

Euler Hermes Collections UK Ltd Terms and Conditions of Business

A company of Allianz 



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1. TERMS OF BUSINESS

These *Terms and Conditions* apply to the *Services* and may not be varied without the prior written approval of an authorised representative of *EHC*.

2. THE SERVICES

Insured Debts

- a) In consideration of the provision of the *Services* the *Client* shall (i) comply with all the terms and conditions of the *Policy*; and (ii) pay the premium due under the *Policy*; and (iii) pay the *Fees* and expenses (where applicable) as set out in Clause 6 of this Contract.

Non Insured Debts

- b) In consideration of the provision of the *Services*, the *Client* shall pay the *Fees* and expenses specified under Clause 6.

Insured and Non Insured Debts

- c) The *Services* shall be provided by *EHC* through its own resources or, in the sole discretion of *EHC*, through *Agents*.
- d) *EHC* shall, in its sole discretion, determine the most appropriate method and steps to be taken for the provision of the *Services*, including (without limitation) the giving of instructions on behalf of the *Client* to *Agents*.
- e) *EHC* reserves the right to refuse to accept any *Debt*, or refuse to instruct its associates, servants or *Agents* to perform any *Services* in relation to any *Debt* placed by the *Client* at *EHC*'s discretion, and shall be indemnified in full by the *Client* against all costs, claims and expenses incurred by *EHC*, its associates, servants and *Agents*, in the performance of any *Services* which are found to be ineligible.

3. OBLIGATIONS OF EHC

Insured Debts and Non Insured Debts

- a) *EHC* shall ensure that the *Services* are performed in an ethical manner, in compliance with the law. *EHC* shall ensure that its employees act in accordance with *EHC*'s internal code of conduct, the Code of the Credit *Services* Association, as approved by the Confederation of British Industry, and the Code of the American Collectors Association, as applicable.
- b) *EHC* shall treat all information concerning the *Client*, its business and financial affairs in complete confidence, save as shall be required for the proper performance of the *Services*.

4. OBLIGATIONS OF THE CLIENT

Insured Debts and Non Insured Debts

- a) The *Client* undertakes to provide *EHC* with all documents and information relating in any way to the *Debt*. The *Client* further undertakes to notify *EHC* promptly of any material change to the documents and information provided, including any offers, correspondence or new information of any kind, affecting directly or indirectly the *Debt*.

- b) The *Client* shall notify *EHC* and any Solicitor of any payment made to the *Client* in or towards the satisfaction of the *Debt*.
- c) All information provided by *EHC* to the *Client* shall be held by the *Client* in the strictest confidence and shall not be disclosed to, nor relied upon, by any other person, firm or company without the consent of *EHC*.
- d) The *Client* undertakes to cooperate at all times with *EHC* and the *Agents*.
- e) The *Client* shall not instruct any other person, firm or company in respect of the *Debt* or the *Services* without the prior written approval of *EHC*.
- f) The *Client* shall provide all information and comply with the obligations specified under Clauses 4(a), (b) and (d) without delay. Any delay or information prejudicing *EHC*'s or the Agent's performance of the *Services* shall entitle *EHC* to immediately terminate the *Services* in relation to the *Debt*.
- g) The *Client* acknowledges its liability to meet in full all costs, claims, expenses and awards made against it by any court of competent jurisdiction as a result of the *Debt Recovery Activities* or the *Services*.

5. SOLICITORS

Insured Debts and Non Insured Debts

- a) *EHC* shall have absolute discretion in the choice of the Solicitor and its choice shall be final and binding. *EHC* shall inform the *Client* of the name and address of any Solicitor that *EHC* proposes to instruct.
- b) *EHC* shall instruct the Solicitor to (i) place himself or themselves upon the record of the appropriate courts as representing the *Client* and (ii) keep *EHC* fully informed of all steps taken, including through any other *Agents*, and any compromise agreement or any other action or matter arising therefrom. *EHC* agrees that the Solicitor shall owe a primary duty to the *Client*.
- c) All monies recovered by a Solicitor in pursuance of the *Services* shall be paid to *EHC*.

