops accepting Charges through it.
- (b) When you process a Charge as a Manual Charge, you must ensure that:
 - (1) the Card is an Individual Card;
 - (2) a valid Individual Card is produced;
 - (3) the Individual Card has been signed by the Cardholder;
 - (4) the Individual Card is used within the validity period shown on the Card; and
 - (5) an Authorisation is obtained when the Charge exceeds the Floor Limit.

5.4 Addendum Transaction Data

If you provide a Settlement File you must submit addendum transaction data for each Charge to Diners Club:

- (a) As per the guidelines as described in the Settlement File specifications provided by us; and
- (b) Electronically as instructed by us from time to time.

Where the addendum transaction data you send to us is missing or incorrect, you will:

- (a) Reprocess the Charges with correct addendum transaction data within seven days of being notified of any errors; and
- (b) Ensure that future submitted Charges have correct addendum transaction data within seven days of being notified of any errors.

5.5 Submission of Charges

You must submit details of each Charge to Diners Club:

- (a) no later than seven days after the Charge is incurred; or
- (b) where the Charge relates to a free trial period for the goods or services the subject of the order you must not submit the Charge to Diners Club until the free trial period has expired, and you must submit it within seven days after that expiry date.

6 Settlement of Charges

6.1 When Diners Club will pay Charges

- (a) Subject to these terms and conditions, Diners Club will pay you the amount of each Charge you submit to Diners Club in accordance with these terms and conditions before the Payment Time for the Charge expires;
- (b) If Diners Club receives details of;
 - (1) an electronically submitted Charge or a Charge other than a Manual Charge, after 6pm (Sydney time) on a Business Day, Diners Club is taken to have received the details on the next Business Day;
 - (2) a manually submitted Charge processed under these terms and conditions after

2pm (AEST) on a Business Day, Diners Club is taken to have received the details on the next Business Day;

- (c) If Diners Club pays a Charge, the payment of any Charge shall not constitute a waiver of Diners Club's right to treat it as a Chargeback.

6.2 Settlement Calculation

We will pay you the gross amount of all Charges submitted by your Establishment, less -

- (a) Commission Fee (exclusive of Goods and Services Tax (GST));
- (b) Any taxes, GST or other duties we are or become liable to pay in respect of any supplies made to you;
- (c) Credits submitted by your Establishment;
- (d) Chargebacks; and
- (e) Other fees and charges as specified to you.

6.3 Errors and Omissions

You must notify us in writing of any error or omission in respect of your fees or payments for Charges or Credits within ninety (90) days of the date of the statement containing such error or omission. Further, if you receive any payment from us not owed to you under this Agreement, you must promptly notify us (by calling our customer service team) and return such payment to us promptly. Whether or not you notify us, we may withhold future payments to you or debit your account until we recoup the amount fully. We have no obligation to pay any party other than you under this agreement.

6.4 Direct Credit

- (a) You will be paid directly into your account with a financial institution;
- (b) You must give Diners Club details of your account at the time of your application, otherwise Diners Club will withhold payment until you provide such details;
- (c) You must ensure that Diners Club has the correct details of your Direct Credit Account at all times;
- (d) You must give Diners Club at least seven (7) days advance written notice if you change or cancel your Direct Credit Account;

- (e) Diners Club is not liable for any Loss you suffer, incur, pay or are liable for as a result of a Direct Credit Account no longer being current or cancelled or changed by you, where you have not notified Diners Club in accordance with clause 6.4(d). This Loss includes the Loss you suffer, incur, pay or are liable for as a result of Diners Club transferring funds to a Direct Credit Account that is no longer current or has been cancelled or changed by you;
- (f) Diners Club may end the Direct Credit arrangements at any time by giving you 5 Business Days advance written notice.

6.5 Direct Debit

- (a) You authorise Diners Club (and you direct the financial institution at which the Direct Credit Account is held) to debit your Direct Credit Account to correct any error relating to any payment Diners Club makes to your Direct Credit Account, or when your account becomes overdrawn due to refunds or Chargebacks, or for any other amount for which you are liable.
- (b) You must also get the signatories to the Direct Credit Account to sign or authorise any withdrawal from that account for the purposes of this clause.

