

Earlytrade – Supplier Service Agreement

This Supplier Service Agreement ("Agreement") is a legal agreement between you, on behalf of the Supplier company who you identified as the representative of during the Service registration process (the "**Supplier**") and Earlypay Exchange Pty Ltd t/as Earlytrade, ABN 79 611 777 363 governing the Supplier's use of the Service.

Important: Please read these terms and conditions carefully before registering for, accessing or using the Service.

By registering as a user of the Service, you represent and warrant that you:

- are accessing and using the Service as an authorised representative and on behalf of the Supplier; and
- have the authority to enter into and legally bind the Supplier to this Agreement on behalf of the Supplier.

By clicking the "Register" button or using the Service, you accept and agree to be bound by the terms of the current terms and conditions of this Agreement as an authorised representative on behalf of the Supplier.

The terms and conditions of this Agreement may be updated from time to time by Earlytrade on prior notice by publication on the Site or via email. Any continued use of the Earlytrade Platform by Participants or their Authorised Users after the notice becomes effective constitutes the Participant's acceptance of the updated Rules.

Definitions

In addition to the terms defined above, the following definitions apply in this Agreement.

Affiliate	with respect to a Party, any company or other entity that is a related body corporate (as defined in the Corporations Act 2001 (Cth)) of that Party.
Authorised Supplier	a third party Supplier to the Customer who: (i) is authorised by the Customer to use the Service and access the Customer marketplace on the Earlytrade Platform; and (ii) has agreed to all terms and conditions of Earlytrade's service agreement applicable to use of the Service.
Authorised User	a user who is authorised by the Supplier to access and use the Service on behalf of the Supplier.
Confidential Information	means: (i) with regard to Earlytrade, all Earlytrade Information, software, inventions, know-how, ideas, programs, apparatus programs, and Intellectual Property Rights related to, connected with or arising out of the Service; (ii) with regard to the Supplier, any non-public information regarding the business or business partners of the Supplier, in whole and in part; and (iii) with regard to either party, the terms, conditions, pricing and other contents of this Agreement, any other information, technical data, or know-how, including, but not limited to, that which relates to research, product plans, products, services,

	customers, markets, software, software code, software documentation, developments, inventions, lists, trade secrets, data compilations, processes, designs, drawings, engineering, hardware configuration information, marketing or finances. Confidential Information does not include Operational Statistics, and information, data or know-how which: (i) is in the public domain at the time of the disclosure or becomes available to the public thereafter without restriction, and not as a result of the act or omission of the receiving Party; (ii) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving Party at the time of the disclosure; (iv) is approved for release by written authorisation of the disclosing Party; or (v) is developed independently and separately by the receiving Party without use of the disclosing Party's Confidential Information.
Content	any data, information or materials provided to Earlytrade by or relating to the Supplier for use with the Service.
Customer	a party that has executed a Corporate Services Agreement with Earlytrade to receive one or more services from Earlytrade.
Early Payment File	an electronic file compiled of successful bids of additional discount from Authorised Suppliers to the Customer to accelerate payment of Customer-approved invoices, resulting in discounts to face value.
Earlytrade	Earlypay Exchange Pty Limited t/as Earlytrade and its related bodies corporate
Earlytrade Marketplace	the portion of the Earlytrade platform which facilitates the bidding and acceptance of invoice discount offers for undisputed invoices for early payment between Earlytrade registered customers and their registered Suppliers.
Earlytrade Platform	the online service platform at the Site operated by Earlytrade, which includes the Earlytrade Marketplace and other services.
Force Majeure	events or conditions beyond a party's reasonable control, including, without limitation, acts of common enemy, earthquakes, floods, fires, epidemics, terrorist attacks, embargoes, labour strike, fire, governmental acts or orders or restrictions, acts of God, lack of internet availability, inability to secure products or services from third parties, failure of a utility service, telecommunications network or the internet; war, riot, civil commotion; power outages and malicious hacking or malware.
Information	any technical, or business information in written, graphical, oral, or other tangible or intangible forms, including but not limited to specifications, drawings, tools, samples, reports, compilations, records, data, computer programs, drawings, models, and secrets.
Intellectual Property Rights	includes confidential information, all copyright, all rights in relation to inventions (including patent rights), registered and unregistered trade marks (including service marks), registered and unregistered designs, and circuit layouts, domain names, know how and all other rights (whether registered or unregistered) resulting from intellectual activity in the industrial, scientific, literary or artistic fields, and any application or right to apply for registration of any such rights throughout the world for the full period of the rights and all renewals and extensions.

