
EFTsure Service Terms

1 About these EFTsure Service Terms

These EFTsure Service Terms (**Terms**) are published by EFTsure Pty Limited ABN 21 168 403 736 (**EFTsure**), an Australian owned and operated business that provides electronic payment authentication services to Australian businesses.

The EFTsure service (the **Service**) means the EFTsure payee verification service as described in a written EFTsure proposal (**Proposal**) made to a Customer as and when the Proposal is accepted by Customer..

These Terms:

- tell Customer who EFTsure is and what EFTsure does; and
- set out other (non-privacy and confidentiality related) terms on which EFTsure will provide the EFTsure Service to customers.

An associated document - the EFTsure Privacy Statement and Confidentiality Commitment (as published on the Website, at <https://www.eftsure.com.au/privacy.pdf>):

- sets out other (non-privacy and confidentiality related) terms on which EFTsure will provide the EFTsure Service to customers;
- states EFTsure's key commitments to each customer that entrusts EFTsure with recipient names and account numbers for verification. EFTsure's key commitments are:
 - (1) that EFTsure will maintain business confidentiality and will not disclose that a particular customer deals with particular persons and entities except for the purpose of conducting verification of payee details for that customer or otherwise at the request of that customer,
 - (2) that payee names and account details are only to be used or disclosed for the purposes and in the ways described in the EFTsure Privacy Statement and Confidentiality Commitment;
- sets out how EFTsure collects, uses and discloses other personal information that EFTsure collects or that is entrusted to EFTsure.

These Terms, the EFTsure Privacy Statement and Confidentiality Commitment and EFTsure's Proposal as and when accepted by Customer are the complete **Agreement** between EFTsure and Customer about provision and use of the Service. Each document is important. Please take the time to read them. By accepting the Proposal for the Service, Customer agrees that Customer has read and understood this Agreement.

The Service supports some of Australia's leading businesses by ensuring that payments made by EFTsure's customers go to the right bank account of intended recipients. EFTsure does this by:

- verifying proposed recipient names and account numbers (provided to EFTsure by EFTsure's customers for checking) as recorded by EFTsure's customers as prospective payers. We do this by enquiry made by EFTsure of prospective recipients; and

- confirming the verified payee details to EFTsure's customers as payers before payment is made to the recipient.

The Service will evolve over time based on customer feedback. These Terms are not intended to answer every question or address every issue raised by the use of the Service.

Effective from the end of each period covered by any Fee paid in advance, EFTsure may change the Fee. If Customer does not agree with this modification, Customer may then terminate this Agreement by giving EFTSure prior written notice.

Subject to the last paragraph, EFTsure reserves the right to change the terms at any time, effective upon reasonable prior notice and the posting of modified terms. EFTsure will make every effort to communicate these changes to each customer via email or notification via the Website. It is Customer's obligation to ensure that Customer has read and understood and agrees to the most recent terms available on the Website.

2 Definitions

Words defined elsewhere in documents forming part of this Agreement have the meaning there given and in addition:

"Fee" means an amount payable for or in relation to performance of the Service or otherwise pursuant to this Agreement, including as specified in the Proposal.

"Intellectual Property Right" means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property right, anywhere in the world and whether or not registered.

Law includes any applicable law (including legislation), mandatory code of practice and mandatory industry standard or code (whatever called).

"Website" means the Internet site at the domain www.EFTsure.com.au.

3 Ordering and provision of Service

- (a) Following Customer's acceptance of EFTsure's Proposal, EFTsure will provide the Service to Customer. Customer's right to use the Service is non-exclusive, non-transferable, and limited by and subject to this Agreement.
- (b) An order placed by Customer will only vary these Terms and the Proposal if the order is in writing and expressly stated as intended to vary these Terms and the Proposal and that order is then accepted by EFTsure in writing notwithstanding that express statement of variation. Otherwise a purposed variation of these Terms and the Proposal by inconsistent terms of any order will not take effect.
- (c) EFTsure relies upon a variety of means to verify payment details, including enquiry made by EFTsure of prospective recipients, cross-verification using records of previous verifications that EFTsure has conducted in relation to the proposed recipient, or cross-verification by matching multiple requests made by multiple customers. These methods are considered by EFTsure to be reliable to substantially reduce risks of error or fraud by third parties, but these methods do not fully address or fully eliminate all risks of error or fraud. Further, EFTsure cannot make enquiry of the payee's bank (because the payee's bank will not provide relevant details because of operation of banker's duty of confidentiality). There also remains risk of error or fraud at a payee's bank. The Service is provided by EFTsure with full disclosure to Customer as to these remaining risks

