



TradeSearch

[www.tradesearch.net.au](http://www.tradesearch.net.au)

**TradeSearch Premium Advertisement**



# Product Terms and Conditions



# Terms and Conditions

## PART A: MATERIAL TERMS

### 1. About This Contract

1.1 Words that appear like *this* in this *Contract* have special meanings that are set out in Clause 10.

1.2 The terms that apply to the TradeSearch Trade Directory are those expressly set out in: these terms including any attachments; the *Contract* details form;

our Advertising Rules or other rules and policies which apply to the TradeSearch Trade Directory; any copy sheet, any advertising instructions sheet, or any advertising proof,

and those implied by consumer protection laws that are unable to be excluded. No other terms apply.

### 2. Term of Your Contract

2.1 This contract commences of the day *You* sign the *Contract* and, unless *You* and *we* agree otherwise, will continue for the period set out in the *contract details form* (if any) or if no period is specified, until termination in accordance with this *Contract* or until the relevant *Product* provided under this *Contract* is based has been provided to *You*.

### 3. Format and Content

#### Things You Must Give Us

3.1 If *we* request, *You* must give *us* or *our* nominee, any *Content* or information related to *Your Product* by the date and in the manner *we* specify.

**Example.** The information *we* may request includes, in the case of a *TradeSearch Trade Directory*, information about a *Hyperlinked Site*, your business logo, or photos you may wish to include.

#### Our right to reject or remove Content

3.2 *We* may at any time reject any *Content* or remove any *Content* from *Your Product* for any reason, including:

(a) if provided for under the TradeSearch policy on advertising standards (or any other rules and policies which apply to *Your Product*) as prepared and amended by *us* from time to time; or

(b) if *we* reasonably believe that the *Content*, or the use of it, contravenes any law, infringes the rights of third parties or is inappropriate, unsuitable, offensive, obscene or indecent; or

(c) if the *Content*, or the use of it, will affect TradeSearch unfavourably; or

(d) in order to comply with requirements, standards or instructions which are imposed by *us*, or any third party, including the Australian Broadcasting Authority.

3.3 *We* may also at any time change, delete, withdraw or suspend a *Product* or any component of a *Product* if *we* reasonably believe *you* are or will be in breach of any undertaking or other provision contained in this *Contract*, or if *we* are or become entitled to reject or remove that *content* for any of the reasons described in clause 3.2 above.

#### Presentation and Classification

3.4 *We* have the right to determine, control or change *Your Product*, the *Content*, any *Directory* or any page, site or other means of display of *Your Product*, including:

(a) nature and content;

(b) presentation (including format, design, placement, order and position);

(c) duration;

(d) classification and any classification system; and

(e) business categories, key words and search criteria

3.5 *We* also have the right to insert a bridging page to any *Hyperlinked Site*.

#### You will keep Content up to date

3.6 *We* are not responsible for keeping the *Content* up to date. *You* must keep the *Content* up to date or, where *you* are not permitted to update the *Content* yourself, provide *us* with information so that *we* may update the *Content*.

#### Retention of Content

3.7 When this *Contract* is terminated or when a *Product* is cancelled, *we* may retain or delete any *Content* relating to the relevant *Product*.

## 3. Billing and Payment

3.1 You must pay for the Services in accordance with the prices and charges contained in the Quote or as set out on the TradeSearch Website (as applicable, and as amended from time to time in accordance with clause 1.3). Those fees and charges may include one or more of:

3.1.1 a fixed non-refundable build fee, payable in advance;

3.1.2 a monthly or annual recurring fee, payable in advance;

3.1.3 custom build fees, payable in accordance with the Quote, 50% non-refundable in advance and 50% on completion; and

3.1.4 other customisation fees, payable on a time and materials basis in arrears, to be charged an hourly rate of \$75.00.

