



Merchant Agreement Terms & Conditions

WEX Australia Pty Ltd ABN: 68 005 970 570
WEX Fuel Cards Australia Ltd ABN: 33 008 962 132
GPO Box 5342, Melbourne, VIC 3001



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1. Definitions

1.1 In this Agreement:

Accountholder means a Customer with whom we have agreed to issue Cards to enable Cardholders to purchase goods or services on a Card;

Agreement means these Terms and Conditions, the Application Form and the Merchant Operating Guide;

Application Form means the application form completed by you when you applied to become one of our Merchants;

Approved Account means the account specified by you in the Application Form or notified to us in accordance with clause 14;

Bearer Card means a Card issued by us to an Accountholder which does not on its face identify or name the person who is authorised to use the Card and has no signature panel on its reverse side to verify the signature of the person authorised to use the Card;

Card means a physical or virtual card issued by us to an Account Holder which includes a Bearer or Company name and may include a signature panel, vehicle registration or product restrictions;

Cardholder means a person to whom a Card has been issued and who is authorised by us to use that Card;

Card Services means the Services listed in clause 3 that are to be provided at Partner sites in Australia;

Claim includes any claim, demand or legal proceedings;

Commencement Date means the date specified as the commencement date in the Application Form or, if later, the date of your application to be one of our Merchants is approved by us;

Consequential Loss means loss or damage that does not naturally or directly result in the ordinary course of events from the breach, action or inaction in question;

Customer means a person or entity who is, was or may be a customer of a Partner from time to time;

Data Receipt Date means, in relation to a Sale:

- if the Payment Period is one day, the business day on which the details of the Sale have been received and processed by us; and
- if the Payment Period is 7, 9, 23 or 37 days, the Wednesday on which, or following the day on which, the details of the Sale have been received and processed by us or, if that Wednesday is not a business day, the previous business day. If details of a Sale are received by us after 7 am on a day, they will be deemed to have been received by us on the following business day;

Date of Termination means the date this Agreement was terminated in accordance with clause 8.2.

EFTPOS means electronic funds transfer at the point of sale;

EFTPOS Receipt means a receipt printed by a Terminal that records a Sale;

EFTPOS Terminal Hire Agreement means an agreement under which you agree to hire a Terminal from us;

EFTPOS Terminal Purchase Agreement means an agreement under which you agree to purchase a Terminal from us;

Floor Limit means the maximum dollar value of any Sale that you may make to a Cardholder using a Card without our specific authority. The initial Floor Limit is specified in the Application Form;

Force Majeure Event means an event or circumstance beyond the reasonable control of the Party affected by the event, and which could not be avoided by the exercise of due care by that Party, which makes it impossible or illegal to perform, or prevents or delays compliance with, or the performance of, a Party's obligations under this Agreement, including:

- fire, flood, earthquake, elements of nature or acts of God;
- war, revolution, or any other unlawful act against public order or authority;
- an industrial dispute; or
- a governmental restraint;

GST has the meaning given in section 195-1 of the GST Law;

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Hot Card List means a flag or notice listing Cards that are no longer valid for use that we give you in writing or by electronic means on a monthly, interim or special basis or otherwise;

Intellectual Property means any copyright, trade mark, design, format, logo, know-how or other intellectual property right owned by us, whether registered or unregistered, and provided by us to you;

Insolvency Event means:

- a receiver, manager, receiver and manager, trustee, administrator, or similar officer is appointed in respect of a person or any asset of a person (and that appointment is not withdrawn or dismissed within 7 days);
- a liquidator or provisional liquidator is appointed in respect of a corporation (and that appointment is not withdrawn or dismissed within 7 days);
- any application (not being an application withdrawn or dismissed within 7 days) is made to a Court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
- appointing a person referred to in paragraphs (a) or (b);
- winding up a corporation; or
- proposing or implementing a creditors' scheme of arrangement;
- a moratorium of any debts of a person, or an official assignment, or a composition, or an arrangement (formal or informal) with a persons' creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within seven days; or
- a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts;

Licence Fee means a monthly fee at the rate determined by us from time to time which you must pay us for using the Software if you have not entered into an EFTPOS Terminal Hire Agreement or an EFTPOS Terminal Purchase Agreement with us;

Liabilities means all liabilities, whether actual or contingent, present or future, quantified or unquantified;

