

## Earlytrade – Platform Participation Rules

All Customers, Suppliers and their respective Authorised Users are required to acknowledge, agree, and if required execute, the following Rules which apply to the use of the Earlytrade Platform and the conduct of all transactions between Participants initiated or facilitated via the Earlytrade Platform.

Earlytrade as operator of the Earlytrade Platform may update these Rules from time to time via email notification to Participants and their Authorised Users. Earlytrade will post the current Rules for Participants to view at: <https://www.earlytrade.com/rules>. 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

Authorised User	A person authorised by a Participant to act and to register a user account on the Earlytrade Platform on its behalf.
Bid / Trade	A discount offer submitted by a Supplier to a Customer via the Earlytrade Platform in relation to one or more Invoices in exchange for early payment of the discounted value of the Invoice(s) by the Customer
Customer	A corporate customer of Earlytrade registered to use the Earlytrade Platform to accept Bids from Suppliers.
Earlytrade	Earlypay Exchange Pty Limited t/as Earlytrade and its related bodies corporate
Exchange Clearing	The time during which the Earlytrade Platform will not accept further bids for a Customer's early payment auction in order to process all Bids to determine those which will be accepted for early payment.
Invoice	A Customer approved invoice from a Supplier that complies with these Rules.
Partially Successful Trade	A Bid / Trade that has been partially accepted for early payment.
Participant	Either a Customer or Supplier (as the case may be)
Pay Run Date	The date on which a Successful Trade will be funded by the Customer. Funded is deemed to be - remittance made by Customer on the Pay Run Date (in the Customer's time zone). Pay Run Date is displayed on the trading screen for a Supplier.

Rules	Means these Platform Participation Rules
Security of Payment Legislation	Building and Construction Industry Security of Payment Act 1999 (NSW), Building Industry Fairness (Security of Payment) Act 2017 (Qld), Building and Construction Industry Security of Payment Act 2002 (Vic), Building and Construction Industry Security of Payment Act 2009 (Tas), Building and Construction Industry (Security of Payment) Act 2009 (ACT), Building and Construction Industry Security of Payment Act 2009 (SA), Construction Contracts (Security of Payments) Act 2004 (NT) or Construction Contracts Act 2004 (WA) (as the case may be).
Statutory Debt	Any debt arising under the Security of Payment Legislation.
Successful Trade	A Bid / Trade that has been fully accepted for early payment.
Unsuccessful Trade	A Bid / Trade that has not been accepted for early payment.
Supplier	A trade creditor of the Customer invited and/or registered to use the Earlytrade Platform.

## 1. Earlytrade's role

Each Participant acknowledges and agrees that Earlytrade:

- a. operates early payment programs on behalf of customers by merely facilitating an online transaction platform for Suppliers to submit Bids to a Customer and for a Customer to accept Bids from one or more Suppliers is not responsible for and plays no part in:
  - i. verifying the accuracy of invoice details (including invoice total and taxes).
  - ii. determining the amount of Customer funds available for making early payments.
  - iii. guaranteeing the performance or acts of any Participant.
  - iv. handling or distributing any payment arising from any transaction between Participants.

## 2. Provision of valid Invoices by the Customer:

- a. A Customer must only provide to Earlytrade correct and undisputed invoices for the purposes of running early payment auctions.
- b. Any uploaded invoice must relate to a lawful supply or transaction.

## 3. Bids for early payment by Supplier

- a. Placing a Bid is binding
  - i. By submitting a Bid, a Supplier agrees that it makes a binding offer to accept the payment of the corresponding discounted invoice value(s) by the Customer as full and final settlement for the relevant invoice(s), if the Supplier's Bid is accepted as "Successful" through the Earlytrade Platform.



