

Terms of Supply

1. Introduction

- 1.1 This agreement applies when we, Equifax Australasia Credit Ratings Pty Limited, ABN 33 007 527 611 (Equifax) supply any of our commercial information, financial viability and ratings services (our "services") to you, our customer. Additional terms may apply to some of the services we supply. We will tell you if additional terms apply to any service you use and these will be documented by way of separate engagement proposal.
- 1.2 In this agreement, the Privacy Act 1988 (Cth) is referred to as "the Privacy Act" and includes instruments and codes made under the Act. Terms used in this agreement that are defined in the Privacy Act have their defined meaning, unless the context otherwise requires.
- 1.3 In this agreement:
 - (a) "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth).
 - (b) "Law" means:
 - (i) any statute, regulation, by-law, ordinance, subordinate legislation or legislative instrument in force from time to time to which a party to this agreement is subject;
 - (ii) the common law and the law of equity as applicable to the parties from time to time;
 - (iii) any binding court or tribunal order, judgement or decree;
 - (iv) any applicable industry code, policy or standard enforceable by law; and
 - (v) any applicable determination, direction, policy, rule or order that is binding on a party and that is made or given by any regulatory or quasi-regulatory body having jurisdiction over a party or any of that party's assets, resources or business.
 - (c) "personal information" has the meaning given to that term in the Privacy Act; and
 - (d) "Third Party" means any third party to whom you disclose personal information disclosed to you under this agreement, or to whom we have disclosed such personal information at your direction;

2. Supply of our services

- 2.1 We will supply our services to you after we accept your request for the particular services.
- 2.2 Where we supply our services to you online, the services are supplied over communication links and other networks not controlled by us, and the availability of the services rely on the availability of those links and networks. While we will do our best to make sure the online services are available, we are not responsible if the links or networks are unavailable at any time, and we do not guarantee that services supplied online will be continuously available.
- 2.3 If we have given you a timetable or time estimate for providing our services, we will use reasonable endeavours to meet that timetable or time estimate. We will let you know if we require you to take any action to assist us to meet the timetable or time estimate and will seek agreement from you before any action is undertaken.
- 2.4 You agree to comply with this agreement and follow any procedures and other instructions we provide when you use our services, for example instructions in documentation as to how to treat certain information. If we change any of our procedures or instructions, or if we introduce new ones and we think those changes will affect you, we will let you know in reasonable time taking into account the nature of those changes.
- 2.5 To access our services you will need to ensure that your system and software complies with a relevant version of our system specifications (if any). Where necessary, you are responsible for any system changes you need to make and agree to make those changes within 6 months of us notifying you of a new version.
- 2.6 You agree to make available to us one contact person within your organisation (and to notify us if they leave). That person will be responsible for liaising with us about the requirements of this agreement.
- 2.7 You agree to keep any username, password or other identifiers we give you to use our services confidential and secure and to manage your users' access to our services. You agree that any identifiers we give you will not be transferred between users or disclosed to any third party and you will tell us if they are no longer required. You are responsible for all use of those identifiers. If we ask you to, you agree to stop using those identifiers or use any replacement identifiers we give you.

3. Your use of our services

- 3.1 You can only use the reports and information we supply you for your own internal business use and for the purpose that we supply them for. You must not re-sell, re-package or otherwise re-use our information in any other way.
- 3.2 If we deliver reports electronically, you can save them onto your system, or print them for your file. If you access our services by direct link and we deliver information to you by a stream of data you can copy the information onto your system and reprocess it but only for your usual internal business purposes. You agree that you will not reproduce, modify or adapt our reports and information in any other way.
- 3.3 We have copyright in the compilation of the information we use to supply our services to you, and in the reports we supply to you when you use our services. We have also developed information technology, software and documentation that we may use to provide the services to you, and we have copyright and other rights in those items. You agree that you will not copy them, modify them, adapt them, reverse engineer them or infect them with viruses.

4. Information we collect from you

- 4.1 We collect information from you when you request our services, such as the information you enter in a search enquiry. You acknowledge that the quality of our services and information returned to you relies on the information you provide us in your request for the particular service. If required, you agree to provide any notifications to individuals or obtain any consents that are required under the Privacy Act before you request our services.
- 4.2 Once you give information to us, we can use that information to supply our services to you and as otherwise permitted by the Privacy Act. You grant to us a non-exclusive, perpetual, irrevocable, transferable, royalty-free licence to use and sublicense the whole or any part of that information for the purpose of providing those services to you.
- 4.3 You warrant that your provision of information and the use by us of that information in accordance with this agreement will not infringe the intellectual property rights or other rights of any person. Because our services rely on the information we collect, we do not usually remove any information from our systems, subject to our obligations under the Privacy Act. Information is updated where it is proven (to our satisfaction) not to be accurate, up to date or complete.
- 4.4 You agree to make sure that all the information you give us is accurate, up to date, complete and not misleading.
- 4.5 You agree that we may retain all information that you provide to us, or that we collect for the purpose of providing the services to you, where this is required for audit, risk management and or other lawful services.