Marketing Material means brochures and other promotional material relating solely to Cards including documents, Card application forms, Card order forms, direct debit forms, Card design and artwork, and statements issued to Cardholders or Customers;

Merchant means you as a franchisee, subsidiary or corporate owned affiliate of a Partner that provides goods or services pursuant to this Agreement;

Merchant Card means a Card issued by us to you for the purpose of identifying your Sales;

Merchant Copy means an EFTPOS Receipt or copy of a Sales Voucher or WEXPAY Sales Voucher that you are required to keep in accordance with the Merchant Operating Guide;

Merchant Operating Guide means the document entitled "Merchant Operating Guide" and any other document that explains our procedures for processing Sales and payments to you and other operating procedures relating to the use of Cards (including procedures relating to the use of Sales Vouchers or WEXPAY Sales Vouchers) issued by us to you from time to time, those documents forming part of this Agreement;

Merchant Service Fee means a percentage of each Transaction charged by us and payable by the Merchant when a Cardholder uses the Card at a Merchant Site;

Merchant Summary means any form we provide to you to summarise Sales using Sales Vouchers or WEXPAY Sales Vouchers;

Partner means a company that WEX has entered into an agreement with to provide goods or services to the Cardholder;

Party means a party to this Agreement;

Payment Period means, in relation to a Sale, the number of days specified in the Application Form (in the section headed "Proposed Payment Plan") after the relevant Data Receipt Date within which we must make payment to you for that Sale;

Personal Information means all information about a person that is "personal information" as defined in the *Privacy Act 1988* (Cth);

PIN means Personal Identification Number;

Sale(s) means a sale or supply of goods or services by you to a Cardholder using a Card;

Sales Voucher means stationery supplied by us to you to record manually the details of a Sale and which must be signed by the Cardholder and bear an imprint of the Cardholder's Card;

Site means a site, branch or outlet at which you carry on business as specified in the schedule to the Application Form or as notified by you to us during the Term;

Site Establishment Fee means the Site Establishment Fee specified in the Application Form that is payable by you to us for each new Site at which Cards are accepted in accordance with the terms of this Agreement;

Software means any software in which we own the copyright that is required to enable you to process Sales using the Terminal or WEXPAY system;

Taxes means all stamp duty, financial institutions duty and any other duties or taxes including a goods and services tax, consumption tax or similar tax;

Terminal means the point of sale EFTPOS terminal that we provide to you under either an EFTPOS Terminal Hire Agreement or EFTPOS Terminal Purchase Agreement;

Terminal Establishment Fee means the Terminal Establishment Fee specified in the Application Form that is payable by you to us each time we provide you with an EFTPOS Terminal for hire at a Site under an EFTPOS Terminal Hire Agreement;

Term means the duration of this Agreement, from the Commencement Date until Termination in accordance with clause 8.2;

Termination means the termination of this Agreement in accordance with clause 8.2.

Trade Card means a closed loop Card that WEX offers with a Partner to enable the Cardholder to purchase goods and services from Merchants;

Transaction(s) means a transaction where a Card is used by a Cardholder to purchase goods or services from a Merchant Site;

us or we means WEX Australia Pty Ltd ABN 68 005 970 570 or WEX Fuel Cards Australia Pty Ltd ABN 33 008 962 132;

WEXPAY means the online payment processing functionality that we may make available for use by you to process Transactions;

WEXPAY Sales Voucher means the WEXPAY customer invoice which has been signed by the Cardholder; and

you means the person named as the "Merchant" in your Application Form.

2. Interpretation

2.1 In these Terms and Conditions:

- (a) words denoting the singular include the plural and vice versa;
- (b) Business day means a day which we are open for business in Melbourne;
- (c) A reference to a person includes an individual, company, other body corporate, association, partnership, firm, joint ventures, trust or government agency;
- (d) a reference to a clause is a reference to a clause of these Terms and Conditions;
- (e) a gender includes all genders;
- (f) a reference to a party to this Agreement or another agreement or document, includes the party's successors and permitted substitutes or assigns.