6.6 Payment Currency

You will be paid in the currency that your Charges were submitted in.

6.7 Withholding payment upon notice

Should Diners Club become aware, or have reason to reasonably suspect, that a Withholding Event has occurred, or in Diners Club's reasonable opinion is likely to occur, with respect to you or your parent company, Diners Club may, upon notifying you, withhold all or any part of any amounts thereafter payable by Diners Club to you under these terms and conditions. With our agreement, you may continue to accept payments using a Card or Account while we withhold amounts under this clause 6.7.

6.8 Delayed Charges

- (a) Diners Club will try to collect a Delayed Charge from the Cardholder, but Diners Club is not liable to make any payment to you on account of the Delayed Charge amount unless Diners Club

actually recovers the Delayed Charge amount from the Cardholder.

- (b) You must keep a copy of all written evidence that the Delayed Charge has been incurred for at least one year from the date the Delayed Charge was incurred, and produce that copy to Diners Club on request.

6.9 Right of Set-Off

6.9.1 Diners Club may set-off all payments

Where under these terms and conditions or any other agreement between Diners Club and you, or under any law or regulation, Diners Club is entitled to any payment, repayment or reimbursement from you (including, but not limited to, any payment by indemnity), Diners Club may set-off the payment, repayment or reimbursement against amounts due and payable to you under these terms and conditions.

6.9.2 Cardholders associated with you

Where any amount billed to a Card or Account held by any of your Associated Persons as a result of a Charge processed by you is not paid within 30 days of the date payment is due to Diners Club under the terms and conditions for that Card or Account, Diners Club may deduct that amount from any amount payable to you under these terms and conditions.

6.9.3 You must pay Diners Club on demand

Notwithstanding anything in clause 6.9.1, if Diners Club reasonably believes that you cannot pay a given amount, Diners Club may, at any time, demand immediate payment of any amount, by sending written demand to you. If Diners Club does this, the amount demanded is immediately due and payable.

7 Refund of Charges

You may only make price adjustments or refunds to a Cardholder relating to goods or services bought by using a Card or Account by crediting the Cardholder's Card or Account in accordance with the following guidelines:

- (a) You must not give cash refunds relating to a Charge;

- (b) Any Refund shall be processed as a credit to that Cardholder's Card or Account and shall be submitted to us within seven days of determining that a Refund is due;
- (c) Refunds shall not be submitted unless they relate to previously submitted Charges;
- (d) You must refund any surcharge that you applied to the Charge; and
- (e) Refunds should be submitted to us using the same method as the original charge was submitted to us.

8 Cardholder Complaints, Disputes and Chargebacks

8.1 Cardholder Complaints

You must handle all complaints by Cardholders relating to purchases from you, except any complaints relating to a Cardholder's statement of account or Diners Club's method of billing.

8.2 Cardholder Disputes

- (a) Where the Cardholder disputes a Charge, the Charge will be treated as a Chargeback if you cannot produce to Diners Club on request a bill or order form for the goods or services, the subject of the Charge bearing the Cardholder's signature and the Card or Account number.
- (b) If Diners Club asks you anything about a Charge (including asking you to provide Diners Club with copies of any document relating to the Charge), you must promptly help Diners Club with its enquiries. If you do not answer an enquiry to Diners Club's reasonable satisfaction within 14 days of the date of the enquiry, the Charge to which the enquiry relates will be treated as Chargeback.

8.3 Chargebacks

A Charge may be deemed by Diners Club to be a Chargeback under the following circumstances:

- (a) it is incurred using an Individual Card that has not been signed by the Cardholder;
- (b) it is incurred outside the validity period shown on the Card;
- (c) the Card number or truncated Card number appearing on the Approved Terminal Receipt is

not the same as the Card number of the Card which is produced to incur the Charge;