Operational Statistics	any summarised, derivative, aggregated, de-identified, or non-attributable information that may be combined with other information to optimise, construct, provide or improve Earlytrade’s performance, modelling, products or services.
Participation Rules	The Participation Rules posted at https://app.earlytrade.com/rules which all Suppliers and Customers agree to adhere to relation to use of, or conducting transactions on the Earlytrade Marketplace.
Party or Parties	individually or collectively, as the case may be, Earlytrade and the Supplier and any and all respective permitted successors and assigns.
Privacy Policy	Earlytrade’s privacy policy (available for viewing at https://www.earlytrade.com/privacy)
Service	the service provided by Earlytrade to the Supplier and its Authorised Users under this Agreement, via access and use of the Earlytrade Platform, related tools, and other services. The scope of the service may include early payment facilitation, verification of supplier status, or other offerings that may vary from time to time.
Site	https://www.earlytrade.com and https://app.earlytrade.com
Software	(i) any proprietary Earlytrade computer software program or application, or those of its third party licensors, utilised by Earlytrade in the establishment, operation, and/or the provision of the Service including any proprietary schema, data processing or storing applications, tools, methodologies, databases and (ii) all source code, documentation, updates, upgrades, and derivative works.
Transaction Information	any data generated, derived from or related to any transaction or operation submitted or processed via the Earlytrade Platform or information disclosed directly or indirectly to Earlytrade.
Supplier Services	any consultancy services such as implementation, training or support to be provided by Earlytrade as set out in the signup process or as agreed between the Supplier and Earlytrade in writing from time to time.

1. Service Access

- a. Use.** Earlytrade grants the Supplier a non-exclusive, non-transferable, limited right to permit Authorised Users to access and use the Service, subject to the following restrictions:
- i. The Supplier may use the Service solely for the Supplier's own internal business purposes; and
 - ii. The Supplier and its Authorised Users must not:
 - A. make any copies of all or any portion of the Service;
 - B. sell, sublicense, distribute, rent, lease or assign the Service to any other person or entity;
 - C. modify, reverse engineer, decompile, disassemble, translate, alter or create derivative works based on the Service;
 - D. except for use by Authorised Users, permit any third party to use the Service;

- E. create Internet "links" to or from the Service, or "frame" or "mirror" any content forming part of the Service, other than on the Supplier's or its Authorised Users' own intranets or otherwise for its own internal business purposes,
- F. use the Service to send spam or other duplicative or unsolicited messages in violation of applicable laws;
- G. use the Service to send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortious material, including material harmful to children or violate third party privacy rights,
- H. send material to Earlytrade or the Earlytrade Platform containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs,
- I. interfere with or disrupt the integrity or performance of the Service or the data contained in the Earlytrade Platform;
- J. attempt to gain unauthorised access to the Service or its related systems or networks.

b. Access to the Service.

- i. Earlytrade shall provide the Supplier access to the Earlytrade Platform login screen on the instruction of, and on behalf of, the Customer. The Supplier shall be permitted to create a unique login credential ("User Name" and "Password") to be used by its Authorised Users to access the Service.
- ii. The Supplier is responsible for maintaining the confidentiality of any Usernames and Passwords. The Supplier will be solely responsible and liable for all activities that occur under any Username and Password created by the Supplier. The Supplier shall immediately notify Earlytrade of any unauthorised use of any User Name or Password and Earlytrade shall take such action as it deems appropriate to address the unauthorised use.
- iii. The Supplier agrees on its own behalf, and to require its Authorised Users on their behalf, to access the Service in a secure manner in compliance with Earlytrade's reasonable standards established from time to time which currently require, to the extent applicable, use of web browsers utilising 128 bit SSL encryption.