3. Your obligations

3.1 You must:

- (a) at all times comply with your obligations under this Agreement;
- (b) accept all valid Cards presented by Cardholders;
- (c) supply goods and services to a Cardholder at the prices at which you would supply the goods and services to the Cardholder for cash;
- (d) at all times act in good faith when processing a Sale and making representations about us, a Card or the Card Services provided by us;
- (e) use only authorised Sales Vouchers and WEXPAY Sales Vouchers, imprints and equipment provided or approved by us and correctly record the information on them as required by the Merchant Operating Guide;
- (f) not advance cash to a Cardholder;
- (g) establish a fair policy for the exchange or return of goods or services and give credit upon each return, noting cash but by means of a Sales Voucher and WEXPAY Sales Vouchers, as specified in the Merchant Operating Guide;
- (h) establish a fair policy for the investigation and resolution of disputes raised by a Cardholder in relation to the goods or services you have supplied;
- (i) obtain prior authorisation from us for any Sale which, together with all other Sales over the last 24 hour period, would be in excess of the Floor Limit applicable in respect of a particular Card and not split Sales which would otherwise be in excess of the Floor Limit;
- (j) not reveal to any Cardholder the Floor Limit or any other restriction on your authority to process Sales;
- (k) perform all obligations to a Cardholder in connection with a Sale prior to processing the Sale;
- (l) send the Sales Voucher or WEXPAY Sales Voucher and a Merchant Summary including details of the Sale to us within 7 business days after the sale, if a Sale is made using a Sales Voucher or WEXPAY Sales Voucher;

- (m) settle recorded Transactions with us every day you are open for business in accordance with the Merchant Operating Guide, if a Sale is made using a Terminal;
 - (n) process a Sale in accordance with the procedures for Terminals if your Terminal is operating, using Sales Vouchers if your Terminal or WEXPAY is not operating, or if you are using WEXPAY in accordance with the procedures for WEXPAY Sales Vouchers;
 - (o) send all Sale refund information with Credit and Refunds Paper Vouchers and Sales Vouchers and WEXPAY Sales Vouchers, to us within 7 business days after the refund or Transaction;
 - (p) if less than the full purchase price of a Sale is paid using a Card, obtain payment in full for the Sale using other payment methods;
 - (q) not, either directly or indirectly, process any Transaction or present any Sales Voucher or WEXPAY Sales Voucher to us using a Card which was not a result of a Sale pursuant to which you actually supplied the goods or services which the Card presented to make the purchase;
 - (r) not process, or attempt to process, any Transaction pursuant to this Agreement in any currency other than Australian dollars;
 - (s) not sell, purchase, provide or exchange Cardholder or Accountholder account number information in the form of Sales Vouchers or WEXPAY Sales Vouchers, carbon copies of Sales Vouchers or WEXPAY Sales Vouchers, mailing lists, tapes or any other media obtained by reason of a Transaction. However, you are not prohibited from providing account number information in the form of Sales Vouchers or WEXPAY Sales Vouchers or any other media to your agent solely for the purpose of facilitating the processing of Transactions to us on your behalf;
 - (t) pay us:
 - i. such charges and fees (including the Merchant Service Fee, Site Establishment Fee and the Terminal Establishment Fee) as specified in the Application Form or set by us from time to time and notified to you 28 days after the end of the month in which charges were incurred;
 - ii. the full amount of all Sales refunds processed by you pursuant to this Agreement, less any charges referred to in clause 3.1(s)(i) already paid by you in respect of the relevant Sales;
 - iii. any overpayments made by us in respect of Sales due to errors or omissions;
 - iv. any credits made to you by us in respect of Sales that are not valid;
 - v. any amount we are entitled to charge back to you under clause 5.2;
 - vi. the Licence Fee; and
 - vii. any other moneys due and payable by you to us under this Agreement, an EFTPOS Terminal Purchase Agreement or an EFTPOS Terminal Hire Agreement;
 - u) not make any warranty or representation that may bind us or misrepresent the Card Services provided by us to Cardholders or our responsibilities;
 - v) use reasonable care in each Sale to detect forged or unauthorised signatures or the unauthorised use of a Card;
 - w) permit us to inspect and examine your books of account and records relating to any Transactions;
 - x) securely keep copies of all records of Sales, including Merchant copies, and other Transactions under this Agreement for 6 years from the date of the relevant Sale or Transaction;
 - y) notify us immediately of damage to, or loss of, property provided to you by us, insure the property for its replacement value and maintain the property at all times in a good state of repair (fair wear and tear excepted); and
 - z) notify us immediately of loss of computer or processing equipment required to access WEXPAY in order for us to decommission access. You will be liable for Transactions processed on your computer equipment via WEXPAY up until the date at which you notify us that it has been lost or stolen.
- 3.2 You are only authorised to accept those types of Cards specified in the Application Form or which we notify you that you are authorised to accept and in respect of which we have not subsequently notified you that we have withdrawn your authority.
- 3.3 You must:
- a) provide us with such assistance as we may reasonably require relating to our promotional and marketing activities;
 - b) not use any Marketing Material in relation to Cards, except as authorised by us;
 - c) not refer to the Cards in information or statements relating to the eligibility for, or the availability of, any goods or services supplied by you;
 - d) advertise in a prominent place at each Site, and in a manner no less conspicuous than the manner in which you advertise other charge or credit cards, acceptance of the Card; and

