



Welcome to [comparePOS.com.au](https://comparePOS.com.au) (The Website).

This is a free website portal enabling businesses to connect with Point of Sales software providers.

When we talk about “comparePOS,” “comparepos.com.au,” “we,” “our,” or “us” in these Terms, we are referring to eCompare, an Australian business with the ABN 40 248 402 078.

### **Acceptance of Terms of Use**

The Terms of Use govern your use of the The Website form part of our agreement with you. Please read these terms and conditions carefully before proceeding.

Your use of The Website constitutes your agreement to be bound by these Terms and Conditions. These Terms and Conditions may change over time without notice and will apply to any subsequent use of The Website by you.

- 1. User Eligibility**

User acknowledges and agrees that the Website is available only to persons aged 18 years old and over. User represents and warrants that he/she is 18 years old or over.

- 2. eCompare’s Role**

The Website operates as a facilitator seeking to match the needs of User with the most cost-effective Provider. eCompare is a neutral facilitator and the User acknowledges and agrees it is not directly involved in the transactions between User and any Provider.

- 3. User Warranties**

- 3.1. The User agrees that it will:
  - (a) not use the Website for illegal purposes;
  - (b) not copy, translate, reproduce, communicate to the public, adapt, vary or modify anything on the Website without eCompare's prior written consent;
  - (c) not interfere with, disrupt or do anything that compromises the security of the Website;
  - (d) only use the Website for personal use and not for commercial use;
  - (e) not use the Website to engage in misleading or deceptive on-line marketing practices;
  - (f) not use the Website to transmit junk mail, spam, chain letters or engage in other flooding techniques or mass distribution of unsolicited email; or
  - (g) provide eCompare with complete and accurate contact details when using the Website enabling Providers to contact User as requested.

#### 4. **eCompare's Reservation of Rights**

eCompare reserves the right to modify or discontinue any services eCompare offers at any time without notice or liability to User.

#### 5. **Intellectual Property**

- 5.1. All intellectual property rights in information, data and materials used or appearing on the Website including (without limitation) all software, tools, know-how, equipment or processes, trade marks, logos and other materials shall remain the exclusive property of eCompare or its licensors. User acknowledges and agrees that it shall not acquire any rights, title or interest in or to any of eCompare's intellectual property rights.
- 5.2. To the extent that User submits any information or material to eCompare, User automatically grants eCompare a licence to use the information or material for the purpose for which it is provided.

#### 6. **Disclaimer and Acknowledgments**

- 6.1. eCompare provides the Website and Provider details on an 'as is' basis and without any warranty, express, implied as to the quality, efficacy, reliability or other attribute or characteristic of any Provider or any service offered by a Provider.
- 6.2. To the fullest extent legally possible, eCompare excludes any representations or warranties concerning the Website, the Website or any third party Site referred to or linked to via the Website.
- 6.3. Without limiting the foregoing, User acknowledges that:
  - (a) eCompare does not check the truth or currency of the material or information that Providers provide or make available to it;
  - (b) any amounts quoted on the Website are subject to change from time to time and it is the User's responsibility to ensure the accuracy and currency of information on the Website ;
  - (c) eCompare does not control, endorse, approve or warrant to the User the merchantability or fitness for any particular purpose the services supplied by any Providers referred to through the Website or whose identities become known to User as a result of using the Website or otherwise;
  - (d) eCompare does not warrant to the User that anything on the Website or any third-party website referred to or connected via the Website is accurate, complete or up to date and makes no performance warranty whatsoever concerning anything on or implied from them;
  - (e) it should satisfy itself through its own enquiries as to the condition or suitability of any Provider;
  - (f) eCompare does not offer professional advice on the fitness of any services or information supplied by any third parties including Providers;
  - (g) eCompare is a neutral facilitator and does not endorse or recommend any Provider or services, including where details of a Provider are provided by eCompare to User or otherwise become known using the

Website;

(h) eCompare is not a party to any transactions between User and Provider and User (and not eCompare) is responsible for paying the Provider;

(i) the User is responsible for completing all transactions it participates in (including monitoring the status and complying with all relevant legal obligations);

(j) the Website may experience interruptions and access difficulties from time to time and that eCompare will not be responsible for such interruptions or access difficulties; and

(k) eCompare shall not be liable for any loss or damage whether directly or indirectly incurred by User or any third person as a result of any failure or delay in eCompare doing any thing, including, but not limited to transmitting any information to User or transmitting User's information to a Provider.

6.4. User agrees that eCompare and all affiliates and related entities of eCompare have no responsibility for the legality of the actions of other users.

## 7. **Limitation of Liability**

7.1. To the extent permitted by law, eCompare excludes all liability to the User or any other person for any loss claim or damage (whether arising in contract, negligence, tort, equity or otherwise for any loss, whether it be consequential, indirect, incidental, special, punitive, exemplary or otherwise, including, without limitation any loss of profits, loss or corruption of data or loss of or damages to reputation or goodwill) arising out of or in connection with any:

(a) removal or termination of User's access to the Website; or

(b) use of the Website or information on or provided through the Website or any information or advice otherwise provided by eCompare or a

Provider, even if eCompare has been advised of the possibility of such loss or damage

7.2. To the extent permitted by law, eCompare and all affiliates and related entities of eCompare expressly limit their liability for breach of a non-excludable condition or warranty implied by virtue of any legislation to the following remedies (the choice of which is to be at eCompare's sole discretion):

(a) the supply of the services again; or

(b) the payment of the cost of having the services supplied again.

