

# Terms and Conditions

## 1. Interpretation

- 1.1. In these Terms and Conditions, unless inconsistent with the context:
- 1.1.1. **Agent** means the land agent who submitted a request for the Form 1 on the Eckermann Forms Portal and includes where the context permits, its directors, employees, contractors and consultants;
  - 1.1.2. **Claim** means any action, claim, proceeding or demand whatsoever, whether presently existing or arising at any time in the future and whether referable to events or circumstances which have already occurred or which may occur in the future;
  - 1.1.3. **Disbursements** means any out-of-pocket expenses (including the costs of any property searches in relation to the Property) incurred by Eckermann Forms in the supply of the Services;
  - 1.1.4. **Eckermann Forms** means Eckermann Forms (SA) Pty Ltd ACN 142 680 742 and includes where the context permits, its directors, employees, contractors and consultants;
  - 1.1.5. **Eckermann Forms Portal** means Eckermann Forms' website portal accessible at <https://agent.eckermannforms.com/> and us updated from time to time;
  - 1.1.6. **Form 1** means a Vendor's Statement – Form 1 under section 7 of the Land and Business (Sale and Conveyancing) Act, in relation to the Property;
  - 1.1.7. **Form 1 Responses** means all responses received by Eckermann Forms from:
    - (a) all relevant government and statutory authorities and any strata or community manager (if applicable), in relation to the Property; and
    - (b) the Vendor, as set out in the completed Vendor's Questionnaire;
  - 1.1.8. **Land and Business (Sale and Conveyancing) Act** means the *Land and Business (Sale and Conveyancing) Act 1994 (SA)*;
  - 1.1.9. **Loss** means all losses, costs, expenses and damages (including legal costs and disbursements) sustained or incurred, whether directly or indirectly or consequential or in any other way;
  - 1.1.10. **Property** means the sale property address specified in the Form 1 ;
  - 1.1.11. **Purchaser** means the purchaser or proposed purchaser of the Property entered or to be entered on the Form 1 by the Agent, the Vendor or Eckermann Forms at the Vendor's or Agent's request;
  - 1.1.12. **Service Fee** means the fee payable to Eckermann Forms for supplying the Services;
  - 1.1.13. **Services** means the preparation and certification (in accordance with section 37 of the Land and Business (Sale and Conveyancing) Act) of the Form 1, as agent for the Agent;
  - 1.1.14. **Terms and Conditions** means these terms and conditions for the supply of the Services;
  - 1.1.15. **Vendor** means the vendor or proposed vendor of the Property specified by the Agent in the request for the Form 1 submitted on the Eckermann Forms Portal; and

- 1.1.16. **Vendor's Questionnaire** means the Vendor's questionnaire relating to the Property and provided to the Vendor for completion, whether electronically, orally or other.
- 1.2. In the interpretation of these Terms and Conditions, unless inconsistent with the context:
  - 1.2.1. words denoting the singular include the plural and vice versa;
  - 1.2.2. the word "includes" or "including" is not a word of limitation; and
  - 1.2.3. where reference is made to a Form 1 being submitted on the Eckermann Forms Portal, this includes all instances where a searches and/or Form 1 request is emailed or sent to Eckermann Forms by some other manner, and Eckermann Forms transpose this request onto the Eckermann Forms Portal.

## 2. Contract

The Agent agrees that by submitting a request for the Form 1 on the Eckermann Forms Portal, the Agent is bound by these Terms and Conditions, which constitute a contract between the Agent and Eckermann Forms.

## 3. Services

- 3.1. The Agent will engage Eckermann Forms to supply the Services in accordance with these Terms and Conditions.
- 3.2. Without limiting clause 3.1, Eckermann Forms agrees to (where requested and applicable):
  - 3.2.1. confirm with the Agent particulars in relation to the Property;
  - 3.2.2. obtain payment details for the Services from the Agent or the Vendor;
  - 3.2.3. complete the Vendor Questionnaire with the Vendor;
  - 3.2.4. undertake the required search inquiries under the Land and Business (Sale and Conveyancing) Act;
  - 3.2.5. prepare the Form 1 based on the Form 1 Responses and all required search inquiries under the Land and Business (Sale and Conveyancing) Act undertaken by Eckermann Forms;
  - 3.2.6. certify the completeness and accuracy of the Form 1 at Part D, as a 'Person authorised to act on behalf of Vendor's agent';
  - 3.2.7. arrange for the review and execution of the Form 1 by the Vendor; and
  - 3.2.8. either:
    - (a) serve the Form 1 on the Purchaser by email; or
    - (b) send the Form 1 to the Agent or the Vendor, ready for the Purchaser's details to be entered on the Form 1 and served on the Purchaser.
- 3.3. Notwithstanding any other clause of these Terms and Conditions, the Agent has the option to do any or all of the following (should the Agent wish to do so), on a file-by-file basis:
  - 3.3.1. make payment;
  - 3.3.2. complete the Vendor's Questionnaire with the Vendor;
  - 3.3.3. arrange for execution of the Form 1 by the Vendor; and/or
  - 3.3.4. serve the Form 1 on the Purchaser.