- e) place in a prominent position at each Site Marketing Material (including the Card decal insignia) and merchandising provided by us to you from time to time.
- 3.4 You acknowledge that you have no right, title or interest in the Intellectual Property other than the right to use the Intellectual Property as authorised by us in writing from time to time and the right to use the Software for the purpose of processing Sales during the Term of this Agreement for a Licence Fee.
- 3.5 You must indemnify us from and against all losses, Consequential Loss, damages, Liabilities, costs and expenses that we may suffer or incur as a result of or in connection with:
- your negligence;
 - any damage to property supplied to you by us;
 - any failure by you to perform any of your obligations under this Agreement;
 - any dispute between you and any Cardholder or Accountholder about the supply, use or quality of goods or services;
 - any claim by a Cardholder or Accountholder against you or us for damages to recover an amount from you or us for misrepresentation, breach of contract or failure of consideration relating to goods or services bought from you;
 - Taxes now or in the future assessed, levied, imposed or collected by any governmental, semi-governmental, administrative, fiscal or judicial body, department or authority in respect of the use of a Card to buy goods or services from you or any charge or any Transaction under, or contemplated by, this Agreement;
 - outages, failures 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 by a Cardholder of a Card.
- 3.6 Clauses 3.5, 5.1 and 19.2 survive rescission or Termination of the Agreement.
- 3.7 You will promptly and carefully examine the statement issued pursuant to clause 4.1(d) of this Agreement to ensure that all Transactions have been properly and correctly recorded. You will notify us within 60 days of the date payment is due of any errors or discrepancies. If you do not notify us within that 60 day period, you accept that the statement is valid and correct.
- 4. Our obligations**
- 4.1 We will:
- accept all valid Sales and Sales refunds evidenced by a Credit and Refund Paper Voucher processed by you under this Agreement;
 - subject to this Agreement, credit to your Approved Account within the Payment Period the full amount of all valid Sales processed by us less:
 - an amount equal to the Merchant Service Fee calculated in respect of such Sales; and
 - any amount you are required to pay us under clause 3.1(s) that has not been paid;
 - supply you with Sales Vouchers, WEXPAY Sales Vouchers, equipment, Marketing Material and other items that we agree to supply you from time to time;
 - send you each calendar month a statement showing the amount of all Sales, refunds, credits, charges and fees processed by us under this Agreement during the previous month; and
 - use reasonable endeavours to process Sales data received from you in a timely manner.
- 5. Invalid Sales**
- 5.1 For the purposes of this Agreement, a Sale is not valid if:
- it is illegal;
 - it is made using a Card that has a signature panel and the panel has not been signed by the Cardholder;
 - it is made using a Card that has a signature panel and the Sales Voucher recording the Sale is not signed or the Sale is not authorised by the Cardholder entering their PIN, if a PIN entry is required;
 - in the case of payments processed using WEXPAY, if the WEXPAY Sales Voucher is not signed by the Cardholder, regardless of whether the Card has a signature panel or not;
 - it is made using a Card that has a signature panel and the signature on the Sales Voucher or EFTPOS Receipt recording the Sale is forged or unauthorised and you should have known or could reasonably have detected that the signature was forged or unauthorised;
 - the particulars inserted in the Sales Voucher or EFTPOS Receipt recording the Sale are not identical with the particulars inserted in the copy given to the Cardholder;
 - the Card used for the Sale is not current at the time of the Transaction;
- the Card used for the Sale is listed on any Hot Card List at the time of the Sale;