and that these risks are not fully mitigated through verification and cross-verification conducted by EFTsure. Customer agree that EFTsure excludes liability and is not liable in relation to any loss or damage that Customer suffer through any error or fraud that is not detected by EFTsure after EFTsure has acted reasonably and has undertaken the verification and cross-verification processes as described in this Agreement and the EFTsure Privacy Statement and Confidentiality Commitment.

- (d) EFTsure will use all reasonable commercial endeavours to maximise verification rates and to minimise the period taken for verification. Subject to the preceding sentence, Customer acknowledge and agree that EFTsure cannot assure any particular verification response rate, the period within which verifications will be conducted or the proportion of successful verifications.
- (e) EFTsure acting reasonably is entitled to rely and may rely upon a statement by a person purporting to exercise authority for a prospective payee as to verification of payment details for a prospective payee. Verification will be based upon the actual knowledge of EFTsure at that time based upon statements by person purporting to exercise authority for prospective payees as to verification of the respective payee's payment details. EFTsure acting reasonably is not required to make further enquiries as to either the actual or apparent authority of that person or otherwise in relation to any details concerning the prospective payee. Customer agree that EFTsure excludes liability and is not liable where EFTsure acting reasonably verifies details of a prospective payee in reliance upon a statement by a person purporting to exercise authority for a prospective payee, whether that statement was made in response to a verification enquiry made following a request by Customer or in response to any prior request made by any prior customer of EFTsure.
- (f) EFTsure will report as to verifications in such in any electronic or printed form as EFTsure elects to make available from time to time, including by provision of electronic tags or flags as to validated payee records provided in such form as EFTsure elects to make available from time to time.
- (g) Any product or output such as reports, tags or flags, data analyses, factors and tables made available or provided to Customer in any electronic or printed form in the course of provision of any service is, for the purposes of this Agreement, a **report**. Customer agrees, in relation to any report, other communication or other deliverable that EFTsure provide to Customer, that:
 - (i) Customer may only rely only on EFTsure's final report (whether in the form of tags or flags, data analyses, factors and tables or such other form as EFTsure may agree) and not upon an interim communication or other advice or interim deliverables. If Customer wish to rely on an interim communication or other advice or interim deliverable, please let EFTsure know and, at your cost, EFTsure will prepare a report on which Customer may rely;
 - (ii) EFTsure are not responsible for updating reports, any interim communication or other advice or any interim deliverable that EFTsure provide, except on such refresh or recheck cycles as EFTsure may agree with Customer. Reports will only be updated by provision of a further report on such refresh or recheck cycles as EFTsure may agree with Customer or otherwise at your request and then at your cost.
- (h) Any report provided to You may only be used for Customer's own use and use by your related bodies corporate in relation to payments to be made by Customer or those related bodies corporate for or in relation to Customer's own business and the business of those related bodies corporate, which must not include resale of

EFTsure's Service or provision of the benefit of EFTsure's Service to any entity other than Customer and Customer's related bodies corporate.