- 3.4. For all tasks completed by the Agent pursuant to clause 3.3, Eckermann Forms accepts no liability whatsoever.

#### **4. Service Fee and Disbursements**

- 4.1. The Agent must arrange for the Vendor or Agent to pay to Eckermann Forms:
  - 4.1.1. the Service Fee; and
  - 4.1.2. any Disbursements,or as otherwise agreed between Eckermann Forms and the Agent.
- 4.2. Despite the provisions of clause 4.1, the Agent agrees that it is fully responsible and liable to Eckermann Forms for payment of the Service Fee and the Disbursements.
- 4.3. The Service Fee and the Disbursements:
  - 4.3.1. must be paid to Eckermann Forms upfront or as otherwise agreed between Eckermann Forms and the Agent or Vendor on receipt of a tax invoice from Eckermann Forms, by credit card payment or electronic funds transfer; and
  - 4.3.2. will be processed by Eckermann Forms in Australian Dollars (AUD).
- 4.4. The Agent acknowledges that all credit card transactions are processed through eWAY.
- 4.5. If the Agent or Vendor cancels the Services before Eckermann Forms has commenced the preparation of the Form 1, Eckermann Forms' liability for any refund of the Service Fee will be limited to a refund of the Service Fee. For the avoidance of doubt, Eckermann Forms will not be liable to provide any refund for any Disbursements.

#### **5. GST**

- 5.1. Unless otherwise expressly stated, all amounts payable under these Terms and Conditions are exclusive of goods and services tax (**GST**).
- 5.2. If GST is payable by a party (**recipient**) on any supply made by, the other party (**supplier**) under these Terms and Conditions, the recipient must pay to the supplier an additional amount that is equal to the amount payable by the recipient for the relevant supply multiplied by the prevailing GST rate. This additional amount is payable at the same time as the amount for the relevant supply to which the additional amount relates.
- 5.3. In the event of a taxable supply, the supplier will provide a valid tax invoice (in the form prescribed by the *A New Tax System (Goods Services Tax) Act 1999 (Cth)*) to the recipient.

#### **6. Agent's obligations and warranties**

- 6.1. The Agent must:
  - 6.1.1. advise the Vendor that Eckermann Forms will contact the Vendor to complete the tasks required (where applicable) under clause 3.2;
  - 6.1.2. obtain consent from the Vendor and Purchaser (as applicable) for all communications and signatures for the proposed sale and purchase of the Property (including the service and/or signing of the Form 1) to be effected electronically to and from the email address(es) provided by the Agent to Eckermann Forms.
  - 6.1.3. if the Agent wishes to complete any tasks listed under clause 3.3, the Agent must do so in a thorough and professional manner;

- 6.1.4. advise Eckermann Forms if the Agent becomes aware of anything that should be disclosed in the Form 1, either through communication with the Vendor or through alternative means;
  - 6.1.5. if not already provided to Eckermann Forms by the Agent, enter the Purchaser's details on the Form 1 provided to the Agent by Eckermann Forms; and
  - 6.1.6. complete any other tasks communicated by Eckermann Forms, depending on the circumstances of particular matters.
- 6.2. The Agent warrants that the Vendor (as advised by the Agent to Eckermann Forms) is:
- 6.2.1. the registered proprietor of the Property; or
  - 6.2.2. the lawfully authorised agent for the registered proprietor of the Property.
- 6.3. The Agent must not amend or alter the Form 1 documentation, nor allow the Vendor to amend or alter it. The Agent agrees that:
- 6.3.1. the onus is on the Agent and the Vendor to check the Form 1 to ensure that the Form 1 is correct and accurate; and
  - 6.3.2. if there are any errors, omissions, inaccuracy or misdescription in the Form 1, the Agent must immediately advise Eckermann Forms in order for the Form 1 to be altered or re-issued (if necessary) by Eckermann Forms.
- 6.4. The Agent further agrees that:
- 6.4.1. the Form 1 is prepared by Eckermann Forms on the basis that it will be used solely by the Vendor or the Agent; and
  - 6.4.2. the Form 1 must not be used by any person, other than the Vendor or the Agent, without Eckermann Forms' prior written consent.

