

## **ADDING INTEREST & COLLECTION COSTS – *Legal Basis***

### **Is Interest Normally Recoverable?**

Interest is only recoverable at law in the following circumstances:

- When it is specifically provided for by statute.  
For example, Solicitors are entitled to charge interest on accounts which are paid beyond 30 days pursuant to a specific Statutory right.
- Commercial property leases invariably incorporate a right to charge interest on any monies overdue at a prescribed rate.
- Judgments bear interest until the date payment is made.

**As most debts do not contain an automatic right to interest, the only way interest can be recovered is if there is a specific provision in your contract with the Customer or Patient to incorporate the right to do so.**

### **How Do You Incorporate An Interest Provision?**

There is only one fool-proof way to incorporate an interest provision.

You must include a specific provision in your trading terms and it must be acknowledged by your Customer or Patient. The wording of the provision must be clear and unambiguous.

*e.g: Interest shall run on the amount of monies outstanding from the date due for payment until the date payment is made at the rate prescribed by the Penalty Interest Rates Act (Vic) plus two percentum.*

When providing goods or services, it is always preferable to specify your terms and conditions to avoid any dispute later. Thus, it is essential that your Customer or Patient understands and acknowledges that the terms and conditions form part of the contract.

### **How to Attempt to Recover Collection Costs**

The most effective way to recover collection costs from your Customer is to incorporate a specific provision in your trading terms which clearly states that in the event of default, the Customer will be liable for the collection costs incurred.

*e.g. 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](http://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.

## **Can I Add Terms After the Contract Has Been Made?**

At law, it is not possible for one party to a contract to vary the contract without the consent of the other party.

In order that your claim for adding interest and/or costs will withstand legal challenge, it must be understood by your Customer as forming a condition of the contract. Unless this is done, then incorporating the conditions only in the invoice will be legally ineffective – if challenged.

We recommend as a minimum that your trading terms be detailed on your website and that all quotes, orders and invoices have the following words incorporated:

“Our trading terms are located on our website and the trading terms shall form part of the contract which governs the relationship between you and us”.

## **Our Role**

*Unless we are satisfied that your trading terms are 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 trading terms, we can't guarantee to successfully recover them and our commission will be charged on whatever sum we recover.

## **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.**

Call the **Prushka Client Services Team** if you have any queries on **1800 061 761**  
or send an email to [clientservices@prushka.com.au](mailto:clientservices@prushka.com.au)

Log on to our website to find out more about us.  
[www.prushka.com.au](http://www.prushka.com.au)

### Offices across Australia

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