2. Scope, Availability & Modifications

- a. **Scope of Service.** The Service is intended to enable transactions and other interactions between the Supplier and Customers as principals. Subject to clause 5, Earlytrade is not a party to or a guarantor of performance with respect to any transaction, agreement or arrangement concluded between the Supplier and any Customer using the Service.
- b. In respect of the Earlytrade Marketplace, the Supplier understands and agrees that:
 - i. Earlytrade does not guarantee any quantity of Supplier invoices will be made available by the Customer for early payment offers or that an early payment offer made through the Service by the Supplier will be accepted;
 - ii. Subject to clause 5, Earlytrade undertakes no duties to receive or distribute any payments agreed by the Supplier and any Customer;

- iii. Subject to clause 5, under no circumstances shall Earlytrade in any manner obtain an interest in, or otherwise be deemed to be within the chain of title of, any Content, goods, and/or related services of the Supplier; and
 - iv. Earlytrade takes no responsibility for the Customer's compliance with the terms and conditions governing the provision of the Supplier's Content, goods and/or related services to the Customer.
- c. The Supplier shall address any issues arising from any transaction, agreement or arrangement concluded between the Supplier and any Customers using the Service exclusively with the relevant Customer and shall not hold Earlytrade responsible or liable in any way for the actions or omissions of any Customers.

3. Supplier Services.

- a. Where agreed in the signup process or as otherwise agreed between the Parties, Earlytrade will provide the Supplier Services to the Supplier.
- b. Where the supplier has registered for the Earlytrade Marketplace, the Supplier appoints Earlytrade as a processing agent for the purposes of generating, holding and issuing invoice adjustment notes on Supplier's behalf, to the Supplier and to the Supplier's Customer, in relation to the Supplier's use of the Earlytrade Platform.

4. Supplier Obligations

- a. **Participation Rules.** The Participation Rules are incorporated into this Agreement by reference. The Supplier and its Authorised Users acknowledge that they understand and agree to the Participation Rules. To the extent a supplier does not participate in the Earlytrade Marketplace to bid for early payment of invoices, those Participation Rules relating to the acceleration of invoice payments do not apply.
- b. **Bidding.** The Supplier and its Authorised Users understand and agree that:
 - i. it is their individual responsibility to check that active bid offers submitted in the Earlytrade Early Payment Platform are correct;
 - ii. prior to clearing of bids on the Earlytrade Marketplace platform or termination of this Agreement, it is the Supplier and its Authorised Users responsibility to review any current bid offers it wishes to keep active or withdraw, as any resulting successful bids for early payment must be honoured by the Supplier in accordance with the Participation Rules; and
 - iii. if a supplier selects Earlytrade options to participate in markets for future invoices, the Earlytrade Marketplace platform will automatically submit a bid on behalf of the Supplier in accordance with the Supplier's nominated parameters. It is the Supplier's responsibility at all times to check its participation status and review the status any of bids placed on its behalf in accordance with its participation status.

5. Indemnity

The Supplier shall indemnify, defend and hold harmless Earlytrade, Earlytrade Affiliates and their directors, officers, members, managers and employees from and against all claims, actions, liabilities, losses, expenses, damages and costs (including reasonable legal fees), that may at any time be incurred by reason of claim from any third party arising out of or relating to: (i) this Agreement, including any actual or alleged breach of this Agreement by the

Supplier; (ii) the Supplier's use or misuse of the Service (including any resulting Customer claims or any use via an Authorised User account); (iii) any claim that is inconsistent with the Supplier's representations or warranties to Earlytrade contained in this Agreement; (iv) any violation of a third party's rights by the Supplier, including intellectual property or privacy; or (v) any dispute between the Supplier and the Customer.