 - the price charged to the Cardholder for any goods or services purchased is in excess of the price at which you would supply the item to the Cardholder for cash;
 - the amount of the Sale, when added to the amount of other Sales made by you in any 24 hour period and charged to a particular Card, was in excess of the Floor Limit applicable to that Card, unless:
 - you obtained authorisation from us and an authorisation number given by us for that Sale has been noted on the Sales Voucher; or
 - you could not reasonably be expected to be aware that the Floor Limit has been breached;
 - the Sales Voucher, WEXPAY Sales Voucher or EFTPOS Receipt used to record the Sale is incomplete or illegible;
 - you failed to observe this Agreement in relation to the Sale;
 - the Card used for the Sale was used without the authority of the Cardholder or, in the case of Bearer Cards, the Accountholder, and the unauthorised use could reasonably have been detected;
 - the Sales Voucher, WEXPAY Sales Voucher or other record of the Sale is received by us more than 30 days after the Sale took place;
 - unless the Sale was authorised by the Cardholder entering their PIN if a PIN is required, you are not able to provide to us the Merchant Copy recording the Sale within 7 days if we ask for it;
 - the Card used for the Sale has a designated vehicle registration number printed or embossed on the Card and the goods or services purchased are not for the designated vehicle;
 - the Card used for the Sale has restrictions on the type of goods or service which may be purchased using the Card or other restrictions printed or embossed on it and the Sale contravenes those restrictions;
 - it is processed using a Terminal and the Card number or truncated Card number appearing on the EFTPOS Receipt is not consistent with the Card number of the Card which is produced;
 - the Card used for the Sale belongs to you;
 - the Cardholder or Account holder refuses to pay all or any amount charged for the Sale because the goods and services were defective, returned, not delivered or provided, or not as promised, or for any other reason;
 - a payment we receive from a Cardholder or Accountholder in respect of the Sale is wholly or partly avoided, or a claim is made to avoid it and that claim is upheld, conceded or compromised under any law (including any law relating to bankruptcy or liquidation);
 - the Cardholder or Account holder asserts a claim of set-off or a counterclaim against you or us in connection with the amount charged for the Sale; or
 - it is otherwise treated as an invalid Sale under this Agreement.
- 5.2 We may refuse to accept or, having accepted, may charge back any Sale if the Sale is not a valid Sale.
- 5.3 A Sale can be an invalid Sale even if it has been authorised by us or if we have paid you an amount in respect of the Sale.
- 5.4 If we ask you anything about a Sale (including asking you to provide copies of any document), you must promptly help us with our enquiry and provide the information requested. If you do not answer our enquiry to our satisfaction within 7 days of the date of the enquiry the Sale to which the enquiry relates, it will be treated as an invalid Sale.
- 6. Warranties**
- 6.1 Each time you process a Sale, or you provide us with a Sales Voucher, WEXPAY Sales Voucher or other record of a Sale, you warrant that:
- all statements of fact and/or data recorded in the Sales Voucher, WEXPAY Sales Voucher or other record of a Sale are true;
 - the Sale is valid; and
 - the Sale is not subject to any dispute, set-off or counterclaim.
- 7. Retention**
- 7.1 We are entitled to retain any moneys that are otherwise payable by us to you in any of the following circumstances:
- where moneys are payable to you with respect to a Transaction or series of Transactions where we suspect upon reasonable grounds:
 - that the Accountholder, Cardholder and/or you have acted fraudulently; or
 - that the Transactions are not bona fide.
- 7.2 We may in our discretion retain the whole or any part of those moneys described in clause 7.1 for a period reasonably necessary to enable the Transactions in question to be properly investigated by us.