3.2 You must pay all prices and charges for the Services and other amounts incurred by you or any designated users or incurred as a result of any use of the Services (whether authorised or not) in accordance with the billing provisions specified in the Payment Confirmation. You agree to keep your billing and account information up to date and to notify TradeSearch of any changes to such information from time to time.

3.3 Prices and charges published on TradeSearch's Web Site or set out in the Quote are exclusive of any government taxes or charges unless otherwise stated.

3.4 You consent to TradeSearch or its Supplier obtaining a credit reporting agency report containing personal information about you (as well as information concerning commercial creditworthiness and activities) for the purpose of assessment by TradeSearch of an application for credit (whether commercial or personal) or for the purpose of the collection of payments that are overdue.

3.5 If we have invoiced you in arrears for any Services, and you fail to pay the charges in any invoice by the due date specified in any applicable billing provisions (as referred to in clause 3.2 above) or the invoice ("**Unpaid Charges**"), in addition to any other rights under this agreement TradeSearch may:

3.5.1 charge you interest and you agree to pay, on demand by TradeSearch, interest on the Unpaid Charges at the Applicable Rate from the date the Unpaid Charges became due until those Unpaid Charges are paid to TradeSearch in full.

3.5.2 suspend or terminate the Service.

For the purposes of this clause, "**Applicable Rate**" means the Reserve Bank's Official Cash Rate (as published in the Australian Financial review at the time the Unpaid Charges become due).

3.6 You agree that in the event of any action being taken by TradeSearch to recover any overdue amount due to it under this agreement or the Proposal, as evidenced for example by, without limitation, your credit card company notifying TradeSearch of you disputing the payment of, or refusing to pay such charge, or where your credit card payment has been declined or reversed, any costs incurred by TradeSearch in recovering the debt (including, without limitation, any legal expenses (on a solicitor/client basis), collection agency charges or any other reasonable associated costs incurred by TradeSearch) are payable by you to TradeSearch and shall be recoverable by TradeSearch as a separate debt.

3.7 TradeSearch or its Supplier will supply the Services/s to you for the "Initial Period" specified in the written confirmation by TradeSearch to you of receipt of payment by you of the Plan Cost applicable to the Services for the Initial Period ("Initial Period Payment Confirmation"). Thereafter, the Service/s will be automatically renewed indefinitely for the same period as the period specified in the Initial Period Payment Confirmation (each a "Renewal Period") unless you have terminated the provision of any Service/s in accordance with clause 14, upon your payment of the applicable renewal fees and charges prior to the expiry of the relevant period and subject to the terms and conditions of this agreement.



3.8 TradeCall Pty Ltd has engaged Ezypay to facilitate all direct debit payments. Below is Ezypay's terms and conditions:

### EZYPAY - Direct Debit Authority

I/we acknowledge and/or authorise:

- Ezypay to make periodic debits from my/our account on behalf of the Company (herein referred to as the Principal) stated on the front of this Direct Debit Request Form.
- If the Principal authorises as such, you will be required to pay Ezypay's load and commission fees.
- That Ezypay is acting as a direct debit agent for the Principal only and does not provide any goods or services to me/us and has no express or implied liability in regard to the goods and services provided by the Principal. As such, Ezypay also has no liability to provide any tax invoices for any fees charged.
- That the periodic debiting of my/our account will be in accordance with the payment arrangement outlined in Section B, with the Terms and Conditions outlined herein and any variations made to them from time to time, as well as the terms and conditions between Ezypay and the Principal.
- Ezypay to communicate with me/us by phone, email or mail to effectively manage my/our account.
- Ezypay to vary these Terms and Conditions from time to time and I acknowledge that it will be sufficient for Ezypay to notify me/us of such changes by posting them on Ezypay's website: [www.ezypay.com.au](http://www.ezypay.com.au).
- It is my/our responsibility to check Ezypay's website for variations to these Terms and Conditions and I/we will not require Ezypay to inform me of such changes by any other means of communication including but not limited to, written notice, phone or email.
- Any variations made to these Terms and Conditions will be effective 14 days after posting on Ezypay's website.
- Ezypay may terminate this Direct Debit Request and cease to provide its direct debit services to me/us at any time by written notice sent by mail or email, such notice to state the reason for the termination.