- (i) You agree that we may use and reproduce Your name and logo on our Website and in our marketing documentation as a customer of EFTsure. We agree that we will not suggest in any way that the fact that you are a customer of the Service implies that you sponsor or approve or endorse our Service in any way.
- (j) Customer agrees that EFTsure may make reasonable use of Customer's name and logo only for stating Customer is a customer of the Service. We agree that EFTsure will not suggest in any way that the fact that Customer is a customer of the Service implies that Customer sponsor or approve or endorse EFTsure's Service in any way.
- (k) EFTsure relies on Customer to supply complete and accurate information relevant to provision of EFTsure's Service and that EFTsure may use in relation to provision of EFTsure's Service, without breaching any law or rights of any third party. Customer agree that in order to perform the Services and deliver the reports and any other deliverables to Customer and (subject at all times to EFTsure properly performing the verification service) EFTsure is entitled to rely on information provided by Customer and your right to provide that information to EFTsure without enquiry or verification other than verification to be conducted in the normal course of provision of the Service. Subject at all times to EFTsure properly conducting verification in the normal course of provision of the Service, and except the extent that EFTsure has expressly agreed in writing to check or verify information provided by Customer, EFTsure will not check or verify that information in any way. Customer agrees, as a fundamental term of this Agreement on which EFTsure relies, that any use by EFTsure of anything provided by Customer (or Customer's employees, officers, contractors, representatives or agents and any members of Customer's group) to assist EFTsure to perform the Service or deliver reports or other deliverables will not infringe any right of privacy or other legal right of any party or breach any Law. Customer indemnifies EFTsure and agrees to keep EFTsure indemnified against loss or damage that EFTsure suffers or incurs arising out of Customer's materials infringing or breaching any Law.
- (l) Subject to paragraph (k) above:
 - (i) EFTsure agrees that performance of the Service and delivery of reports or other deliverables will not infringe any Law; and
 - (ii) EFTsure will indemnify Customer and agree to keep Customer indemnified against loss or damage to the extent reasonably attributable to EFTsure's performance of the Service infringing or breaching any Law or delivery of reports or other deliverables infringing or breaching any Law.
- (m) Customer agrees to have in place reasonable safeguards, precautions and security procedures to protect EFTsure's services, deliverables and software from access of use by an unauthorised user and to protect EFTsure's information technology systems, including implementing reasonable procedures to guard against viruses and unauthorised interception, access, use or loss of electronic communications between Customer and EFTsure.
- (n) EFTsure agrees to have in place reasonable safeguards, precautions and security procedures to protect Customer's services from access of use by an unauthorised user and to protect Customer's information technology systems, including implementing reasonable procedures to guard against viruses and unauthorised interception, access, use or loss of electronic communications between Customer and EFTsure.

- (o) Customer acknowledges that:
 - (i) EFTsure has no responsibility to any person other than Customer. Nothing in this Agreement confers, or purports to confer, a benefit on any person other than Customer.
 - (ii) It is Customer's sole responsibility to determine that the Services meet the needs of Customer's business and are suitable for the purposes for which they are used.
 - (iii) EFTsure does not warrant that access to and use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public communications networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. EFTsure is not in any way responsible for any such interference or prevention of Customer's access or use of the Service.
 - (iv) Without limiting your rights under any Law, EFTsure gives no further warranty or guarantee about the Service other than as expressly stated in this Agreement. Without limiting the foregoing, EFTsure does not warrant that the Service will meet Customer's requirements or that it will be suitable for any particular purpose. To avoid doubt but subject to Law including statutory guarantees which cannot be excluded (but limited to the extent permitted in respect of those statutory guarantees), EFTsure excludes all implied guarantees, conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.
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4 Customer's Obligations

- (a) **Payment:** Customer agree to pay to EFTsure the charges set out in the Proposal and any applicable Order, plus any applicable goods and services tax (**GST**) and other taxes on provision of services and other deliverables, within fourteen (14) days after the date of EFTsure's invoice issued for those charges.
- (b) EFTsure may:
 - (i) increase the Fees, but only as stated in clause 1 above or otherwise as expressly stated in the Proposal;
 - (ii) alter the amount EFTsure deducts from your credit card or debit card if the Fees change in accordance with this Agreement; and
- (c) deduct any other payment owed to EFTsure under this Agreement. EFTsure may at EFTsure's election, charge Customer:
 - (i) **Expenses:** at cost and subject to Customer's prior approval for EFTsure incurring relevant expenses and disbursements, EFTsure's reasonable expenses and disbursements for goods and services purchased on Customer's behalf. Travel on Customer's behalf is reimbursable by Customer in accordance with EFTsure's standard policies, which EFTsure will provide to Customer at Customer's request and which include economy class for air travel within Australia and business class or equivalent for overseas air travel; and
 - (ii) **interest on late payment:** interest on overdue amounts at an annual rate of two (2) per cent over the Reserve Bank of Australia base rate as at the date payment was due and not made.