## **7. Recommendation**

Where it is agreed by the Agent and Eckermann Forms that the Vendor will pay the Service Fee and the Disbursements, Eckermann Forms recommends the below clause be entered into the Agent's sales agency agreement with the Vendor:

*"The Vendor acknowledges that the Agent will arrange for Eckermann Forms, the Agent's authorised Form 1 provider, to contact the Vendor in order to obtain the necessary information to prepare and certify a Form 1 for the property. The Vendor acknowledges that the Form 1 preparation costs and statutory searches required will be payable by the Vendor to Eckermann Forms, and that these costs are in addition to any recovery of expenses, commission or other charges payable to the Agent as set out in this Sales Agency Agreement."*

## **8. Delivery of Form 1**

- 8.1. Eckermann Forms will deliver the Form 1 as soon as reasonably practicable following Eckermann Forms' receipt of:
  - 8.1.1. all required Form 1 Responses; and
  - 8.1.2. payment of the Service Fee and the Disbursements,or as otherwise agreed between Eckermann Forms and the Agent or Vendor.

- 8.2. The Agent agrees that Eckermann Forms will be deemed to receive payment of the Service Fee and the Disbursements where:
  - 8.2.1. if payment is made by credit card or electronic funds transfer, the card or electronic transfer is advised as debited by Eckermann Forms' service provider and credited to its account; or
  - 8.2.2. if payment is made by cheque, upon clearance of the cheque (allow 3-7 days for clearance).
- 8.3. Once the Form 1 is completed, the Form 1 can be:
  - 8.3.1. downloaded in Portable Document Format (PDF) format from the Eckermann Forms Portal; or
  - 8.3.2. sent to the Agent or the Vendor electronically by email, if requested by the Agent or Vendor.
- 8.4. The Agent may download the Form 1 from the Eckermann Forms Portal for three months from the date that the Form 1 was certified by Eckermann Forms.

## 9. Service of Form 1

The Agent may instruct Eckermann Forms to serve on the Purchaser the Form 1 or a notice of amendment to the Form 1, on behalf of the Vendor.

## 10. Exclusions

- 10.1. To the extent permitted by law, and subject to clauses 4.5 and 10.2, Eckermann Forms:
  - 10.1.1. disclaims all liability (including any direct, indirect, special or consequential damage or loss) suffered or incurred by the Agent or any third party (including the Vendor and Purchaser), howsoever caused, arising out of or in connection with the Services or these Terms and Conditions, including:
    - (a) the accuracy or the timing of the Form 1 Responses;
    - (b) any errors, omissions, inaccuracy or misdescription in the Form 1;
    - (c) any changes:
      - (i) in the Form 1 Responses between the date of those responses and the date that the Form 1 is served on the Purchaser; or
      - (ii) the Agent or the Vendor makes to the Form 1 once delivered by Eckermann Forms; and
    - (d) any delay in the delivery of the Form 1; and
  - 10.1.2. will not, in any circumstance, be liable to the Agent, Vendor or Purchaser (whether in contract, tort, under any statute or otherwise) for any Loss, Claims or damage of any kind (including direct, indirect and consequential loss and damage of business revenue, loss of profits, failure to realise expected profits or savings or other commercial or economic loss of any kind).
- 10.2. If the Agent is entitled to obtain any legal remedy against Eckermann Forms under these Terms and Conditions, then to the extent permitted by law that remedy will be limited to:
  - 10.2.1. if the breach relates to goods, and at the option of Eckermann Forms:
    - (a) the replacement of the goods;
    - (b) the supply of equivalent goods;