- ii. A Supplier may adjust an active Bid at any time after placement until before Exchange Clearing time – at which point all Bids are deemed final and irrevocable.
- b. Cancelling a Bid
  - i. A Supplier may choose to cancel an active Bid at any time before Exchange Clearing time.
- c. Credit notes & minimum Bid size
  - i. In the event that Invoices provided to Earlytrade by the Customer include credit notes – those credit notes must be included in a Bid.
  - ii. The sum of selected invoices, credit notes and total discounts must be greater than zero for a Bid to be placed.
- d. Taxes
  - i. it is the Supplier's sole responsibility to ensure that any necessary adjustments are made to your GST/VAT records and that adjustment notes provided are held for taxation purposes.

#### 4. Matched Bids / Exchange Clearing

- a. At, or around, the Exchange Clearing time displayed within the Earlytrade Platform, Earlytrade will proceed to clear the market for early payments from the Customer.
- b. All active Bids at the time of Exchange Clearing will be included in the clearing process
- c. Bids that have cleared can be:
  - i. Successful Trade – the Bid has been accepted and the Customer will make payment of the discounted invoice total to the Supplier by the Pay Run Date.
  - ii. Partially Successful Trade – a portion of the total Invoices included in a Bid have been successful and the Customer will make payment of successful discounted invoices to the Supplier by the Pay Run Date.
  - iii. Unsuccessful Trade – the Bid has not been accepted (and automatically expires).
- d. Notwithstanding other parts of this agreement, all parties agree that in the event of an Earlytrade process or technical failure, any bids whose obligations fail to reach the Customer are nullified and related advice emails are considered of no effect. In such rare cases, Earlytrade will advise an affected supplier as soon as possible and enable the supplier to make new bids as soon as possible.

#### 5. Matched Bids – Obligation to Complete

- a. Where a Bid has been successful or partially successful, the Customer and the relevant Supplier agree that, in relation to each relevant Invoice included in the Successful Bid:
  - i. notwithstanding the underlying terms and conditions applicable to the Invoice, a corresponding binding contract variation between the Customer and the Supplier is immediately formed and agreed to reduce the Invoice by



- the accepted discount amount and supersedes the previous payment terms of that Invoice;
  - ii. the Customer commits and is under a binding obligation to pay the agreed discounted Invoice amount to the Supplier by the Pay Run Date; and
  - iii. receipt by the Supplier of the Customer's payment of the agreed discounted Invoice amount discharges the Customer's payment obligations in full in relation to that Invoice.
- b. If a Customer does not make payment of the agreed discounted Invoice amount to the relevant Supplier by the Pay Run Date, the Customer acknowledges and agrees to the relevant Supplier that:
- i. the Customer immediately forfeits half of the accepted discount in the Supplier's favour;
  - ii. if the required payment is not made after 2 further business days, the Customer forfeits the full discount and is obliged to make early payment to the Supplier of the original undiscounted Invoice amount within 5 business days; and
  - iii. the contract variation created under Rule 5(a) above is further amended to reduce the value of the Invoice discount and re-state the payment obligation of the Customer consistent with Rule 5(b)(i) or Rule 5(b)(ii), whichever is applicable.

## 6. General obligations of Participants

Each Participant releases Earlytrade, its licensors and their respective related bodies corporate from any loss, liability or damages arising out of or in connection with any dispute between that Participant and any other Participant.

Each Participant agrees to not attempt reverse engineering of the Earlytrade Platform, or attempt to exploit the security of the Earlytrade Platform for any reason, including but not limited to:

- a. interfering with the integrity of the Earlytrade Platform and the auctions or transactions conducted.
- b. any unauthorised use of Earlytrade's Intellectual Property.

## 7. Earlytrade's Operational Rights

Earlytrade reserves the right to interrupt, limit or suspend availability of the Earlytrade Platform for the purposes of maintenance, upgrade and security of the Earlytrade Platform. Each Participant and its Authorised Users agrees that Earlytrade has no responsibility or liability arising from any interruption, limitation or suspension or termination of the Earlytrade Platform.

Earlytrade reserves the right to suspend (and subsequently terminate) the account of any Authorised User that is suspected (and subsequently found) to be in continual breach of these Rules.