- 7.3 Where moneys are payable to you in respect of a period in which the volume of Transactions is considered by us to be exceptional, having regard to the volume of Transactions that we would reasonably have expected based on Transaction history for the period in question, we may in our discretion retain in a retention account such proportion of those moneys (not exceeding the excess) as we think fit for a period of not more than 60 days.
- 7.4 On Termination of this Agreement, we may retain an amount equal to 20% of the average monthly amount of valid Sales Transactions over the 6 complete calendar months prior to the Date of Termination or such other sum as we may reasonably consider necessary to be retained by us in order to meet:
- Transactions which may be disputed by Cardholders or Accountholders;
 - amounts that we reasonably believe you may become liable to pay to us under the terms of this Agreement (whether by way of indemnity or otherwise) after the Date of Termination.
- Without prejudice to any of our rights under this Agreement, we may only retain amounts retained under this clause 7.4 for 90 days from the Date of Termination of this Agreement.
- 7.5 All moneys held in a retention account shall be placed on interest bearing deposit with an authorised deposit institution, and any moneys paid out of a retention account to you will be paid together with the interest accrued on the amount paid out.
- 8. Term and Termination**
- 8.1 This Agreement starts on the Commencement Date and continues unless terminated in accordance with clause 8.2.
- 8.2 This Agreement may be terminated:
- by either Party with 60 days' written notice;
 - immediately by notice in writing to the other Party if an Insolvency Event occurs in relation to the other Party and the Party purporting to terminate is not restricted from doing so by law;
 - by either Party with immediate effect by written notice to the other Party, in the case of a breach of any term of this Agreement by the Party that is not remedied within 14 days of being given notice by the other Party specifying the breach and asking the Party to remedy it;
 - by us if regulatory requirements concerning the Card are changed; or
 - if one Party receives significant negative media attention in the Australian media and continuation of this Agreement would cause the other Party serious and imminent risk to the reputation of its business, as determined by the other Party.
- 8.3 Termination of this Agreement will not affect obligations incurred prior to Termination. We will not be obliged to accept any Sales or Sales refunds processed by you after notice has been given by you or us under clause 8.2.
- 8.4 You must promptly return to us any equipment, Sales Vouchers, WEXPAY Sales Vouchers, Card decals, Marketing Material or other items supplied by us upon Termination of this Agreement.
- 9. Liability**
- 9.1 Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.
- 9.2 To the fullest extent by law, we have no liability to any Merchants arising from loss or damaged suffered by the use of WEXPAY or Sales Vouchers, including with respect to loss or damage arising from the loss of data.
- 9.3 Under the Australian Consumer Law, certain statutory guarantees (**Consumer Guarantees**) are conferred in relation to the supply of goods or services if the price of the goods or services is \$40,000 or less or the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption. Except for the Consumer Guarantees (if applicable), and the warranties and conditions set out in this Agreement, and except to the extent prohibited by law, the Parties respectively exclude all implied terms, warranties and conditions from operating in this Agreement.
- 9.4 Except as expressly set out in this Agreement or as otherwise required by law, Customer acknowledges and agrees that WEX Australia makes no warranty or representation in respect of the Card Services.
- 9.5 The limitations of liability in clauses 9.2 and 9.3 do not apply to either Party's liability for loss due to fraud, personal injury, or death.
- 10. Credit worthiness**
- 10.1 To the extent that any representation or assurance concerning the credit worthiness of a Cardholder or an Accountholder may be inferred from the issue of a Card to a Cardholder or an Accountholder, you waive those rights (if any) which you may have against us by reason of the representation or assurance.
- 11. GST Law**
- 11.1 Except as otherwise provided by this clause, all moneys payable under this Agreement in relation to any Supply is exclusive of GST.