6. Proprietary Rights

- a. **Title to Technology.** All Intellectual Property Rights pertaining to the Earlytrade Platform, the Software, Operational Statistics, the Service and the Supplier Services, in whole or in part, is the exclusive property of Earlytrade and its third party licensors. The Supplier must not on its' own behalf or on behalf of any third party violate Earlytrade's Intellectual Property Rights.
- b. **Title to Transaction Information.** Earlytrade owns all Intellectual Property Rights in Transaction Information. Earlytrade reserves the right to: (i) extract information that does not identify the Supplier or its Authorised User; and (ii) use and create aggregated, metadata or statistical data from such information for internal use and commercial analytical purposes.
- c. **Title to Content.** All title, right, and interest in and to any Content submitted to Earlytrade in the course of providing the Service shall remain the property of the Supplier or other applicable third-party owners. If all or part of any Content becomes the subject of an actual or threatened lawsuit or if Earlytrade believes such Content may violate a third party's Intellectual Property Rights or applicable law, Earlytrade will immediately be entitled to remove such Content without incurring any liability to the Supplier. The Supplier grants to Earlytrade a non-exclusive royalty-free, worldwide, sub-licensable, perpetual irrevocable license to use, reproduce, adapt, create derivative works, publish and distribute Content provided by the Supplier for the purposes of operating the Service. This license excludes Personally Identifiable Information (PII) and confidential information such as detailed financial particulars, and operates within the limits of section 8 below (Confidentiality and Privacy). All title, right and interest in and to content licensed by Earlytrade from third party licensors and used in the process of providing the Service, if any, shall remain the exclusive property of Earlytrade or its third-party licensors.
- d. **Suggestions.** Any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the Supplier and its Authorised Users relating to the Service ("Suggestions") will be taken to be non-confidential Content provided by the Supplier. The Supplier and its Authorised Users authorise Earlytrade to use Suggestions without restriction or payment.
- e. **Supplier licence to Earlytrade.** The Supplier grants to Earlytrade a limited, worldwide, royalty-free, non-transferable license to use the Supplier's name (including Authorised User's name and job title), any comments made about the Earlytrade Service, photo (including approved Authorised User photos submitted to Earlytrade), company logos and trademarks to identify the Supplier as a user of the Earlytrade Platform and the Service for Earlytrade's marketing and public relations purposes, including marketing materials, advertisements, customer lists, press releases, presentations, and publications during the term of this Agreement.

7. Confidentiality and Privacy

- a. **Non-Disclosure of Confidential Information.** Each Party shall retain the other Party's Confidential Information in the strictest confidence (need to know basis) and shall not disclose such Confidential Information to any third party. Each Party agrees:

- i. to use the Confidential Information only for the purposes of this Agreement and as expressly permitted by this Agreement;
 - ii. not to make copies of or store Confidential Information or any part thereof except as expressly permitted by this Agreement;
 - iii. to reproduce and maintain on any copies of any Confidential Information such proprietary legends or notices (whether of disclosing Party or a third party) as are contained in or on the original or as the disclosing Party may otherwise reasonably request; and
 - iv. that the receiving Party shall notify the disclosing Party in writing of any known unauthorised use, possession or disclosure of Confidential Information of the disclosing Party. The disclosing Party shall have the sole right (but shall be under no obligation) to take legal or other action against any third party with respect to any such unauthorised use, possession or disclosure of Confidential Information of the disclosing Party, and the receiving Party shall cooperate with the disclosing Party in such effort.
- b. **Remedies.** The Parties agree that, notwithstanding any other section of this Agreement, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to preliminary and permanent injunctive relief, as well as monetary damages. Nothing in this clause shall be construed to limit any other remedies available to the Parties.
- c. **Disclosures to Governmental Entities.** If a Party becomes legally obligated to disclose Confidential Information ("Disclosing Party") by any governmental entity as a result of court order or similar legal action ("Compelled Disclosure"), the Disclosing Party will give the other Party (if allowed) prompt written notice. The Disclosing Party will cooperate with the other Party's reasonable efforts to quash, modify or challenge the Compelled Disclosure, and will disclose only such information as is legally required. Notwithstanding anything in this clause to the contrary, a Compelled Disclosure is not considered a breach of Clause 8(a) above.
- d. **Privacy.** Earlytrade takes privacy of its users seriously and will collect, handle and store any personal information in accordance with Earlytrade's Privacy Policy. The Supplier confirms that it and each of its Authorised Users by registering for or using the Service have read and understood that the Privacy Policy will apply to the Service, Supplier Services (if any) and consent to the collection, processing and use of their personal information by Earlytrade in accordance with the Privacy Policy.