- (d) Customer may also purchase certain value-added services. If Customer elects to use such services, Customer agrees to pay in advance the required Fees as specified in the Proposal or otherwise as EFTsure and Customer may agree.
- (e) Any consideration or payment obligation stated or referred to in this Agreement does not include GST. If GST is imposed on any **Supply**, as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Law)*, other than a Supply which is GST free under subsection 38-190 of the GST Law, made by any party (**Supplier**) to any other party (**Recipient**) under or in connection with this Agreement, the consideration for that Supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that Supply. Supplier must provide to Recipient a GST tax invoice as required by the relevant legislation.
- (f) Fees are exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply and use of the EFTsure Service (including GST). Without limiting the foregoing, Customer will be liable for any new taxes, duties or charges imposed after the date of first provision of the Service in respect of provision of the Service.
- (g) Customer must provide EFTsure with accurate and complete payment information. Customer must keep this information up-to-date at all times.

5 Access conditions:

- (a) Customer must ensure that all usernames and passwords required to access the Service are kept secure and confidential. Customer must immediately notify EFTsure of any unauthorised use of Customer's passwords or any other breach of security. EFTsure will then reset Customer's passwords. Customer must take all other actions that EFTsure reasonably deems necessary to maintain or enhance the security of EFTsure's computing systems and networks and Customer's access to the Service.
- (b) As a condition of these Terms, when accessing and using the Service, Customer must:
 - (i) not attempt to undermine the security or integrity of EFTsure's computing systems or networks or, where the Service is hosted by a third party, that third party's computing systems and networks;
 - (ii) not use, or misuse, the Service in any way which may impair the functionality of the Service or Website, or other systems used to deliver the Services or impair the ability of any other user to use the Service or Website;
 - (iii) not attempt to gain unauthorised access to any materials other than those to which Customer have been given express permission to access or to the computer system on which the Services are hosted;
 - (iv) not transmit, or input into the Website, any: files that may damage any other person's computing devices or software, content that may be offensive, or material or information or data in violation of any law (including data or other material protected by copyright or the law relating to confidential information and trade secrets which Customer do not have the right to use); and
 - (v) not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Service or to operate the Website except as is strictly necessary to use either of them for normal operation.

- (c) Use of the Service may be subject to limitations including but not limited to the number of verifications in any period or other transaction volumes and as to the number of calls that Customer are permitted to make against EFTsure's application programming interface. Any such limitations will be as stated in EFTsure's Proposal.

6 Intellectual Property and information that Customer submits to EFTsure

- (a) Title to and any and all Intellectual Property Rights in the Service, the Website and any documentation relating to the Service remains the property of EFTsure (or its licensors).
- (b) Title to, and any and all Intellectual Property Rights in, information that Customer's submits to EFTsure remains Customer's property but may be used and disclosed in accordance with the Privacy Statement and Confidentiality Commitment. Further, Customer's access to information that Customer submits to EFTsure is contingent on full payment of EFTsure's charges when due.
- (c) Customer grants EFTsure a licence to use, copy, transmit, store, and back-up information that Customer submits to EFTsure for the purposes of provision of the Service and for any other purpose that is in accordance with the Privacy Statement and Confidentiality Commitment.
- (d) Customer must maintain copies of information that Customer submits to EFTsure. EFTsure must adhere to accepted good industry practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of information that Customer submits to EFTsure. EFTsure expressly excludes liability for any loss of information that Customer submits to EFTsure no matter how caused.
- (e) If Customer enable third-party applications for use in conjunction with the Service, Customer acknowledge that EFTsure may allow the providers of those third-party applications to access information that Customer submits to EFTsure as required for the interoperation of such third-party applications with the Services. EFTsure shall not be responsible for any disclosure, modification or deletion of information that Customer submits to EFTsure resulting from any such access by third-party application providers.

