

DEBT MANAGEMENT AND RECOVERY GUIDE

Murfett Legal has extensive experience in debt collection and recovery matters. We have produced this guide to assist you with:

- (a) Obtaining payment of debts owed to you; and
- (b) Utilising our services for recovery of your outstanding debts.

Terms of Trade

1. It is prudent that you implement standard written Terms of Trade with your clients or customers (as the case may be).
2. Terms of Trade specify your business' contractual terms and conditions, including how/when payment will be made to you (the creditor) by your client (the debtor).
3. To enable enforcement of your Terms of Trade, your client/customer must accept them before you supply them with any goods and/or services.
4. Terms of Trade should also incorporate debt recovery provisions specifying:
 - (a) if you extend credit and/or have large invoices, the client and its owners/directors provide "security" for such credit eg. personal guarantees, charges, mortgages etc;
 - (b) your rights to reclaim supplied goods (if appropriate). This is also known as "retention of title";
 - (c) interest accrues on unpaid debts (eg. 8% per annum calculated daily); and
 - (d) the ability for you to recover from your client any legal costs incurred chasing payment of the debt (including Court proceedings).
5. Murfett Legal can prepare custom Terms of Trade to suit your business, or review your existing Terms of Trade to ensure they are effective.

Your Internal Debt Recovery Process

6. The key to successful debt recovery is ensuring the debtor prioritises its payment of its debt to you. A simple way to ensure you are prioritised is to adhere to your Terms of Trade and/or payment terms, and follow up with the debtor.
7. Firstly, as soon as the deadline for payment (as noted on your invoices) expires, contact the debtor to inquire as to why payment has not been made, and when payment can be expected.
8. Secondly, if the debt remains unpaid, a written reminder notice should then be sent, specifying a deadline by which the debtor must respond.
9. If the debtor requires more time to pay, you should at the very least ensure that the amount of the debt is acknowledged or admitted in writing by the debtor. The easiest way to do this is to have them put any proposal to pay the debt to you in writing.

Legal Demands

10. If the debt remains unpaid, or agreement has not been reached (or complied with), details of the debt should then be sent to us together with:
 - (a) your Terms of Trade signed by the debtor;
 - (b) any correspondence between you and the debtor in relation to the debt; and
 - (c) your instructions as to whether you wish to:

- (i) preserve your business relationship with your debtor/client (ie. we can then prepare a “softer” yet stern demand); or
 - (ii) recover the debt without compromise (a more aggressive demand would be utilised).
11. We will review the Debtor Documents and then prepare and promptly issue your customised Letter of Demand, which will generally state that:
- (a) we act for you;
 - (b) despite prior demands by you, the debt remains unpaid;
 - (c) payment of the debt is required to be made to you, together with legal costs and interest (if you are entitled to them under your Terms of Trade); and
 - (d) if payment is not received within, say, 5 days of the date of the letter then we are instructed to commence legal action for the outstanding debt, interest and legal costs without further notice to the debtor.
12. Quite often, after receiving our Letter of Demand, the debtor will either pay the debt or contact us with a proposal to repay the debt in instalments.
13. We will seek your instructions as to whether to accept a proposal, reject a proposal and negotiate a better payment plan, or reject a proposal and require full payment.
14. If we fail to receive a response to the demand letter, or receive an inadequate proposal from the debtor, we can commence legal proceedings against the debtor on your behalf.

Legal Action Options

15. **Magistrates Court** - for debts up to \$75,000, proceedings can be commenced in the Magistrates Court.
16. **District Court** – for debts between \$75,000 and \$750,000, proceedings can be commenced in the District Court.

17. **Supreme Court** – generally, actions for debts exceeding \$750,000 are brought in the Supreme Court.
18. **Federal Courts** – proceedings under Commonwealth (Federal) legislation (e.g. for winding of companies and bankruptcy) can be brought in the Federal Magistrates Court and/or Federal Court.
19. **Statutory Demand** – as an alternative to standard Court proceedings, where:
- (a) the debtor is a company;
 - (b) the debtor has no genuine dispute to the debt; and
 - (c) there are questions as to the debtor's solvency,

you may be able to issue a Statutory Demand to the debtor company under the *Corporations Act 2001*. If the debtor does not comply with the Statutory Demand within 21 days, you could then apply to Court to wind-up (liquidate) the debtor company. A similar process exists for natural person debtors, but a judgment in Court proceedings is first required.

When is it best to seek our assistance?

Generally, it is best to retain us as soon as the potential dispute becomes known or as soon as it becomes evident the debtor is not prioritising its debt to you. We may be able to assist with implementing a strategy to settle the dispute on a commercial basis and **avoid** legal costs associated with litigating the dispute to trial.

We take a commercially savvy approach to dispute resolution; not only is our time required, but your own valuable time is diverted away from your business' operations. Accordingly, we develop at an early stage, and constantly revise, a settlement strategy to be implemented side-by-side with aggressively asserting and litigating our clients' position/rights.

Please contact Murfett Legal if you have any queries regarding this guide or require our assistance.