5. Our financial assessment and ratings services

The provisions of this section apply only to Equifax's financial assessment and ratings services, not to our commercial information services.

- 5.1 Equifax relies on information provided or sourced from third parties which Equifax reasonably considers are accurate, reliable and trustworthy. Equifax undertakes reasonable investigations of information which it relies on in accordance with its published ratings and assessments methodologies (as amended and applicable from time to time), and obtains reasonable verification of that information from independent sources where available. You acknowledge that Equifax is not an auditor and cannot independently verify or validate all information received in undertaking its rating or assessment.
- 5.2 You agree that credit ratings and other assessments provided are solely our opinion as to credit risk and are not statements of fact or recommendations to purchase, hold or sell any securities or make any other investment decisions.

6. Our charges

- 6.1 You must pay us:
- any fees we charge for any of our services that you use, which fees may be charged in advance;
 - our current charges for any service you use on the basis we set out in our invoice and as communicated to you before you use our service (for example in our price list, project scoping or proposal); and
 - GST on our fees and charges.
- We will send you invoices for all our fees and charges.
- 6.2 We may change our fees and charges from time to time, we will always let you know the price of a service before you incur this fee, and if you do not agree to any amended prices, you have the option to not obtain our Service.
- 6.3 You acknowledge that for some of the services we provide to you, we may be required to incur costs in the expectations of completing these services as you have requested. Should you decide to terminate this agreement prior to the provision of these services, any costs that we have incurred in expectation of provision of these services, will be payable by you.
- 6.4 If you do not pay us by the due date for payment, we may require you to pay the whole of the amounts outstanding by you to us, which immediately become due and payable.
- 6.5 You agree to keep confidential the terms and conditions of supply of our services to you, including our fees, charges and pricing arrangements, under this and any other agreement between us, except to the extent that such terms are generally known to the public, other than as a result of your failure to comply with the obligations of confidentiality in this agreement.

7. Term, termination and suspension

- 7.1 This agreement continues until either of us terminates it by giving 30 days' written notice to the other.
- 7.2 Any outstanding charges for our services up to and including the date of termination, will be payable by you upon cancellation.
- 7.3 Provisions of this Agreement which by their expression or nature are intended to survive termination of this Agreement will so survive.
- 7.4 We may withhold, suspend or terminate any of our services to you:
- if you do not pay our fees and charges for any service;
 - if you breach clause 3.1;
 - if we reasonably believe you are not complying with any of your other obligations under this agreement or any other agreement you have with us, and this non-compliance is not capable of remedy or, if it is capable of remedy, it is not rectified within 14 days after we have notified you of the non-compliance; or
 - if we reasonably believe that you are not complying with your legal obligations in respect of the information that we supply you.

8. Compensation and liability

- 8.1 When we provide the services to you, we rely on information provided to us by others. While we always aim to provide quality information to you, you understand that in the case of our commercial information services we do not independently check all information supplied to us, or the compilation of information by our systems, and that information may become out of date.
- 8.2 You understand that you are responsible for assessing the value of the information we provide you, and for the business decisions that you make, regardless of whether you base them on the information we supply.
- 8.3 To the extent we are able to at Law, we exclude all statutory or implied representations, conditions, warranties and terms relating to the services or this agreement. We do not exclude any such representations, conditions, warranties or terms to the extent we are prohibited by Law from doing so (including under the Australian Consumer Law).
- 8.4 We are not liable to you or to anyone else:
- except as expressly provided otherwise in these terms or pursuant to any other engagement terms between us, for any loss or damage arising out of, or in connection with, the information we provide to you; or
 - for any indirect or consequential loss or damage arising out of or in connection with this agreement or our services (including loss of profit, revenue or business or special or incidental loss or damage), however such loss, damage or liability arises or might arise (including in contract, tort (including negligence), under statute or in equity) if it were not for this section. Our total aggregate liability for any loss or damage not excluded under this clause 8.4 is limited to the amount of fees and charges paid by you for the services under this agreement in the 12 months immediately prior to the event giving rise to the liability. This exclusion and limitation do not apply to the extent the Law prohibits us excluding or limiting our liability (including under any statutory or implied representation, condition, warranty, term or guarantee that we are unable to exclude by Law).
- 8.5 Our total liability for any loss or damage under any statutory or implied representation, condition, warranty, term or guarantee that we are unable to exclude by Law (including under the Australian Consumer Law), is limited to the extent permitted by Law, to usre-supplying the services to you, or, at our option, us refunding to you the amount you have paid us for the service to which your claim relates.
- 8.6 You indemnify us for any loss we suffer or liability we incur because:
- any information you give us is not accurate, up to date or complete or is otherwise misleading; or
 - of any misuse of the services or the information we supply you; or
 - of any breach by you of clause 9.2, or any breach by a Third Party of the Third Party's obligations referred to in clause 9.2.
- 8.7 In this section 8, references to "we" and "us" include our officers, employees, contractors and agents.