### Variations to My/Our Direct Debit Arrangement

I/we acknowledge and/or authorise:

- The Principal to vary the amount, frequency and date of payments from time to time.
- Ezypay to vary the payments upon instructions from the Principal. I/we do not require Ezypay to notify me/us of such variation prior to varying the debit amount.
- All other variations to my/our debit arrangement will need to be directed to the Principal. Ezypay can only process variations to my/our direct debit arrangement upon the Principal's instructions and where those instructions are received, Ezypay will not require a signed agreement or new Direct Debit Request Form from me/us.
- Ezypay will make reasonable attempts to minimize any variance to debit amounts affected by exchange rate fluctuations or factors in connection with the provision of the direct debit service that are within Ezypay's control. However, Ezypay will not be responsible for any variance or shortfall to debit amounts affected by exchange rate fluctuations as a result of external factors beyond the control of Ezypay including but not limited to, the date on which a direct debit is processed by Ezypay's Sponsoring Financial Institution, the timing a debit is requested and processed or where there is a delay in the processing of a direct debit due to any one of the factors (a) to (c) specified below.
- That a delay may occur in the processing of a direct debit if:
  - (a) There is a public or bank holiday on the day or on the day after a payment is due to be made by direct entry;
  - (b) A payment is received either on a day, which is not a banking business day, or after the normal close of business on a business banking day; or
  - (c) Ezypay does not receive the Direct Debit Request Form so that it has sufficient time to process the Direct Debit Request Form prior to the first debit payment being due and payable.

### My Responsibility

I/we acknowledge that:

- It is my/our responsibility to inform Ezypay or the Principal of any changes to my account or contact details (by phone, mail or email) to permit and facilitate the direct debit arrangement as per these agreed Terms and Conditions.
- It is my/our responsibility to have sufficient funds available in my/our account failing which I/we will incur a failed payment fee of up to \$16.50 for each unsuccessful debit, in addition to any fees charged by my/our Financial Institution, and any collection fees incurred by Ezypay including but not limited to any legal costs and/or the commission of a collection agent appointed by Ezypay for the purpose of recovering the unsuccessful debit payment. Additionally, Ezypay in conjunction with the principal will implement re-debit measures as necessary to recover any outstanding amount/s.
- For the avoidance of doubt, Ezypay will not be liable for any fees or charges described in the above paragraph.
- Ezypay requires a 7 days written notice should I/we wish to cancel this direct debit arrangement. On receiving such notice, Ezypay will have the authority to direct debit any payments due within the 7 days notice period and thereafter, cancel the direct debit arrangement as requested by me/us. The cancellation will be effective 7 days after the notice has been received.
- Any cancellations made directly with Ezypay do not affect or terminate any contracts, agreements or payment obligations I have with my Principal.

### 5. Changes to the Contract

5.1 We may change this Contract by written notice to You

5.2 If we vary any term of this Contract or change any Product or Price and the variation or change has a major negative impact on You (such as where the Price increases by more than CPI plus 4%, we will give You sufficient written prior notice to enable You to cancel the Product affected by the change without payment of any fees or charges.

5.3 However, in some circumstances we may need to exercise these rights on an urgent basis, for example, if there is a change in law or regulation or because of security, fraud, technical and related issues. In such circumstances, we endeavour to give You 3 days prior written notice of the change.

### 6. Termination of this Contract

6.1 You may terminate this Contract or cancel a Product at any time by 30 days' written notice to us unless the cancellation policy set out in clause 7 applies.

6.2 Each cancellation fee referred to in clause 7 is a genuine pre-estimate of the amount of our loss due to the termination or cancellation.