- (d) it is incurred by the Cardholder on a Card that is not a valid Card;
- (e) it is incurred in contravention of any marking specified on the Card indicating the use of the Card is restricted;
- (f) it is incurred by forgery of the Cardholder's signature where the signature on the Record of Charge Form or an Approved Terminal Receipt is conspicuously obviously different to that of the true Cardholder's signature;
- (g) it has not been incurred or processed in accordance with these terms and conditions or the Processing Guidelines;
- (h) it is incurred involving a Record of Charge Form or Approved Terminal Receipt that is not signed by the Cardholder or is incomplete or illegible as to the Cardholder's name or the number or validity date of the Card;
- (i) it is processed through an EFTPOS terminal or other electronic charging system terminal which is not an Approved Terminal;
- (j) where the date of the Charge is wholly or partly incapable of being deciphered or processed;
- (k) it relates to a transaction which you key enter through an Approved Terminal despite not having obtained an Approval Code for the Charge through the Approved Terminal;
- (l) Diners Club receives the details or date of the debit Charge is more than seven days or date of credit Charge is more than thirty days after the Charge was incurred by the Cardholders;
- (m) you billed the amount of the Charge direct to the Cardholder, or received payment for the Charge other than through the use of a Card or Account;
- (n) it exceeds the Floor Limit except where you obtained Authorisation under clause 4;
- (o) the Approved Terminal referred you to Diners Club to get Authorisation and (not being a mail or telephone order Charge) you did not get from Diners Club, or Diners Club refused to give you, Authorisation;

- (p) the Cardholder refuses to pay it because goods or services the subject of the Charge were defective, returned, not delivered or provided, or not as agreed;
- (q) it relates to the rental of a motor vehicle and it cannot be substantiated by written evidence that the Charge was incurred and approved by the Cardholder;
- (r) it relates to a mail or telephone order which the Cardholder has failed to pay and you cannot produce to Diners Club on request a bill or order form for the goods or services the subject of the Charge bearing the Cardholder's signature and Card number;
- (s) it relates to a transaction for which you have previously processed a Charge under these terms and conditions;
- (t) the amount of the Charge is altered by you or any other person in any way after the Cardholder signed the Record of Charge Form or the Approved Terminal Receipt;
- (u) in Diners Club's opinion it relates to a single transaction which has been split into two or more Charges;
- (v) it is incurred through the use of a Card which was evidently a forgery, or which you had reasonable grounds to suspect was a forgery (other than a Charge that is covered by clause 8.3(f));
- (w) it is unsigned and incurred in a hotel Establishment for which the Cardholder can furnish a cancellation number provided by the hotel or the amount of the Charge exceeds the cost of one night's stay; or
- (x) it is a Delayed Charge that cannot be recovered from the Cardholder.

8.4 Fraudulent Charges and Cardholder Complaints

If you claim reimbursement from Diners Club in relation to two or more Charges incurred during any calendar year which involve, or Diners Club suspect involves, fraud committed by you, or an Associated Person or your employee, or in Diners Club's opinion a serious Cardholder complaint is made concerning

the use of a Card or Account with you, Diners Club may do any combination of the following:

- (a) withhold payment of any Charge (whether or not that Charge relates to the Cardholder complaint or the Charge which involves fraud) incurred with you until Diners Club has had time to fully investigate the Cardholder complaint or the fraudulent Charge;
- (b) exercise its right of set-off under clause 6.9 in relation to any such withheld payment; or
- (c) on giving you written notice, treat as a Chargeback any Charge (whether or not that Charge relates to the Cardholder complaint or the Charge which involves fraud) incurred with you and which is disputed by the Cardholder.

9 Fees, Charges, and Taxes

9.1 Commission Fee

You must pay Diners Club a Commission Fee for each Charge you submit to Diners Club. The Commission Fee is the amount of the Charge multiplied by the Commission Rate.

9.2 Account Setup Fee

We reserve the right to charge a fee for each merchant Account that we set up.

9.3 Account Keeping Fees

We reserve the right to charge monthly or annual account keeping fees for each Merchant Account that is open during such period.

9.4 Early Termination Fees

We reserve the right to charge an early termination fee for each Merchant Account that is closed before the agreed contracted period has elapsed.

9.5 Manual Processing Fees

We reserve the right to charge a fee for any Record of Charge Form submitted manually.

9.6 Taxes

You must pay any Taxes Diners Club reasonably incurs or pays which relate to that payment or the Charge, including any GST payable in respect of a supply by Diners Club for which the Commission Fee is payable.