8. Term and Termination

- a. **Term.** This Agreement shall become effective on the date the Supplier or any Authorised User first registers on the Site and agrees to these terms and conditions. The Agreement shall continue in force so long as the Service is being provided by Earlytrade to the Supplier, unless earlier terminated by either party in accordance with its terms.
- b. **Termination for Cause.** Earlytrade may terminate this Agreement if: (a)(i) the Supplier is in breach of the terms, conditions and warranties of this Agreement; and (ii) such breach, if capable of remedy, is not cured within three (3) business days after notice of breach is provided to the Supplier; or (b) the Supplier terminates or suspends its business activities, becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or becomes subject to any bankruptcy or insolvency proceeding under any applicable law.

- c. **Termination for Convenience.** Either Party may terminate this Agreement at any time for any reason at its sole discretion by providing the other Party no less than thirty (30) days advance written notice.
- d. **Effect of Termination.** Upon termination of this Agreement consistent with the terms in this clause, Earlytrade may immediately discontinue Supplier's access to and use of the Earlytrade Platform and the Service. Supplier shall promptly discontinue use of the Earlytrade Platform, any Service and destroy any Confidential Information that the Supplier has received from Earlytrade.
- e. **Survival.** Notwithstanding any termination of this Agreement, Clauses 5 ("Indemnity"), 6 ("Proprietary Rights"), Clauses 7(a)-(c) ("Confidentiality and Privacy"), 9 ("Disclaimer; Warranty; Limitation of Liability"), 10 ("General") and the Participation Rules shall survive termination of this Agreement indefinitely. All other rights granted under this Agreement will cease upon termination.

9. Disclaimer; Warranty; Limitation of Liability

- a. **Disclaimer.** To the maximum extent allowed by law and except as expressly set out in this Agreement, the Earlytrade Platform, the Service and the Supplier Services are provided "as is" and Earlytrade specifically excludes and disclaims all implied warranties, conditions and representations (including relation to quality, skill and care and fitness for a particular purpose) connected with, related to or arising out of this Agreement. Earlytrade expressly excludes and disclaims any representation, condition or warranty that access or use of the Service will be error-free, secure or uninterrupted, or that information or content will be accurate or timely.
- b. **Supplier's Warranty.** Supplier represents and warrants that:
 - i. its Authorised Users have authority to act on behalf of the Supplier; and
 - ii. all Content or other materials submitted by the Supplier to Earlytrade under this Agreement will not:
 - A. infringe on any third party's rights, including any Intellectual Property Rights,
 - B. violate any applicable law, statute, ordinance or regulation; or
 - C. contain viruses, trojan horses, worms, time bombs, cancel bots or other similar harmful or deleterious programming routines.
 - iii. it is duly organised, validly existing and in good standing under applicable law;
 - iv. it has the power and authority to execute, deliver and perform under this Agreement; and
 - v. this Agreement constitutes a valid and binding obligation enforceable in accordance with its terms.
- c. **Limitation of Liability.** To the maximum extent allowed by law, in no event will Earlytrade or any Earlytrade Affiliate be liable for any loss of profits or revenue, loss of business, loss of anticipated savings, loss of use, business interruption, loss of data or costs of procurement of substitute goods, technologies or services, cost of cover or punitive or exemplary, or and direct, indirect, special, incidental or consequential damages of any kind in connection with or arising out of the furnishing, performance of or use of the Earlytrade Platform, the Service or Supplier Services, whether alleged as a breach of contract or tortious conduct, including negligence, even if the Supplier has been advised of the possibility of such damages. In addition, Earlytrade and any Earlytrade Affiliate will not be liable for any damages caused by delay in delivery or furnishing the Service or Supplier Services. Earlytrade's aggregate liability