6.3 We may terminate this Contract or suspend, change or cancel Your Product at any time:

- (a) by 30 days written notice to You without cause (when we will refund the Price on a pro-rata basis); or
- (b) immediately if You breach Your obligations under this Contract and (if capable or remedy) fail to remedy the breach within 14 days after we notify You of such breach; or
- (c) immediately if you become *Insolvent*.

### 7. Cancellation Policy

7.1 If we or You terminate this Contract or cancel Your Product or a component of Your Product within 12 months (or such other period as we may notify from time to time), we may charge You a cancellation fee as set out in Part D of this Contract (together with any GST on this cancellation fee recoverable from You under clause 4.11).

### 8. Other Important Terms

#### General

8.1 We may assign or novate our rights and obligations under this Contract without Your consent.

8.2 This Contract will be governed by the laws in force in the State in which it is entered into.

8.3 We may use any third parties we may consider fit to provide any part or all of Your Product, without informing You or obtaining Your consent. Copyright and other uses



8.4 You agree that, except for any trademarks, designs, logos, graphics or illustrations that are Your property or the property of the person who authorized You to use them, copyright in our Products, including the Content, belongs to TradeSearch. You may not reproduce or permit it to be reproduced without our prior consent.

8.5 You grant us a royalty free license to use, reproduce, modify and adapt the Content (to the extent not owned by TradeSearch under clause 8.4) for the purposes of providing Your Product and including Your Content in any other directory, product, service or marketing material provided or used by us. You agree that the Contract applies to the inclusion of the Content in those other directories, Products, services and marketing materials.

8.6 The license you grant to us under clause 8.5 includes a license to provide Content to any of our contractors where necessary for us to provide a Product to You.

#### Privacy

8.7 Our commitment to privacy is set out in our "Privacy Policy" document (available at [www.tradesearch.net.au](http://www.tradesearch.net.au)). You acknowledge that You have read and understood the Privacy Policy document and consent to the collection, use and disclosure of personal information on the terms and the purposes set out in the Privacy Policy document.

#### Our Warranties and Limitation of Liability

8.8 We warrant that we will use due care and skill in relation to the provision of the Product. However, we warrant that the Product will be free from errors or omissions.

8.9 If we breach the warranty set out in clause 8.8, or any other conditions or warranties in the Contract or implied by law which cannot be excluded but which can be limited, then we limit our liability (where it is fair and reasonable to do so) to either of the following (at our option):

- (a) supply of the Product again, free of charge to You; or
- (b) paying You the cost of having the Product supplied again.

8.10 You agree that, apart from Your rights under clauses 8.8 and 8.9 we nor either of our Representatives, will be liable for any loss, damage, claim or demand incurred or made by any person (whether based in tort, contract, statute or otherwise) arising under or in connection with this Contract, including from provision of the Product, or failure to provide the Product, or from exercising any of our rights in relation to Content.

#### Your Warranties

8.11 You warrant to us that:

- (a) You have the right to enter into this Contract and are the owner of, or are legally authorized to use the Content and to advertise any business, Product or service referred to in the Content;
- (b) nothing in the Content or Hyperlinked Site contravenes any law or statute, infringes the rights of third parties or is obscene, indecent, defamatory, or misleading or deceptive;
- (c) the Content complies with the requirements of this Contract and our advertising rules applicable to Your Product from time to time; and
- (d) any Hyperlinked Site or URL displayed on Your Product does not, expressly or impliedly, falsely represent that it, or the goods or services described in it, have the endorsement, sponsorship or approval of or association with us.

#### Your Indemnity In Favour Of Us

8.12 You agree to indemnify us and our Representatives against all claims, demands, damages, costs, penalties, suits and liabilities of any nature caused directly or indirectly by Your act or omission or any breach by You of any provision of this Contract including the warranties given by You under clause 8.11.

## PART B: PRODUCT SPECIFIC TERMS

### 9. Domain Name Registration and Delegation

9.1 We may offer You a domain name registration and delegation service (as a reseller of a domain name registration company, where indicated on the Domain Name Registration Form) or, if You already have a domain name, a re-delegation service as part of the TradeSearch Directory Listing Product.