10 Statements

We will provide you with confirmation of amounts deposited into, or if applicable withdrawn from, your financial institution account by issuing you with a statement by mail or if available by allowing you to retrieve your statement by accessing it via Secure File Transmission. For Australian Establishments, the statement will constitute a Tax Invoice.

11 Data Security Standards

11.1 Data Security Standards for Merchants

Diners Club requires that all merchants, and their third-party processors, must comply with PCI Data Security Standards. Without limiting the foregoing: you must comply with the following obligations regarding the protection of Cardholder data.

- (a) You agree to be subject to an audit to verify your compliance with security procedures;
- (b) For non in-person transactions, copies of the transaction records may be delivered to Cardholders in either electronic or paper format;
- (c) You may not transmit Cardholder account numbers to Cardholders for non in-person transactions;
- (d) You agree not to store or retain Card Validation Codes (three-digit values printed in the signature panel of most Cards);
- (e) You agree not to store or retain Magnetic Stripe data or PIN data;
- (f) You agree to destroy or purge all media containing obsolete transaction data with Cardholder information;
- (g) In the event that transaction data is accessed or retrieved by any unauthorised person or entity, you shall contact Diners Club immediately. You may be asked to conduct an investigation, at your expense, into the unauthorised access.

11.2 Secure File Transmission

If we have made Secure File Transmission available to you it is your responsibility to ensure that your account password is:

- (a) changed when an employee with knowledge of your Secure File Transmission account's login details leaves your organisation or no longer

requires access to your Secure File Transmission account;

- (b) changed periodically; and
- (c) not written anywhere that may be seen by an individual that should not have access to your Secure File Transmission account's login details.

11.3 Duty to Notify Diners Club

You must notify Diners Club immediately if you know or suspect that Cardholder information has been accessed or used without authorisation.

You must provide (and obtain any waivers necessary to provide) to Diners Club and its auditors, on request, full cooperation and access to conduct a thorough audit of any data incidents including providing all Card or Account numbers related to the incident and audit reports of the incident. You must work with Diners Club to rectify any issues arising from the incident, including consulting with us about your communications to Cardholders affected by the incident and providing (and obtaining any waivers necessary to provide) Diners Club all relevant information to verify their ability to prevent future incidents.

12 Indemnities, no liability

12.1 General indemnity

Subject to any applicable law to the contrary, you must indemnify Diners Club against all Loss (whether direct or indirect) that Diners Club suffers, incurs, pays or is liable for in respect of:

- (a) your breach of any of your obligations under these terms and conditions;
- (b) any dispute between you and a Cardholder or an Organisation about the supply, use, quality or fitness for purpose of goods or services bought from you;
- (c) any Taxes now or in future assessed, levied, imposed or collected by any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department or authority in respect of the use of a Card or Account to buy goods or services from you, any Charge or any transaction under, or contemplated by, these terms and conditions;

- (d) your possession, operation, control or use of an Approved Terminal, Approved Electronic Commerce Service or imprinter;
- (e) a claim by a Cardholder or an Organisation against you or Diners Club for damages or to recover an amount from you or Diners Club as a result of misrepresentation, breach of contract or failure of consideration relating to goods or services bought from you;
- (f) any leakage or compromise of Cardholder data held by you or a third party processor engaged by you;
- (g) a claim by a Cardholder or an Organisation against you or Diners Club for damages or to recover an amount from you or Diners Club in respect of any representation, warranty or statement made (whether orally or in writing) by you, or any person acting on your behalf, in relation to the Card or Account;
- (h) outages, faults or delays in any of your computer systems or any infrastructure or systems connected to your computer systems or any corruption of data caused by, or in any way attributable to, the use of a Card or Account; and
- (i) The indemnity provided in this clause excludes any Loss caused by fraud or negligent conduct of Diners Club's employees or agents.

12.2 Continuing indemnities

Each of your indemnities in these terms and conditions:

- (a) remains in force until all money owing contingently or otherwise, under the indemnity has been paid in full;
- (b) is an additional, separate and independent obligation; and
- (c) continues after this agreement ends unless you and Diners Club agree otherwise.

