

How to make your bad
paying customers
legally bound to pay
your interest and your
debt collection costs.



*Every business can bind
customers to its trading terms.*

*Let us show you how easy it is to set up
...and it will cost you nothing.*

Don't let your bad
payers cost you money.

Take the time to read this.
It shows you how to speed
cash flow, save money... **and it
costs you nothing.**

The underlying principle is that the customer must be reasonably aware that your trading terms are applicable, prior to engaging your services or purchasing products from you.

The strongest position is where your customer signs an order form and the form clearly specifies that your trading terms are applicable to the relationship. It is common for quotations to incorporate wording such as:

“This quotation is subject to our trading terms, which are detailed overleaf and are also detailed on our website – www.ourbusiness.com.au”.

Tips we recommend that you follow.

- Detail your trading terms on your website and incorporate a statement in large font on your quotations and other correspondence with your customers, to read:

*“Our full trading terms are detailed on www.ourbusiness.com.au and our business relationship with you will be governed by the applicable terms from time to time. *As the terms may change, we suggest that you check our website prior to placing further orders*”.*

- Define a process for allowing credit to new customers and ensure that it is followed.
- Remind customers that you have trading terms in place when sending out follow-up letters and statements. Suggested wording would be:

“Our relationship is governed by our trading terms, which are detailed on www.ourbusiness.com.au. Our terms provide that collection and legal costs and interest will be added to overdue accounts. Pay now to avoid this”.

Recommended Simple Clauses

Adding Collection Costs

“In the event where your overdue account is referred to a collection agency and/or law firm, you will be liable for all costs which would be incurred as if the debt is collected in full, including commission on collection of the additional costs and also including legal demand costs”.

Adding Interest

“Overdue accounts will be subject to interest at the rate of 13% p.a., calculated for the period the account is due until the date it is paid”.

BUSINESS CATEGORIES

Your business will definitely fall within one of the five categories below:

Home Services

Includes trades, such as plumbers and electricians, curtains and blinds, repair of home appliances, heating and cooling, pool works and maintenance, lawns and garden maintenance, roof repairs etc.

When the order is placed, ask the customer for their email address and advise that the order is subject to your terms and conditions which are detailed on your website and outline the essential terms, such as callout fee, hourly rate etc. It is prudent to record all orders placed in either a hard copy or electronic format, with the date, time and name of the person you spoke to. Follow up the order by sending an email to the customer confirming the applicable terms.

If the customer does not have email, explain the main terms on the phone and advise that you will require a form to be signed when you arrive on the job. The form will incorporate reference to your trading terms.

For larger jobs, send out a formal quotation, either by post or email and detail the applicable terms on it.

Business-to-Business

Includes suppliers, wholesalers selling to retailers etc.

For larger orders, obtain completion of a New Customer Form, which should incorporate your trading terms in it. Download a free copy from www.prushka.com.au/forms.cfm.

For more casual jobs and orders, send an email confirmation of the order, incorporating your trading terms.

Healthcare (direct)

Includes GP Practices, vets, dental, chiropractors, specialist practitioners and hospitals.

Get the patient to sign a New Patient Form (you may download a draft for free from www.prushka.com.au/forms.cfm) which incorporates your trading terms.

Place a sign in your waiting room, next to the receptionist with wording such as:

“your consultation will be subject to our trading terms. These are detailed on our website and a copy is available from our receptionist. Our terms provide that in the event of this account remaining unpaid and being referred to a debt collection agency and/or law firm, all collection and legal demand costs will be added to the account”.

The receptionist should then always offer a copy to the patient.

Healthcare (indirect)

Includes hospital pharmacies, radiology, pathology and anaesthetists.

These service-providers require special processes but they can still cover all their patients.

For **hospital pharmacies**, the best process is to prepare a simple New Patient Form, which incorporates the trading terms and is to be provided by the hospital to the patient, upon registration. The form may need to be signed by a parent to guardian if the patient is incapable of signing or is a minor.