7 Limitation and Exclusions of Liability

- (a) To the maximum extent permitted by law, EFTsure is not liable for any losses or claims that Customer or Customer's related bodies corporate may incur in relation to use of the Service, except to the extent that these losses or claims are suffered by Customer and directly arise from EFTsure's breach of this Agreement or arise from EFTsure's failure to have in place reasonable safeguards, precautions and security procedures to protect EFTsure's services, deliverables and software from access of use by an unauthorised user and to protect EFTsure's information technology systems, including implementing reasonable procedures to guard against viruses and unauthorised interception, access, use or loss of electronic communications.
- (b) Nothing in this Agreement excludes, restricts or modifies any guarantee, term, condition, warranty, or any right or remedy, implied or imposed by any legislation which cannot lawfully be excluded or limited, including the Australian Consumer

Law (which contains guarantees that protect the purchasers of goods and services in certain circumstances).

- (c) If any guarantee, term, condition or warranty is implied into this Agreement under the Australian Consumer Law or any other applicable legislation (a **Non-Excludable Provision**) and EFTsure are able to limit Customer's remedy for a breach of the Non-Excludable Provision, then EFTsure's liability for breach of the Non-Excludable Provision is limited to one or more of the following at EFTsure's option:
 - (i) in the case of goods, replacement of the goods or the supply of equivalent goods, the repair of the goods, payment of the cost of replacing the goods or of acquiring equivalent goods, or payment of the cost of having the goods repaired; or
 - (ii) in the case of services, supplying of the services again, or payment of the cost of having the services supplied again.
- (d) Subject to paragraphs (e), (f) and (g) and EFTsure's obligations pursuant to any Non-Excludable Provision, and to the maximum extent permitted by law, EFTsure's maximum aggregate liability for all claims under or relating to this Agreement or the Service whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to the lesser of:
 - (i) the Fees paid by Customer in the preceding 12 months; or
 - (ii) AUD \$10,000.
- (e) Subject to EFTsure's obligations under the Non-Excludable Provisions, and to the maximum extent permitted by law, EFTsure is not liable for, and no measure of damages will, under any circumstances, include:
 - (i) special, indirect, consequential, incidental or punitive damages; or
 - (ii) damages for loss of profits, revenue, goodwill, anticipated savings or damage to data or corruption of data (including any data or information that is inputted by Customer), whether in contract, tort (including negligence), in equity, under statute or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of such loss or damage.
- (f) Our liability to Customer is diminished to the extent that acts or omissions of Customer or any person for whom Customer is responsible or other third parties contribute to or cause the loss or liability.
- (g) Customer indemnifies EFTsure against any claim, proceedings, loss, damage, fine, penalty, interest and expense arising out of or in connection with breach of this Agreement by Customer in respect of Customer's access to and use of the Service and non-compliance with Laws by Customer or any person for whom Customer is responsible.

8 Termination

- (a) Provision of the Service will continue for the period covered by any Fee paid in advance.