6. FEES AND EXPENSES

Insured Debts

- a) Subject to the *Client*'s compliance with all the terms and conditions of the *Policy* and to the provisions of these *Terms and Conditions of Business*, *EHUK* shall pay:
 - i) all the *Client*'s *Legal Costs* in respect of *Insured Buyers* trading in the United Kingdom;
 - ii) a proportion (as set out in the *Policy*) of the *Client*'s *Legal Costs* in respect of *Insured Buyers* trading in any country other than the United Kingdom.
- b) The *Client* will be liable for and must repay any *Legal Costs* that have been paid by *EHUK* or that are incurred by *EHC* on the *Client*'s behalf and that relate to a debt that is not an *Insured Debt* or are otherwise excluded under the *Policy*.

Non Insured Debts

- c) The *Client* will be liable for and must pay *Legal Costs* in respect of *Debt Recovery Activities* carried on in any country other than the United Kingdom.

Insured Debts and Non Insured Debts

- d) The *Client* shall pay:
- i) the *Commission Fees* on the *Recovery* of any *Debt* or part of a *Debt* after *Placement of a Debt*; and
 - ii) the *Legal Action Fees* each in accordance with the relevant standard *EHC* scale of fees in force at the time when the *Debt* is placed with *EHC*.
- e) Subject to *EHC* providing the *Client* with reasonable notice prior to any change, *EHC* reserves the right to vary its scale of fees at any time.
- f) The *Client* shall pay all charges within 30 days of the date of any invoice ("the Invoice Date"). Failure to pay any invoice by the due date shall entitle *EHC* to charge interest on all overdue payments calculated on a daily basis from the Invoice Date, both before and after any judgment and until the date on which the Fee is actually paid, at a rate equivalent to the rate prevailing on the due date as prescribed by the Secretary of State pursuant to section 6 of the Late Payments of Commercial Debts (Interest) Act 1998.
- g) The *Client* shall fully and effectively indemnify *EHC* against the total expense to *EHC* arising out of the *Client's* breach or breaches of these *Terms and Conditions*. Such expense shall include, without limitation, all expenses incurred by *EHC* in recovering overdue *Fees*, all court fees, all amounts payable to *EHC's* professional advisers (payable on an indemnity basis) in pursuing claims against the *Client* for breaches of the *Terms and Conditions* and for enforcing any judgment(s) and/or orders, all amounts payable to *EHC's* debt recovery *Agents*. The *Client* further agrees to so indemnify *EHC* in the event that any instructions given to *EHC* by the *Client*, its officers, contractors or its employees are not authorised by the *Client*, or if any information given to *EHC* proves to be inaccurate, incomplete or misleading.
- h) On the due date for payment the *Client* shall pay to *EHC* the balance due for payment, without any right of set-off, deduction, retention or withholding whatsoever.
- i) If *EHC* has provided the *Client* with credit facilities, then *EHC* reserves the right to withdraw or to reduce such credit facilities, or to bring forward the date for payment at any time.
- j) The *Client* must pay all *Legal Costs* in connection with a counterclaim or proceedings other than the primary action to recover the *Debt*.
- k) The *Client* must pay all *Legal Costs* where Judgment is awarded against the *Client* (either before or at trial).
- l) If, following the *Placement of a Debt*, the *Client* enters into any settlement or compromise with a debtor which has the effect of reducing the amount claimed from the debtor, the *Client* shall pay the *Legal Costs* and the *Additional Fee*. For the avoidance of doubt, but without limitation and by way of example only, if the *Client* shall accept the return of goods from the debtor, the *Client* shall be liable to pay the *Legal Costs* and the *Additional Fee*.
- m) Other fees and expenses payable to *Agents* shall be payable by the *Client* in addition to the *Fees* and shall be paid irrespective of the extent of any *Recovery* achieved by *EHC* hereunder (if any). Unbilled or outstanding fees and expenses of *Agents* shall become

immediately due and payable in the event of the termination of the *Services* for any reason.