- 11.2 To the extent that any Supply by us under this Agreement constitutes a Taxable Supply, the amount payable by you to us will be increased by the applicable amount of GST (**GST Amount**), which will be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.
- 11.3 Any GST Amount must be paid by you to us at the same time and in the same manner as the relevant amount is paid or given under this Agreement, without any right of set-off or deduction (unless otherwise provided in this Agreement).
- 11.4 If this Agreement requires you to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by us (**Relevant Expense**), the amount that you must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which we are entitled in respect of the Relevant Expense.
- 11.5 We must provide a valid Tax Invoice to you at or prior to the time of payment of any GST Amount.
- 11.6 To the extent that any Adjustment occurs in relation to a Taxable Supply by us, we must issue an Adjustment Note to you within 28 days of becoming aware of the Adjustment and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.
- 11.7 In this clause 11, Adjustment Event, Adjustment Note, Consideration, Supply, Taxable Supply and Tax Invoice have the meanings given to those terms in section 195-1 of the GST Law.
- 12. Recipient Created Tax Invoice Agreement**
- 12.1 You may make Taxable Supplies to us in accordance with this Agreement.
- 12.2 We may issue Recipient Created Tax Invoices in respect of such supplies (**RCTI**).
- 12.3 You must not issue Tax Invoices in respect of such supplies.
- 12.4 You acknowledge that you are registered for GST when you enter into this Agreement. You must immediately notify us if you cease to be registered.
- 12.5 We acknowledge that we are registered for GST when we enter into this Agreement. We must immediately notify you if we cease to be registered.
- 12.6 We will issue a copy of an RCTI to you within 28 days of you making any Taxable Supply under this Agreement.
- 12.7 We will not issue a document that would otherwise be a RCTI on or after a date when we or you have failed to comply with any of the requirements of A New Tax System (Goods and Services Tax) Act 1999 Classes of Recipient Created Tax Invoice Determination (No.1) 2000 (**the Determination**).
- 12.8 You must immediately notify us if you fail to comply with any requirement of the Determination.
- 12.9 To the extent that any Adjustment occurs in relation to a Taxable Supply by you, we must issue an Adjustment Note to you within 28 days of becoming aware of the Adjustment and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.
- 12.10 In this clause 12, Adjustment, Adjustment Note, Recipient Created Tax Invoice, Taxable Supply and Tax Invoice have the meanings given to those terms in section 195-1 of the GST Law.
- 13. Your Approved Account**
- 13.1 If you change your Approved Account, you must give us at least 7 days' prior written notice of the change and the details of your new account. We are not liable for any loss, Liability, cost or expense you incur or are required to pay as a result of us transferring funds to an Approved Account that is no longer current.
- 13.2 If we ask you to do so, you must complete, sign and promptly return to us a direct debit authority in the form provided to you by us authorising us to:
- debit your Approved Account to correct any error relating to any payment that we make to your Approved Account; and
 - debit from your Approved Account an amount equal to the amount of any invalid Sale.
- 14. You must notify us of certain matters**
- 14.1 You must promptly notify us in writing if:
- you stop carrying on business at a Site or start carrying on business other than at a Site;
 - you cease to carry on business or transfer your business to another person;
 - you restructure your business (for example, change of owner or director) or register your business under a new ABN;
 - (if you are a company) an administrator, receiver, receiver and manager, liquidator or similar officer is appointed or an order is made for your administration, winding-up or dissolution or steps are taken towards this (for example, a resolution is passed or an application is made to a court);
 - (if you are a natural person) you commit an act of bankruptcy or enter into an assignment, arrangement or composition with any creditors.
- 15. Dispute resolution**
- 15.1 If there is a dispute between the Parties concerning compliance with this Agreement (**Dispute**) then a Party must not start court proceedings in respect of the Dispute unless it has complied with clauses 15.3, 15.4 and 15.5.
- 15.2 Nothing prevents a Party from commencing proceedings against another Party in respect of urgent interlocutory relief in a court of competent jurisdiction in relation to any matter.