9.2 We will only register, delegate or re-delegate one domain name for You under this Contract. Such registration, delegation or re-delegation will only be for an address within the domains available from the domain name registration company from time to time.

9.3 You acknowledge that:

- if You require us to register or re-delegate a domain name on Your behalf, we will enter into a contract with the domain name registration company on Your behalf;

- pursuant to the Domain Name Terms & Conditions, the registration of Your domain name may be subject to certain terms and conditions being met and we do not guarantee that You will be successful; and

- once we have registered and delegated, or re-delegated a domain name for You, it is Your responsibility to liaise directly with the domain name registration company for renewals, cancellation and transfers of that domain name.

9.4 We do not guarantee that an application to the domain name registration company or to another registrar for re-delegation will be accepted.

9.5 During re-delegation there may be some disruption to Your e-mail service.

9.6 For the purpose of this clause 9, You warrant that the Contract has been signed by the principal or an authorized employee of the organisation licensed to use the Domain Name.

## PART C: INTERPRETATION

**Applicable Rate** means the Reserve Bank's Official Cash Rate (as published in the Australian Financial review at the time the Price became due) plus 5%  
**TradeSearch Trade Directory Product** means one or more forms of electronic display and communication for publication on [www.tradesearch.net.au](http://www.tradesearch.net.au) including any advertising, identified by the item(s) in the Product column in the Contract details form.

**Content** means any information (including personal information), business name, trading name, trademark, design, logo, photograph, illustration, graphic, artwork or other material forming part of the Product which has been provided or may be provided in the future.

**Contract** means the terms by which You acquire the Product from us as explained in Clause 1.

**Contract details form** means the document setting out Your order or the details of Your Product (whether provided in printed or electronic format).

**Directory** means the TradeSearch Trade Directory in which Your Product is published.

**Domain Name** means the domain name registered and delegated or re-delegated for You by us.

**Domain Name Terms and Conditions** are any terms and conditions under which a domain name license is issued from time to time by the domain name registration company indicated on the Domain Name Registration Form.

**GST** means the tax imposed under the GST Act and related imposition Acts of the Commonwealth.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999.

**Hyperlinked Site** means an internet site accessed by a hyperlink from Your Online Product at [www.tradesearch.net.au](http://www.tradesearch.net.au).

**Insolvent** means:

(a) You are unable to pay Your debts as they fall due, You make or commence negotiations with a view to making a general rescheduling of Your indebtedness, a general assignment, scheme or arrangement or composition with Your creditors;

(b) You take any corporate action, or any steps are taken or legal proceedings are started for:

(i) Your winding up dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent; or

(ii) the appointment of a controller, receiver, administrator, official manager, trustee, or other similar officer, of You or of any of Your revenue or assets; or

(c) You seek or are granted protection from Your creditors under any applicable legislation.

**Monthly Fee** means a component of the Price for a Product payable on a monthly basis during the term of this Contract.

**Price** means the Price payable by You for Your Product, as notified to You by us from time to time.

**Product** means one or all of the TradeSearch Products including Business Web StarterPak, Trade Directory, Business StarterPak (including Content in the Product)



*Representative* means officers, employees or agents.  
*Set Up Fee* means a component of the *Price* which is a once-off non-refundable fee.  
*Tax Invoice* has the same meaning as in the *GST Act*.  
*Taxable Supply* has the same meaning as in the *GST Act*.  
*we, us, our* refers to TradeSearch (ABN )  
*You, Your* refers to the customer named on the front on the Contract details form.

**PART D: AMOUNTS YOU MUST PAY US ON CANCELLATION OF A PRODUCT**

Product Name	Cancellation Fee
Premium Directory Listing	The remainder of the <i>Price</i> payable by <i>You</i> to <i>us</i> for the Product
Business Web StarterPak	The remainder of the <i>Price</i> payable by <i>You</i> to <i>us</i> for the Product