- n) The *Client* shall obtain the prior *Written* consent of *EHC* before agreeing to any settlement or compromise with the debtor. Failure to do so will render the *Client* liable to *EHC* for all and any *Legal Costs* and other disbursements incurred during, or arising out of, the provision of the *Services*.
- o) *EHC* shall be at liberty to reject any individual request for *Debt Recovery Activities* in its sole discretion, which shall be absolute and final.
- p) For the avoidance of doubt, if in relation to any *Debt* the *Services* are terminated either:
 - i) by the *Client* otherwise than in accordance with *EHC's* express recommendation; or
 - ii) by *EHC* in accordance with Clause 4(f) the *Client* shall pay the *Legal Costs* and the *Handling Fee*. In the case of *Insured Debts* the *Handling Fee* shall be £200. In the case of *Non Insured Debts* the amount of the *Handling Fee* will be determined by *EHC* at their sole discretion, provided that it shall not exceed the *Commission Fees* that would be payable by the *Client* if the *Debt* had been recovered in full (in addition to any liabilities owed by the *Client* pursuant to this Clause).

7. RECOVERY PAYMENTS

- a) Any monies received by *EHC* in performance of the *Services* will be paid into a general *EHC* collection account and any *Fees*, or part thereof, together with other fees and expenses of any *Agent* shall be either:
 - i) discharged out of monies held in that account, in which case *EHC* will account to the *Client* upon receipt of the monies recovered by the *Agents*, in excess of *Fees*, other fees and expenses due and payable; or
 - ii) invoiced to the *Client* separately, in which case *EHC* will account to the *Client* in full upon receipt of the monies recovered, without deduction of *Fees*, other fees and charges due and payable.
- b) *EHC* shall:
 - i) decide which of the two options set out in clause 7a) shall apply, and
 - ii) be at liberty to vary the option selected, upon reasonable notice, at any time each in its sole and final discretion.
- c) No interest is payable on monies held in the *EHC* trust account as no interest accrues.
- d) In the event that the *Client* does not pay any invoice raised by *EHC*, *EHC* reserves the right to either deduct from any other monies recovered for the *Client*, or to reclaim from the *Client*, at the *Client's* cost, sufficient monies to meet such *Fees*, expenses and charges.
- e) In the event of *EHC* failing to recover a sum sufficient to discharge fees and charges paid by *EHC* to the *Agents* in respect of the *Services* or any matter arising therefrom, the *Client* shall indemnify *EHC* for such shortfall and agrees to reimburse *EHC* forthwith.

8. TERMINATION OF SERVICES

- a) The *Client* may give written notice at any time to *EHC* to terminate the *Services*. The *Client* shall be responsible for all *Fees*, expenses and costs incurred to date and accruing and shall forthwith pay those *Fees*, expenses and costs to *EHC* and any Solicitor, as appropriate.
- b) *EHC* shall have the right immediately to terminate this Agreement without any liability to the *Client*, and if the *Services* have been performed but not paid for the *Fee* shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:
 - i) the *Client* fails to make any payment or breaches any provision of this Contract; or
 - ii) the *Client* makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or a receiver is appointed in respect of any of the property or assets of the *Client*; or the *Client* ceases, or threatens to cease, to carry on business; or *EHC* reasonably believes that any of these events is about to occur in relation to the *Client*.
- c) The right of termination given by Clause 8b) shall be without prejudice to any other right or remedy of either party in respect of any breach committed under the *Terms and Conditions*.

9. LIMITATION OF LIABILITY

- a) All information and advice given by *EHC*, its servants and *Agents* is provided in the utmost good faith.
- b) Neither *EHC*, its servants or *Agents* represent that any information or advice given is accurate or that any statement made by *EHC*, its servants or *Agents* amounts to an undertaking, term, condition, representation or warranty capable of incorporation into this Agreement or any collateral agreement hereto. In addition, *EHC* will not be held liable for the *Client's* reliance on any unauthorised representations, whether oral or in writing, made by *EHC's* servants or *Agents*, unless such representations are confirmed in writing by a director of *EHC*.
- c) Neither *EHC*, its servants or *Agents* shall be liable for any direct or indirect losses or damages of the *Client* whether pure economic loss, consequential loss, or otherwise, arising from the *Services*.
- d) Subject to the provisions of the Unfair Contract Terms Act 1977, all warranties, conditions, representations whether written or oral, or other terms implied by statute or common law are excluded to the fullest extent permissible by law.
- e) To the extent that the law does not permit the liabilities concerned to be excluded and save as otherwise expressly provided, *EHC's* entire aggregate liability for all claims arising out of these *Terms and Conditions* shall be limited to an amount equal to the *Fee* payable by the *Client* to *EHC* in respect of the *Debt* in relation to which the liability has arisen.