- 15.3 A Party claiming that a Dispute has arisen must notify the other Party in writing, giving details of the Dispute.
- 15.4 During the 28 day period after a notice is given under clause 15.3 (or such longer period as may be agreed in writing by the relevant Parties), the relevant Parties will use their best efforts to resolve the Dispute.
- 15.5 Any communication made for the purposes of this clause 15 must be kept confidential and may not be used except to attempt to resolve the Dispute.
- 15.6 During any dispute resolution process in relation to a Dispute, the pre-Dispute status quo will continue. Accordingly, each Party will comply with its obligations and may exercise its rights under this Agreement. The fact that a Party ceases to do anything in Dispute will not be taken to be an admission by that Party that it had breached, or had been in breach of, this Agreement.

16. Notices

- 16.1 Any notice under this Agreement must be legible and may be posted, faxed or sent by email.
- 16.2 A notice is treated as given to you:
- (a) if faxed to you at the fax number set out in the Application Form or the fax number last notified by you to us, on receipt by us of confirmation of successful transmission of the notice;
 - (b) if posted in a prepaid envelope addressed to you at your address specified in the Application Form or the address last notified by you to us, 2 business days after the date it is posted; or
 - (c) if sent by email to you at the email address set out in the Application Form or the email address last notified by you to us, when sent to your computer system or your email account, but if delivery or receipt is on a day which is not a business day or is after 5 pm (AEST), it is treated as given to you at 9 am on the next business day.
- 16.3 A notice is treated as given to us:
- (a) if faxed to us at the fax number set out below or the fax number last notified by us to you, on receipt by you of confirmation of successful transmission of the notice;
 - (b) if posted in a prepaid envelope addressed to us at our address set out below or the address last notified by us to you, 2 business days after the date it is posted; or
 - (c) if sent by email to us at our email address set out below or the email address last notified by us, when received by us, but if delivery or receipt is on a day which is not a business day or is after 5 pm (Melbourne time), it is treated as given to us at 9 am on the next business day.

Our current address and fax number are:
 Level 3, 293 Camberwell Road
 CAMBERWELL, Vic 3124
 Fax: (03) 9274 9139
 Email: merchants@wexaustralia.com
 Merchant Service Team: 1300 130 113

17. Assignment

- 17.1 You may not assign or transfer any of your rights or obligations under this Agreement without our prior written consent.
- 17.2 You must not sub-contract the performance, or appoint an agent to perform, all or any of your obligations under this Agreement without our prior written consent.
- 17.3 You will remain fully responsible for the performance of all your obligations under this Agreement and all costs incurred in relation to any sub-contractor or agent you engage.
- 17.4 We may assign or transfer this Agreement by providing 30 days' notice to you.

18. Matters outside our control

Neither Party will be liable to the other for any delay in the performance of its obligations under this Agreement if the delay in performance is a result of a Force Majeure Event. Each Party undertakes to use all reasonable endeavours to remove the cause of the delay as quickly as possible.

19. Confidentiality

- 19.1 This Agreement and all information provided by a Party to the other Party under this Agreement (**Confidential Information**) are confidential and each Party must keep all Confidential Information confidential and must not disclose the Confidential Information to any person other than:
- (a) to an employee whose duties require such disclosure;
 - (b) if required by law, judicial order or in accordance with the rules of any relevant stock exchange; or
 - (c) to a potential assignee of the disclosing Party who has entered into a deed in favour of the other Party undertaking to keep the Confidential Information confidential on terms no less onerous than the terms of this clause 19.
- 19.2 Without limiting the generality of clause 19.1, you must keep the Merchant Service Fee confidential and must ensure that the Merchant Service Fee is not disclosed to any person other than an employee whose duties require such disclosure and who undertakes to keep the Confidential Information confidential on terms no less onerous than the terms of this clause 19.2.

20. Joint and several liability

Where you consist of 2 or more persons, your obligations under this Agreement are joint and several.

21. Variation

Either Party may vary the terms of this Agreement at any time by giving written request. The other Party must not unreasonably withhold consent.

22. Privacy and Personal Information

- 22.1 If any information exchanged between the Parties under this Agreement includes any Personal Information, each Party must:
- (a) comply with all applicable privacy laws or data protection laws as may be in force from time to time which regulate the storage, use and disclosure of information;
 - (b) promptly notify the other of any complaint or investigation under, or relating to, any of the laws referred to in clause 22.1(a); and
 - (c) co-operate with the other Party in the resolution of any such complaint or investigation.

- 22.2 You agree that you will comply with any request made by us in relation to Personal Information of Customers that you may store. This includes the provision of full and complete records of Customer information in, for example, the case of an allegation of fraud in relation to a Card.

23. Governing law

This Agreement is governed by and must be construed in accordance with the laws of Victoria. The parties agree to submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

24. Our certificate is conclusive

Any statement or certificate specifying the amount you owe us under this Agreement signed by one of our employees is conclusive evidence of the amount of your liability to us at the date of the statement or certificate, unless there is an obvious error.

25. Severability of provisions

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. Such prohibition or unenforceability does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

26. No waiver

No failure to exercise or delay in exercising any right under this Agreement by either Party will operate as a waiver of that right, nor will any single or partial exercise of any right prevent any other or future exercise of that or any other right.

WEX Australia Pty Ltd ABN 68 005 970 570

WEX Fuel Cards Australia Limited ABN 33 008 962 132

GPO Box 5342, Melbourne, VIC 3001

Tel: 1300 130 113 Fax: (03) 9274 9139 www.motorpass.com.au, www.motorcharge.com.au

Effective: 1 September 2018