in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement, will not, in any event, exceed the greater of fees actually paid by Supplier to Earlytrade under this Agreement during the six (6) months prior to the occurrence of the breach or incident asserted as causing damage or AUD\$100.

- d. Nothing in this clause is intended to limit any rights or guarantees which cannot be excluded or that are implied by the Competition and Consumer Act 2010 (Cth) or applicable law. To the extent liability for breach of any implied warranty or condition cannot be excluded by law, Earlytrade's liability will be limited, at its option: (i) in the case of goods, to the replacement of the goods, the supply of equivalent goods, repairing the goods or the payment of the cost of having the goods replaced or repaired; and (ii) in the case of services, to re-supplying the services or paying the cost of re-supplying the services.

10. General

- a. **Notices.** Any notice required or permitted under the terms of this Agreement shall be delivered in person, by courier service, or mailed by registered, or certified mail, if to the Supplier: to the address supplied by the Supplier during the signup process or if to: Earlytrade - Legal Notices, 3rd Floor, Customs House, 31 Alfred St Sydney NSW 2000. All such notices shall be deemed to have been given upon receipt.
- b. **Third party rights.** Save as expressly provided for in this Agreement, this Agreement does not confer any rights on any person not a Party to this Agreement.
- c. **Employee Solicitation.** Both Parties acknowledge that each other's business is dependent upon being able to adequately staff projects with qualified persons and adequately utilise its employees and independent contractors. Neither Party shall, directly or indirectly, for itself, or on behalf of any other person, firm, company or other entity, whether as principal, agent, employee, stockholder, partner, member, officer, director, sole proprietor, or otherwise, solicit, participate in or promote the solicitation of the other Party's employees or independent contractors to leave the employ or service of the other Party, during the period such employee or independent contractor is working with the other Party and for one (1) year immediately following the period for which such employee or independent contractor last performed services for the other Party.
- d. **Assignment and subcontracting.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by the Supplier, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Earlytrade. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding anything to the contrary, Earlytrade shall have the right to subcontract any of its obligations under this Agreement to third parties.
- e. **Governing Law.** This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of the New South Wales, Australia without reference to conflict of laws principles. The parties irrevocably agree that the courts of the State of New South Wales have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). A Customer may, as provided for in this Agreement, enforce this Agreement against a Supplier in any court of competent jurisdiction.

- f. **Independent Contractors.** The relationship of Earlytrade and the Supplier established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed or implied to give either Party the power to direct or control the day-to-day activities of the other or constitute the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.
- g. **Variation.** No waiver, amendment or variation to this Agreement by the Supplier shall be valid unless in writing and signed by both Parties.
- h. **Severability.** In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction:
 - i. such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law; and
 - ii. the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect.
- i. **Miscellaneous.** The failure of either Party to enforce at any time any of the provisions of this Agreement shall not be deemed to be a waiver of the right of either Party to enforce any such provisions. Earlytrade shall be excused from performance under this Agreement to the extent that performance is delayed or unable to be performed due to Force Majeure. Section headings are for ease of reference only and do not form part of this Agreement. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.
- j. **Governing Language.** The English version of this Agreement will prevail over any non-English translation or interpretation of this Agreement.

Last updated: October 2019