10. ASSIGNMENT

- a) These *Terms and Conditions* shall be between *EHC*, its servants or *Agents*, and the *Client* and shall not be capable of assignment or transfer in whole or in part by the *Client* without the prior *Written* consent of *EHC*.
- b) *EHC* may sub-contract the *Services* to any Group Company and shall not be restricted in any way whatsoever from passing any information obtained in the provision of the *Services* to any Group Company and relating to the subject matter of the *Debt*.

11. INSOLVENCY

- a) *EHC* may, at any time and at its absolute discretion, terminate the provision of the *Services* if the *Client* has petitioned for, commits any act of, or is adjudged to be bankrupt or insolvent in any jurisdiction.
- b) *EHC* may, at any time and at its absolute discretion, terminate the provision of the *Services* if the *Client* is the subject of any receiving or administration order, or if the *Client* enters into any composition or arrangement with its creditors.
- c) In the event of *EHC* exercising its absolute discretion under Clauses 11a) and b), such action shall not prejudice any rights and remedies otherwise available to it.

12. NOTICE

Either *EHC* or the *Client* may serve notice upon the other by facsimile transmission or ordinary pre-paid first class post at the registered office or normal place of business of the other party. Facsimile transmissions are deemed to have been received at the time of the transmission. Post is deemed to have been received the next working day after the day of posting.

13. FORCE MAJEURE

The provision of the *Services* shall automatically terminate subject to payment by the *Client* of *Fees* and expenses incurred to that date, in the event that such provision of *Services* is frustrated or incapable of performance, through any cause beyond the control of *EHC* or the *Client*, including but not limited to acts of God, accident, explosion, fire, transport delays, strikes and other industrial disputes, and compliance with any government laws, regulations or orders.

14. DATA PROTECTION

- a) *EHC* is committed to *processing personal data* (as each term is defined in the Data Protection Act 1998) ("data") in accordance with the provisions of the Data Protection Act 1998. Where data is given to *EHC*, it will be received on the premise that the *Client* is authorised to process such data in compliance with its obligations imposed by the Data Protection Act 1998 or similar legislation. *EHC* accepts no responsibility or liability for any action or claim brought by an individual or the Office of the Information Commissioner where the *Client* is found

to be in, or has been in, contravention of the provisions and principles of the Data Protection Act 1998 or similar legislation. The *Client* agrees to indemnify *EHC* for any losses *EHC* may sustain in responding to any such action or claim on the *Client's* behalf.

- b) The data will be used by *EHC* in the provision of its *Debt Recovery Activities, Services* and general collection and credit management activities, and it may be necessary for *EHC* to share the data with others. For example, the data will be passed to legal advisers, debt recovery agents, tracing agents, a credit reference agency and other members within the Euler Hermes Group, all of which may be located both within or outside the Economic European Area.
- c) If the *Client* shall at any stage become a data processor (as defined in the Data Protection Act 1998) in respect of any data provided to and by *EHC*, it will follow the sole instructions of *EHC* in connection with such processing and shall indemnify *EHC*, and take appropriate measures, against unauthorised or unlawful processing of such data and against accidental loss or destruction of, or damage to, such data.
- d) The *Client* may write to the Data Protection Officer at Euler Hermes UK plc, 1 Canada Square, London, E14 5DX for information as it relates to the *Services*, otherwise the *Client* should seek legal advice for general data protection enquiries.

15. JURISDICTION

- a) These *Terms and Conditions* shall be subject to, construed and interpreted in accordance with the laws of England and Wales and, unless otherwise agreed, the High Court shall be the court of competent jurisdiction.
- b) Where the *Debt* is collectable within the European Union, *EHC* may, at its absolute discretion, nominate another jurisdiction as provided under the Brussels Convention.
- c) Where the *Debt* is collectable outside the European Union, *EHC* may, at its absolute discretion, nominate the courts of the competent jurisdiction.