12.3 No liability

Diners Club is not liable for any Loss (whether direct or indirect) you suffer, incur, pay or are liable for in respect of:

- (a) any dispute between you and a Cardholder or an Organisation about the supply, use, quality or fitness for purpose of goods or services;

- (b) your possession, operation, control or use of an Approved Terminal, Approved Electronic Commerce Service or imprinter;
- (c) a claim by a Cardholder or an Organisation against you for damages or to recover an amount from you as a result of misrepresentation, breach of contract or failure of consideration relating to goods or services bought from you;
- (d) a claim by a Cardholder or an Organisation against you for damages or to recover an amount from you in respect of any representation, warranty or statement made (whether orally or in writing) by you, or any person acting on your behalf, in relation to the Card or the Account; or
- (e) outages, faults or delays in any of your computer systems or any infrastructure or systems connected to your computer systems or any corruption of data caused by, or in any way attributable to, the use of a Card or Account other than where Diners Club has contributed through its negligence to the circumstances giving rise to the relevant loss.

13 General rights and obligations

13.1 Governing law

These terms and conditions are governed by the laws of New South Wales. You submit to the non-exclusive jurisdiction of the courts of New South Wales.

13.2 Certificate conclusive

A certificate, statement or letter signed by a Diners Club employee or approved agent of Diners Club stating the amount you owe Diners Club under these terms and conditions is conclusive evidence of the amount of your liability to Diners Club at the date of the certificate, unless there is obvious error.

13.3 Right of access

Diners Club enter the your Premises during your normal business hours to:

- (a) remove or protect any of Diners Club's property that is in your possession;
- (b) take copies of any documents in your possession relating to any transactions involving the use of a Card or Account; or
- (c) to audit your compliance with these terms and conditions.

13.4 Change of Details

- (a) You must promptly give Diners Club written notice if you change the address where you carry on business or start carrying on business at any place other than the Premises specified in the Application Form.
- (b) You must promptly give Diners Club written notice if you change any details specified in the Application Form.

13.5 Notice of insolvency events

You must promptly give Diners Club written notice if:

- (a) you are placed in receivership, have an administrator appointed to you, or are wound up, or any person or its agent takes possession of any part of your property;
- (b) your business or the Premises are sold, assigned, leased or transferred;
- (c) any event occurs that might prevent or restrict you from meeting your obligations under these terms and conditions; or
- (d) any of your Associated Persons is declared bankrupt or becomes unable to pay his or her debts.

13.6 Change of Ownership

You must provide Diners Club with details (which Diners Club reasonably requires) of any proposed change in your ownership or control (including, without limitation, your Australian Business Number and new names under which you may trade or operate):

- (a) if you are a listed company, within seven (7) days of the change taking effect; or
- (b) otherwise, prior to the change taking effect.

If you fail to comply with the requirements of this clause 13.6, and receive any amount incorrectly as a result of your failure to comply, you must immediately return that amount to Diners Club, and in any case, on demand from Diners Club.

13.7 GST Registration

Unless such information is provided on your application form you will provide Diners Club with a signed statement stating:

- (a) your Australian Business Number (ABN);
- (b) whether or not you are registered for GST;

- (c) whether the supplies you make are either:
 - (1) solely taxable supplies;
 - (2) solely non-taxable supplies (that is, GST-free or input taxed supplies); or
 - (3) a mixture of both taxable and non-taxable supplies;
- (d) where you only make supplies that are solely taxable supplies, whether or not GST is calculated at the normal prevailing rate of the price for all the taxable supplies you provide; and
- (e) that you undertake to immediately notify Diners Club in writing:
 - (1) if after you submitted or submit the Application Form (including, for the avoidance of doubt, at any time on or after 1 July 2000), your GST registration status changes or changed (that is, you cease or ceased to be registered for GST or you become or became registered for GST), the date on which that GST registration changes or changed; and
 - (2) if after you submitted or submit the Application Form (including, for the avoidance of doubt, at any time on or after 1 July 2000), you cease or commence or ceased or commenced, as the case may be, to make only taxable supplies where the GST is calculated at 1/11th of the price, the date on which that event occurs or occurred.