- (c) the repair of such goods; or
  - (d) the payment of the cost of replacing the goods or of acquiring equivalent goods; and
- 10.2.2. if the breach relates to services, and at the option of Eckermann Forms:
  - (a) the re-supply of the services; or
  - (b) the payment of the cost of having the services supplied again.
- 10.3. Despite any other provision of these Terms and Conditions, to the fullest extent permitted by law, the aggregate liability of Eckermann Forms in respect of all Claims arising out of or in connection with these Terms and Conditions (whether arising out of breach of contract, negligence or any other tort, under statute or otherwise) will not exceed the Service Fee actually paid by the Agent or the Vendor to Eckermann Forms under these Terms and Conditions.
- 10.4. The Agent agrees that Eckermann Forms, to the extent permitted by law:
  - 10.4.1. makes no warranties in respect of the Services to be supplied, including:
    - (a) the accuracy of the information in the Form 1;
    - (b) the accuracy or the timing of the Form 1 Responses; or
    - (c) any errors, omissions, inaccuracy or misdescription in the Form 1; and
  - 10.4.2. excludes from these Terms and Conditions all conditions, warranties and terms implied by law (including those in respect of the state, quality, condition or manner of provision of the Services).
- 10.5. For the avoidance of doubt, subject to any terms implied by law which cannot be excluded, Eckermann Forms accepts no responsibility or liability for any Loss suffered by the Agent, the Vendor, the Purchaser or any other third party as a result of any error, omission or misrepresentation in any information provided by Eckermann Forms or reliance placed on such information.

## **11. Indemnities**

- 11.1. The Agent must indemnify and keep indemnified Eckermann Forms from and against all Loss and Claims suffered by or brought against Eckermann Forms arising out of or in connection with:
  - 11.1.1. a breach of any provision of these Terms and Conditions by the Agent; or
  - 11.1.2. the Form 1 or its use by any person.
- 11.2. For the avoidance of doubt, this indemnity includes Claims arising out of any errors, omissions, inaccuracy or misdescription in the Form 1.

## **12. General**

- 12.1. If the Agent breaches these Terms and Conditions, Eckermann Forms does not have to comply with any of its obligations under these Terms and Conditions.
- 12.2. These Terms and Conditions contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by these Terms and Conditions and has no further effect.
- 12.3. The relationship between the parties is and will remain that of principal and agent. Nothing in these Terms and Conditions:

- 12.3.1. gives rise to an employment relationship between the parties; or
  - 12.3.2. constitutes the parties as partners, joint venturers or any other form of fiduciary relationship.
- 12.4. These Terms and Conditions may be varied by Eckermann Forms by notice from time to time and in continuing to use the Services and/or the Eckermann Forms Portal the Agent agrees to the varied Terms and Conditions as published by Eckermann Forms on the Eckermann Forms Portal from time to time. Electronic notice on the Eckermann Forms Portal is deemed notice of any varied Terms and Conditions and will be binding on the Agent.
- 12.5. No party may assign or transfer any of its rights or obligations under these Terms and Conditions, without the prior written consent of the other party. No assignment of any obligation will be effective until the assignee has covenanted in favour of, and in a form reasonably satisfactory to, the non-assigning party, to assume and to be bound by the obligations assigned.
- 12.6. Other than as provided in these Terms and Conditions, the rights and remedies provided under these Terms and Conditions are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy. Any single or partial exercise of any power or right does not preclude any other or further exercise of it or the exercise of any other power or right under these Terms and Conditions.
- 12.7. No waiver by a party of any breach or default by any other party is effective unless reduced to writing and signed by the party making such waiver, and any such waiver does not constitute a waiver of any other continuing breach or default under these Terms and Conditions.
- 12.8. Each party will promptly do all things required by law or reasonably requested by any other party to give effect to these Terms and Conditions.
- 12.9. No right or obligation of any party will merge on completion of any transaction under these Terms and Conditions. All rights and obligations under these Terms and Conditions survive execution and delivery of the Form 1 or other document which implements any transaction under these Terms and Conditions.
- 12.10. These Terms and Conditions will be governed by South Australian law. The parties submit to the exclusive jurisdiction of the courts of that State and the South Australian Registry of the Federal Court of Australia in respect of all proceedings arising in connection with these Terms and Conditions.
- 12.11. If any provision of these Terms and Conditions is prohibited, invalid or unenforceable in any jurisdiction, that unenforceability will not invalidate the remaining provisions of these Terms and Conditions or affect the validity or enforceability of that provision in any other jurisdiction.

### 13. Privacy

- 13.1. Eckermann Forms has created a privacy statement setting forth how information collected about the Agent and the Vendor are collected, used and stored (**Privacy Statement**). The Privacy Statement is published on <http://eckermannforms.com/>.
- 13.2. The Agent acknowledges and accepts the Privacy Statement. The Agent further acknowledges and agrees that Eckermann Forms may use the Agent's or the Vendor's personal information in the manner described in the Privacy Statement.