16. GENERAL

- a) No delay or failure by *EHC* in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by *EHC* of any breach by the *Client* shall be considered as a waiver of any subsequent breach of the same or any other provision. No waiver by *EHC* shall be effective unless in writing.
- b) If any provision of the *Terms and Conditions* is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the *Terms and Conditions* and the remainder of the provision in question shall not be affected.
- c) These *Terms and Conditions* (together with any documents referred to in them) constitute the whole agreement between the *EHC* and the *Client* relating to its subject matter and supersede any prior agreements or understandings. No variations shall be effective unless made in writing signed by the *EHC* and the *Client* and expressing an intention to vary these *Terms and Conditions*.
- d) The *Client* acknowledges that it has relied solely upon the provisions of these *Terms and Conditions* in entering into the Contract and that no

reliance has been placed on any representation, warranty, statement or undertaking given by *EHC*, its professional advisers, agents or employees not contained in these *Terms and Conditions*. The *Client* irrevocably and unconditionally waives any right he may have to claim damages for any misrepresentation not contained in these *Terms and Conditions* or breach of any warranty not contained in these *Terms and Conditions* unless such misrepresentation or warranty was made fraudulently and/or to rescind these *Terms and Conditions*.

- e) Nothing in these *Terms and Conditions* shall confer on any third party any benefit or the right to enforce any provisions of these *Terms and Conditions*.

Definitions

Additional Fee

means the fee payable by the Client to EHC, in addition to the Fees, in the circumstances described under Clause 6(l), and equal to 50% of the Fees on the amount by which the Debt has been reduced.

Agent or Agents

means any solicitor, bailiff, sheriff, or other person instructed by EHC to act on behalf of the Client in respect of the Services.

Client

means the individual, business or corporation to whom the Services are supplied.

Commission Fees

means the fees payable to EHC under Clause 6(d)(i).

Contract

is this contract for the provision of the Services.

Debt or Debts

means together any Insured and any Non Insured Debt or Debts.

Debt Recovery Activities

means the recovery or attempted recovery of Debt, or any other action or matter arising as a result of such recovery or attempted recovery, on behalf of the Client but excludes the Excluded Activities.

EHC

means Euler Hermes Collections UK Limited.

EHUK

means Euler Hermes UK plc.

Excluded Activities

means any form of alternative dispute resolution, whether arbitration, mediation adjudication or otherwise, winding up or other insolvency proceedings, any counterclaim and any action which is not connected with the initial Debt as placed with EHC.

Fees

means all the charges payable to EHC under Clause 6.

Group Company

means any holding or subsidiary company, as defined under section 736 of the Companies Act 1985, of Euler Hermes Group.

Handling Fee

means the fee payable by the Client to EHC in the circumstances described under Clause 6(p).

Insured Buyer

means as ascribed in the Policy.

Insured Debt

means as ascribed in the Policy.

Legal Costs

means claimant's solicitor costs, court fees, disbursements and similar costs of all litigation, including defended cases, up to trial.

Legal Action Fees

means the fees payable to EHC under Clause 6(d)(ii).

Definitions

Non Insured Debt

means any debt or debts which

- (i) do not fall within the definition of Insured Debt;
- (ii) are otherwise excluded under the Policy;
- (iii) you have elected not to pass to EHC.

Policy

means the Client's policy of credit insurance with EHUK, if any.

Placement of a Debt

means the receipt by EHC of the Client's instructions to recover a Debt on their behalf.

Recovery

means any circumstance in which the debtor or any other party on the debtor's behalf pays or otherwise discharges all or part of the Debt to EHC, the Client, an Agent of EHC, or any third party on the Client's behalf.

Services

means all the work and services performed by, or at the direction of, EHC, its associates, servants and agents in relation to the Debt Recovery Activities, as further described under Clause 2.

Solicitor or Solicitors

means a solicitor as defined under section 717(2) of the Companies Act 1985, or the equivalent in foreign jurisdictions, instructed by EHC to act on behalf of the Client in respect of the Services.

Terms and Conditions

means these terms and conditions, governing the provision of the Services.

Written

means facsimile, ordinary mail or electronic mail.

Euler Hermes Collections UK Ltd.
1 Canada Square London E14 5DX
Tel: 020 7860 2756
Fax: 020 7860 2651
Int Tel: +44 (0)20 7860 2712
Int Fax: +44 (0)20 7216 1401
collections.eulerhermes.co.uk

Registered in England & Wales No. 2110655
Registered Office: 1 Canada Square, London E14 5DX