For **anaesthetists**, a New Patient Form is required and if possible, the surgeon or other specialist requiring the anaesthetist services should get it completed and booked in. Alternatively, when visiting the patient, get either the patient or his or her guardian to complete it at the time of the visit.

Radiology and pathology services are invariably provided after a medical practitioner makes a referral, by providing the patient with a written slip which is to then be left with the service provider. The referral slip should have in large red bold font, on the front, wording such as:

In addition, at the service centre, there should be a prominent sign which reads:

“Provision of our service to you is subject to our trading terms. Please ask us for a copy. Our trading terms are also detailed on www.pathologyprovider.com.au. If the account is referred to a debt collection agency, you will be liable for additional costs. If uncertain about any terms, please call freecall XXX”.

A set of trading terms should be held at every centre and copies provided to patients who ask for them.

The invoice and follow-up statements should include the following words, in prominent font:

“Provision of our service has been subject to our trading terms which are detailed at www.pathologyprovider.com.au. Our terms provide that in the event of this account remaining unpaid and being referred to a debt collection agency and/or law firm, all collection and legal demand costs will be added to the account”.

Sales

Includes retail businesses which provide customer accounts, such as petrol stations, pharmacies, newsagents and businesses which sell to other businesses, such as office suppliers, corporate catering etc.

The preferred process is that you get your customer to complete a New Customer Form (download from www.prushka.com.au) and that you incorporate your trading terms in that form.

Schools

Ensure that your enrolment form incorporates the full trading terms you require and that the form is signed by the person who will be bound to pay for it.

Our Role

Unless we are satisfied that you have an effective clause in place to add costs and/or interest in accordance with the above, then we are legally unable to add commission and interest to the debts you submit to us.

Whilst we will add commission to your claim, if instructed and you have applicable clauses, we can't guarantee to successfully recover them and our commission will be charged on whatever sum we recover.

Reaction From Your Bad Payers

The choice of whether or not collection costs are to be added to your account(s) is entirely yours. Accordingly, even if you do have an applicable default clause in place, you may elect to not apply it for particular debts. However, in that case you will need to provide us with precise instructions.

Sometimes, applying the default clause will cause a reaction from your debtor. This will particularly be the case where the debt is relatively small and if it is more than 6 months old. The reason is that Prushka's commission rate on small debts and debts older than 6 months old is higher.

Suing Your Debtor

The clauses above are sufficient to enable us to claim and in most cases to successfully recover our commission. However, if you intend suing debtors and want to ensure that the clause will fully withstand legal challenge, we suggest the following clause:

"In the event of the Customer being in default of his obligation to pay and the overdue account is then referred to a debt collection agency, and/or law firm for collection the Customer shall be liable for the recovery costs incurred and if the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply.

$$\text{Commission} = \left\{ \frac{\text{Original Debt}}{100 - \text{Commission \% charged by the agency (including GST)}} \right\} \times 100$$

In the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au.

In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis".

Example of the Formula

A typical example.

- \$2,000 debt, 4 months old
- Default clause is in place.
- Amount claimed by Prushka using the formula is \$2,758.62
- If Prushka collect the full amount, commission will be:
 $\$2,758.62 \times 25\% \text{ commission (+ 2.5\% GST) = 27.5\%}$
- The result is that you receive \$2,000 and your debtor pays all commission costs i.e. It has cost you nothing.

The alternative to this example is that you refer \$2,000.00 debt to Prushka without adding collection costs. This will result in deduction by Prushka of \$514.00 (inc GST) and this costs would be borne by you.

Pressure Your Bad Payer

A further advantage to you is that you will be able to pressure your bad payers to pay before you send the debt to Prushka.

E.g. 'Pay now or this debt will be sent to Prushka and you will then be liable for all debt collection costs'.

No Guarantee

Prushka does not guarantee to collect all or any of the debt collection costs and will charge commission on the amount it collects.

Further Help

If you require assistance in **preparing or reviewing your Trading Terms**, our associated lawyers, Mendelsons can assist you.

Please contact the Prushka Client Services Team for more information 1800 641 617 or clientservices@prushka.com.au