(c) exit fees are not considered when calculating estimated costs. In the event the consumer is under contract when changing providers, an early termination fee may apply and should be deducted from the projected savings.

8. **Indemnity**

User indemnifies and holds eCompare and its parent, subsidiaries, affiliates, officers, directors, agents, employees, partners, suppliers, franchisors and franchisees, harmless from and against any claims, demands, proceedings, losses and damages whether actual, special and consequential of every kind and nature including all legal fees) made by User or a Provider arising out of or in any way connected with or related to Users' use of the Website or Website or the User's breach of this Deed or User's violation of any law or the rights of a third party.

9. **Termination**

This Deed is effective until terminated by eCompare, and eCompare may terminate it at any time without prior notice to the User.

10. **Disputes**

10.1. The procedure set out in this clause must be followed in relation to the resolution of a dispute concerning the interpretation of a term this Deed or of the parties' rights or obligations pursuant to this Deed ("Dispute").

- 10.2. Upon any Dispute arising, a party may give written notice to the other party that a Dispute exists (“Dispute Notice”).
- 10.3. The Dispute Notice shall provide the recipient with the full particulars of the matters in Dispute.
- 10.4. The timetable and process for resolving a Dispute pursuant to a Dispute Notice is as follows:
- (a) within 5 working days of receipt of a Dispute Notice, the recipient shall hold discussions in good faith in an attempt to resolve the Dispute;
  - (b) if the Dispute is not resolved within 20 days of the commencement of the meeting referred to in the previous sub-clause or if the meeting referred to in the previous sub-clause has not taken place within the 5 day period, the parties to the Dispute shall refer the matter to mediation;
  - (c) within 5 working days following the expiry of the relevant period in the previous sub-clause, the parties to the Dispute must attempt to agree on the appointment of a mediator, with the costs of the mediation to be borne equally by the parties to the Dispute;
  - (d) the parties to the Dispute shall use their best endeavours to ensure the mediation takes place within 30 days of a mediator being appointed; and
  - (e) any mediation that takes place pursuant to the operation of this clause is to take place in Melbourne, Australia.
- 10.5. Except for the purpose of obtaining urgent interlocutory or declaratory relief from a court of competent jurisdiction, no party shall commence any proceedings in any court, tribunals or otherwise without first providing a Dispute Notice and complying with the dispute resolution process set out in this clause.

11. **Circumstances beyond eCompare’s control**

eCompare will not be liable for any failure or delay in the performance of its obligations to the User if that failure or delay is due to circumstances beyond its reasonable control including, without limitation, any act of God or other cause

beyond its reasonable control including any mechanical, electronic, communications or third party supplier failure.

12. **Use of Material on Site**

Users may not use screen scraping, data mining or any similar data gathering and extraction technological devices on this Site for the purpose of reproducing information contained on this Site on or through any other medium, except with eCompare's prior written consent

13. **Website Links**

13.1. eCompare may provide links and pointers to websites maintained by third parties from its Site which websites are not under the control of eCompare and eCompare is not responsible for the contents of any linked website or any website link contained in any linked website.

13.2. eCompare will not be liable for any damages or loss arising in any way out of or in connection with or incidental to any information or third party service provided by or through any linked websites whether linked to or from eCompare's Site.

14. **General**

14.1. **Interpretation**

14.1.1. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

14.1.2. User agree that this Deed may not be construed adversely against eCompare solely because eCompare prepared it.

14.1.3. The singular includes the plural and vice-versa.

14.1.4. A reference to a person includes any corporation or body corporate.

14.2. **Definitions**

In this Deed the following terms have the following meanings:

"Provider" means any Point of Sale software provider who is or may potentially be matched to a User.

“Website” means the website operated by eCompare at comparepos.com.au or on any affiliate website.

“User” means a party or individual who utilises the Website by eCompare from time to time.

#### **14.3. Severability**

The provisions of this Deed are severable, and if any provision of this Deed is held to be illegal, invalid or unenforceable, under present or future law, such provision may be removed and the remaining provisions shall be enforced.

#### **14.4. No Waiver**

eCompare’s failure to take action with respect to a breach by User or others does not waive eCompare’s right to take action with respect to subsequent or similar breaches.

#### **14.5. Entire Agreement**

This Deed and those policies incorporated by reference herein set out the entire understanding and agreement between the parties with respect to the subject matter hereof.

#### **14.6. Survival**

Those clauses capable of surviving termination of this Deed shall do so.

#### **14.7. Notices**

eCompare may provide notices to User by simply posting the notice on the Website. This is in addition to any other mode of services permitted by law.



#### **14.8. Governing Laws**

This Deed shall be governed in all respects by the laws of the State of Victoria, Australia. The User irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and to the Federal Court of Australia sitting in Victoria.

#### **14.9. Commission**

eCompare may receive a fee from some of the POS providers that the User determines to use where the initial contact came about through The User's use of the Website, which fee does not influence the comparison results generated by the User in requesting a comparison using the Website.