## 8. Security of Payment Legislation

This section applies when the Supplier and Customer are party to an agreement or other arrangement to which Security of Payment Legislation is applicable.

The Participants and their respective Authorised Users agree and acknowledge that:

- a. in the event of a Successful Trade or Partially Successful Trade:
  - i. any Statutory Debt associated with an Invoice is hereby reduced by the discount offered by way of the relevant Bid (as accepted by the Customer) in accordance with the terms of the Customer's acceptance; and
  - ii. the Supplier hereby releases the Customer from any entitlement to, or claim the Supplier has in respect of, the proportion of the Statutory Debt associated with the Invoice that exceeds the discounted amount of the relevant Invoice (in accordance with the terms of the relevant Successful Trade or Partially Successful Trade);
- b. any Invoice or purported Invoice provided or uploaded to the Earlytrade Platform is not a payment claim or alike under the Security of Payment Legislation;
- c. neither Participant is required to serve a payment schedule or alike under the Security of Payment Legislation in respect of any Invoice or purported Invoice provided or uploaded to the Earlytrade Platform;
- d. the Earlytrade Platform is not (and cannot be used as) a method of the service of documents or notices (including payment claims and alike, payment schedules and alike, adjudication applications and any other documents or notices) under the Security of Payment Legislation;
- e. the due date for payment associated with any Successful Trade or Partially Successful trade is the Pay Run Date and not the due date for payment (if different) provided for under the Security of Payment Legislation;
- f. that sufficient consideration has passed between the Supplier and Customer to render the terms of the Successful Trade or Partially Successful Trade valid and enforceable;
- g. Earlytrade is not a claimant, respondent or alike under the Security of Payment Legislation;
- h. Earlytrade has no liability under, or in connection to, the Security of Payment Legislation and is not responsible for any Participant's liability, obligations or loss (if any) incurred under, or in relation to, the Security of Payment Legislation and the Participants hereby release Earlytrade of any such liability;
- i. insofar as the amount payable in respect of an Invoice is payable on account of the final consideration payable under the agreement or other arrangement under which the Invoice was rendered, in the event of a Successful Trade or Partially Successful Trade in respect of that Invoice:
  - i. the final consideration payable by the Customer under that agreement or arrangement is hereby reduced by the amount of the discount offered by way of



- the relevant Bid (as accepted by the Customer) in accordance with the terms of the Customer's acceptance; and
- ii. the amount payable by the Customer, under any final reconciliation of the final consideration payable by the Customer under that agreement or arrangement, in respect of the work the subject of the Invoice is to be calculated by reference to the discounted amount of the relevant Invoice (in accordance with the terms of the relevant Successful Trade or Partially Successful Trade) and not the amount of the relevant Invoice prior to the Successful Trade or Partially Successful Trade.
- j. prior to a given Supplier submitting any Bid to a given Customer, that Supplier and Customer must execute and exchange these Rules in accordance with the execution block set out in these Rules (or, if the Customer and/or Supplier is not a company, the execution block as appropriately amended to account for the entity type of the Customer and/or Supplier) and:
- i. for the avoidance of doubt, that Customer and Supplier need only execute these Rules once (which applies to all transactions and activity on the Earlytrade Platform as between that Customer and Supplier) for each agreement or other arrangement to which Security of Payment Legislation is applicable;
  - ii. for the purposes of effecting execution of the Rules, the Participants may execute the Rules in any number of counterparts, and a counterpart may be in digital form, and may be exchanged via email between the Participants;
  - iii. the signature of any Participant by scanned reproduction is as sufficiently binding as an original signature; and
  - iv. any person signing these Rules on behalf of a Participant warrants that, by signing, they have all the necessary authority from that Participation to sign these Rules as a deed on behalf of that Participant.
- k. if, for whatever reason, the Participants fail to comply with rule 8(j), these Rules are binding as if rule 8(j) had been complied with by the Participants.

Last updated: 9 April 2020