9. Privacy

- 9.1 You agree to comply with the Privacy Act (whether it expressly applies to you or not) and all other Laws that apply to the information that we provide to you or you provide to us, or to your use of our services (and to maintain documentation to demonstrate your compliance). This includes the following matters:
- (a) Compliance with the Australian Privacy Principles, Part IIIC and Part IIIA of the Privacy Act, as applicable; and
 - (b) All information provided by you to us has been collected and disclosed to us in accordance with valid consents or notices (including on behalf of us), as required under the Australian Privacy Principles of Part IIIA of the Privacy Act as applicable.
- 9.2 Where we disclose personal information to you (including to any person at your direction) outside Australia, you must:
- (a) Comply with clause 9.1 in relation to the personal information as if you were subject to the Privacy Act (excluding compliance with Australian Privacy Principle 1 if you do not have an Australian link);
 - (b) Notify us immediately if you become aware of, or suspect, any unauthorised access to, disclosure of, or loss of, any such personal information ("Data Breach"), whether in the control or possession of you or any Third Party, and provide full details of the Data Breach;
 - (c) Take all reasonable steps to ensure that any Third Party complies with this clause 9.2 in relation to the personal information, as if references to you were references to the Third Party, and references to us were references to you;
 - (d) Fully co-operate with us and promptly provide upon request access to your systems and/or documentation in connection with the conduct by us of any assessment or investigation of a Data Breach;
 - (e) Co-operate with us in relation to any provision, notification or publication of a statement in respect of the Data Breach under sections 26WK and 26WL of the Privacy Act; and
 - (f) Provide on request, evidence of compliance with this clause 9.2.
- 9.3 If we ask you to, you agree to provide us, on not less than 5 business days' notice, with access to your systems and/or documentation so that we can check your compliance with this agreement and in some cases aspects of the Privacy Act. You are not required to provide information to us to the extent that doing so would cause you to breach the confidence of a third-party or would cause you to breach the Privacy Act.

10. General

- 10.1 We may add or withdraw any service and modify or otherwise change any service :
- (a) without notice to you where this is necessary to comply with Law or because of a change of Law, or any other event outside of our reasonable control; and
 - (b) for any reason upon provision to you of not less than 30 days' notice.
- 10.2 We may vary the terms and conditions of this agreement at any time:
- (a) upon provision to you of notice where this is necessary to comply with Law or because of a change of Law; and
 - (b) for any reason upon provision of not less than 30 days' notice to you.
- Your continued use of our services after any such variation constitutes your agreement to the variation.
- 10.3 Neither of us is liable for a failure or delay in performing an obligation under this agreement to the extent the failure or delay is because of an event beyond our reasonable control. If either of us is affected in this way, each of us will use our reasonable endeavours to minimise delays or interruptions.
- 10.4 Where we have used the word "includes" or "including" or "for example", these words do not have a limiting effect.
- 10.5 Where we have referred to any legislation or a provision of any legislation, it includes that legislation or provision as from time to time re-enacted or otherwise amended.
- 10.6 We will send bills and notices to either the last postal address, fax number or email address you have given to us. You must tell us if you change any contact details.
- 10.7 You agree you will not transfer your rights or obligations under this agreement to any other person without first getting our written consent. We will not unreasonably withhold our consent.
- 10.8 No delay or failure to exercise a right under this agreement prevents the exercise of that or any other right on that or any other occasion.
- 10.9 If any term of this agreement is unlawful and unenforceable, it will be severed from this agreement and the rest of this agreement remains in force.
- 10.10 This agreement supersedes any other agreement you have with us for our services unless we agree otherwise in writing.
- 10.11 This agreement is governed by the Laws of New South Wales and both parties submit to the non-exclusive jurisdiction of the courts of that state.