13.8 Financial information

Diners Club may request that you provide us with information relating to your financial condition (including, but not limited to, financial statements, balance sheets or profit and loss statements) at any time while the Agreement remains on foot. You must provide the requested information to Diners Club within two Business Days following the receipt by you of such a request.

13.9 Assignment restricted

- (a) You must not assign or transfer any of your rights or obligations under this agreement without Diners Club's prior written consent.

- (b) Diners Club may assign or transfer any of its rights or obligations under this agreement without your prior consent.

13.10 Notices to you

- (a) A notice, direction or other information (including a Special Warning Bulletin) to be given to you in writing under these terms and conditions (each called a notice) must be legible and may be posted, faxed or sent by email or other electronic messaging system to your address.
- (b) A notice is regarded as given to you:
 - (1) on the date of actual receipt of the notice or on the date it would have been delivered in the ordinary course of post, whichever occurs first;
 - (2) if faxed, when transmitted to you; or
 - (3) if sent by email or other electronic messaging system, when sent to your computer system or your email or electronic messaging system account, but if delivery or receipt is on a day which is not a Business Day or is after 5pm (your time), it is regarded as received at 9am on the next Business Day.
- (c) A notice sent by fax, email or other electronic messaging system is regarded as legible unless, within 24 hours after the transmission is received or regarded as received, you:
 - (1) give Diners Club written notice that it is not legible; or
 - (2) telephone Diners Club and tell Diners Club that it is not legible.
- (d) In this clause 13.10 address means your address, fax number or email or other electronic messaging address last known to Diners Club.

13.11 Notices to Diners Club

- (a) A notice to be given to Diners Club in writing under these terms and conditions must be legible and posted to Diners Club's address;
- (b) A notice is regarded as given to Diners Club when received by the addressee at Diners Club;
- (c) Notices to Diners Club must be sent to:
GPO Box 40, Sydney, NSW 2001.

13.12 Third-Party Fees and Commissions

Diners Club may pay a fee or commission to a third party who introduces you to us.

13.13 Diners Club Trademarks

- (a) You acknowledge and agree that:
- (1) Diners Club International is sole and exclusive owner of the Diners Club Trademarks and the goodwill associated with the Diners Club Trademarks and all rights in and to all uses of any of them. The Diners Club Trademarks have acquired valuable goodwill and secondary meaning and you must not challenge or adversely affect Diners Club International's ownership rights therein;
 - (2) any rights that you may acquire or develop in or to the Diners Club Trademarks or any similar Diners Club Trademarks, and any goodwill associated with the Diners Club Trademarks, will be held by you solely as fiduciary in trust for Diners Club International for Diners Club International's benefit. You will use the Diners Club Trademarks (or variations thereof) and take action with regard to them only as specifically directed by Diners Club International; and
 - (3) should you have received a prior written grant of right in any Diners Club Trademarks from Diners Club International or any predecessor in interest to Diners Club International, you represent and warrant that such uses have been, and are subject to Diners Club International's exclusive ownership rights therein, and you shall immediately discontinue any such uses if requested by Diners Club International.
- (b) Diners Club reserves all rights, and owns or licenses all intellectual property, in the Diners Club Trademarks.
- (c) You are authorised by Diners Club to use the Diners Club Trademarks in relation to an Approved Electronic Commerce Service, subject to the following conditions:

- (1) authorisation to reproduce the Diners Club Trademarks is given solely in relation to the promotion of you as a merchant who is authorised by Diners Club to accept Charges, and for such purpose may only be reproduced on brochures, your Web Site and any other promotional materials which promote your status as such a merchant;
- (2) you may not use the Diners Club Trademarks or any similar trademark, words or logos for any other purpose whatsoever, without the prior written consent of Diners Club;
- (3) when you reproduce any Diners Club Trademarks in accordance with clause 13.13(c)(1), you may not in any way indicate that Diners Club or Diners Club International endorses your goods or services or is the supplier of, or guarantees the supply, quality or fitness for purpose of your goods or services;
- (4) if, in Diners Club's absolute discretion, Diners Club believes your use or reproduction of the Diners Club Trademarks is in any way prejudicial to Diners Club's rights or interests, or does not comply with Diners Club's specifications, or this authorisation is terminated, you will at Diners Club's request immediately amend, withdraw, remove, destroy, or return to Diners Club, or otherwise as directed by Diners Club, any document or thing bearing the Diners Club Trademarks;
- (5) reproduction of the Diners Club Trademarks must strictly accord with all specifications prescribed by Diners Club, from time to time, including spacing, size and colour requirements; and
- (6) authorisation to use the Diners Club Trademarks will terminate when this agreement terminates, or when Diners Club notifies you in writing of such termination, which Diners Club may do at any time in its absolute discretion and without any liability to you for any form of compensation.