- (b) At the end of each period covered by any Fee paid in advance, this Agreement will automatically continue for another period of the same duration as that period, if Customer pays the then current Fee in advance when due, unless either party terminates this Agreement by giving notice to the other party in accordance with this Agreement.
- (c) If Customer terminates this Agreement Customer shall be liable to pay all relevant Fees on a pro-rata basis for each day of the then current period up to and including the day of termination of this Agreement.
- (d) If Customer:
 - (i) breaches this Agreement (including, without limitation, by non-payment of any Fees) and does not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
 - (ii) breaches this Agreement and that breach is not capable of being remedied (which includes (without limitation) or any payment of Fees that are more than 30 days overdue); or
 - (iii) becomes insolvent or go into liquidation or voluntary administration or has a receiver or manager appointed of any of its assets, or makes any arrangement with Customer's creditors, or becomes subject to any similar insolvency event in any jurisdiction,then EFTsure may take any or all of the following actions, at its sole discretion:
 - (A) terminate this Agreement and Customer's right of use of the Service;
 - (B) suspend for any definite or indefinite period of time, Customer's use of the Service.
- (e) For the avoidance of doubt, if payment of any invoice for Fees due is not made in full by the relevant due date, EFTsure may suspend or terminate Customer's use of the Service and the authority for Customer to use the Service.
- (f) Termination of this Agreement is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement:
 - (i) Customer will remain liable for any accrued charges and amounts which become due for payment before or after termination; and
 - (ii) Customer must immediately cease to use the Service.

9 Help Desk

- (a) In the case of technical problems Customer must make all reasonable efforts to investigate and diagnose problems before contacting EFTsure.
- (b) If Customer still needs technical help, please check the support provided online by EFTsure on the Website or failing that email EFTsure at support@eftsure.com.au.

10 Service availability:

- (a) Whilst EFTsure intends that the Services should be available 24 hours a day, seven days a week, it is possible that on occasions the Services or Website may be unavailable to permit maintenance or other development activity to take place.
- (b) If for any reason EFTsure has to interrupt the Services for longer periods than EFTsure would normally expect, EFTsure will use reasonable endeavours to publish in advance details of such activity on the Website.

11 General

- (a) If any part of this Agreement is held to be unenforceable, the unenforceable part is to be given effect to the greatest extent possible and the remainder will remain in full force and effect. This clause has no effect if the deletion alters the basic nature of this Agreement or is contrary to public policy.
- (b) This Agreement is governed by the laws of New South Wales, Australia. Customer irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia.
- (c) A person who is not a party to this Agreement has no right to benefit under or to enforce any term of this Agreement.
- (d) Provisions of this Agreement constitute the entire agreement between EFTsure and Customer in relation to the Service and supersede all other (prior or contemporaneous) communications or displays whether electronic, oral, or written, between EFTsure and Customer in relation to the Service.
- (e) Customer's use of the Service is conducted electronically. Customer agrees that EFTsure may communicate with Customer electronically for all aspects of Customer's use of the Service, including sending electronic notices to Customer.
- (f) No waiver, delay or failure by EFTsure to take any action shall constitute or be construed as a waiver of that or any other term, condition, option, privilege or right EFTsure may have.
- (g) Neither EFTsure nor Customer will be liable for any delay or non-performance of EFTsure's obligations under this Agreement to the extent to which that delay or non-performance arises for any act or omission beyond their reasonable control which could not reasonably be planned for or avoided. This clause does not apply to any obligation to pay money. Each of EFTsure and Customer agrees to promptly notifying the other in writing of the cause of the delay or non-performance and the likely duration of the delay or non-performance. Provided that the affected party uses its reasonable endeavours to limit the effect of that delay or non-performance on the other party, the affected party's obligations to perform, to the extent affected by the cause, will be suspended during the period that the cause persists. If performance is not resumed within a reasonable period after the cause of the delay or non-performance ceases to operate the other party may terminate this Agreement immediately by written notice to the affected party.
- (h) A provision of this Agreement, or any right referenced in it, may only be waived by written notice signed by the party granting the waiver. Waiver of a breach of this Agreement does not waive any other breach.

- (i) Eftsure is Customer's independent contractor. Neither party is a partner, agent, employee, joint venturer, fiduciary or legal representative of the other party. Neither party has authority to bind the other in any way.
- (j) All notices, consents or other communication must be in writing addressed to the parties and will be taken to have been given if:
 - (i) personally delivered, on delivery;
 - (ii) mailed, on the expiration of three (3) business days after posting;
 - (iii) sent by email when the recipient sends an acknowledgment of receipt of the email.
- (k) Neither EFTsure nor Customer may assign, sub-license or otherwise transfer the benefit of this Agreement without the other's prior consent.