If authorisation to use the Diners Club Trademarks is terminated, you will immediately cease using the Diners Club Trademarks in any way whatsoever and will thereafter not use any name, mark, logo, or trade dress substantially identical with, deceptively similar to any Diners Club Trademark, or so nearly resembling any Diners Club Trademark as to be likely to deceive or cause confusion.

13.14 No Waiver

No failure or delay by Diners Club in exercising any right, power or remedy under this Agreement and no course of dealing or grant by the Diners Club to you of any time or other consideration, will operate as a waiver of the breach or a default by you. Any waiver by Diners Club of a breach of this Agreement will not be construed as a waiver of any further breach of the same or any other provision.

14 Privacy

Purposes for which we collect, use and disclose your personal information

- (a) We collect, use and disclose your personal information:
 - (1) to assess any application;
 - (2) to provide and manage your products, accounts and services, and to manage your relationship and arrangements with us;
 - (3) to comply with applicable laws both in Australia and overseas (for more information about the relevant Australian laws see our Privacy Policy); and
 - (4) for other purposes as listed in our Privacy Policy.

If you do not provide us with the information we ask for or the information provided is incorrect or incomplete, we may not be able to provide or manage the products or services that you are seeking.

- (b) We usually collect your personal information directly from you. However, we may need to collect personal information about you from third parties. This may include, for example, where we need information from a third party to

assist us to process your application, or to assist us to locate or communicate with you.

- (c) Where you provide information about another individual, you must make them aware of that fact and the contents of the Privacy Consents and Notifications, and have obtained their consent to make this disclosure.
- (d) Your telephone calls and conversations with a Diners Club representative may be recorded and monitored for quality, training and verification purposes.
- (e) Disclosures of your personal information:
We may disclose to, and obtain from, the following organisations personal information about you (as well as otherwise permitted by the Privacy Act):
 - (1) our related companies in Australia and overseas;
 - (2) any signatory to the product for which you are applying;
 - (3) any broker, financial, legal or other adviser acting in connection with your product or application;
 - (4) regulatory and tax authorities in Australia and overseas;
 - (5) any insurer relating to your product;
 - (6) organisations wishing to acquire an interest in any part of our business for assessing or implementing any such acquisition;
 - (7) organisations that carry out functions for us or on our behalf including mailing houses, data processors, researchers and collection agents; and
 - (8) other organisations as further set out in our Privacy Policy.
- (f) Disclosures to overseas recipients:
Some of the recipients to whom we disclose your personal information may be based overseas. It is not practicable to list every country in which such recipients are located but it is likely that such countries will include the United States of America, India, Malaysia, Hong Kong, the Philippines and Singapore.

- (g) Our policies (including how to access and correct information, and make a complaint):
You can view the Diners Club Privacy Policy on our website www.dinersclub.com.au/privacy or obtain a copy by calling us on 1300 360 060. This policy includes information as to how you can access and/or seek correction of the personal information we hold about you. Our Privacy Policy also contains information as to how you can complain about a breach by us of the Privacy Act and how we will deal with such a complaint.

Contacting us

If you wish to find out more information, or raise any specific or general concerns about us and our Privacy Policies, the contact details are as follows:

Diners Club

GPO Box 204

Sydney NSW 2001

Telephone: 1300 360 060

Email: privacy.officer@citi.com

For further information call
Diners Club Customer Service
24 hours a day on 1300 360 060
dinersclub.com.au

