

mPOS Solution

Merchant Terms and Conditions



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1. Definitions

1.1. Definitions

In these Terms and Conditions, unless inconsistent with the context:

- (a) *Application Forms* means the Merchant Facility Application with the Acquiring Bank and the mPOS Application Form with Us (collectively referred to as the "Application Forms") for provision of the Merchant Services, Equipment and Services;
- (b) *Acquiring Bank* means the bank or financial institution which provides the Merchant with the Merchant Services ;
- (c) *Acquiring Bank Merchant Terms and Conditions* means the terms and conditions imposed by the Acquiring Bank for provision of Merchant Services as amended from time to time;
- (d) *Business Day* means a day other than a Saturday, Sunday or public holiday in Sydney, New South Wales;
- (e) *Business Hour* means from 9.00am to 5.00pm Australian Eastern Standard Time (or if applicable, Australian Eastern Daylight Time) on a Business Day;
- (f) *Customer* means any person nominated in the Application Forms as a "Customer".
- (g) *Defect* means any fault not caused by the misuse of the Equipment or damage to the Equipment occurring after delivery of the Equipment to the Customer, which causes an item of Equipment:
 - (i) to fail to provide the Services as described in the Documentation; or
 - (ii) to fail to comply with statutory implied conditions and warranties, but only if by statute such conditions and warranties may not be disclaimed, and*Defective* has a corresponding meaning.
- (h) *Documentation* means any user guide, instruction manuals or any other documentation provided for the purposes of assisting the Customer to utilise the Services in any form;
- (i) *Equipment* means any equipment (including the mPOS Reader) supplied by Us to enable Us to provide the Services;
- (j) *Fees* mean any fees payable in relation to provision of Merchant Services, the Equipment and Services as detailed in the Application Forms, or as varied from time to time in accordance with clause 7 of these Terms and Conditions;
- (k) *GST* means any GST payable under the GST Legislation;
- (l) *GST Legislation* includes *A New Tax System (Goods and Services Tax) Act 1999* and any other related legislation (whether or not currently in force) and any rulings, additions, amendments and alterations thereto;
- (m) *Lease Period* means the period of 12 months from the commencement date of these Terms and Conditions;
- (n) *Merchant Account* means the merchant account the Customer holds with the Acquiring Bank;
- (o) *Merchant Portal* means the online portal facilitating transactions via the mPOS Solution as amended or updated from time to time;
- (p) *Merchant Services* means the transaction processing and acquiring service provided by the Acquiring Bank;
- (q) *mPOS Solution* means the internet based transaction processing service provided by Us using the mPOS Reader, Our App or Merchant Portal;
- (r) *mPOS Reader* means the hardware provided by Us to the Customer through which the Merchant Services are provided;
- (s) *Our, Us and We* means Mint (Aust) Pty Limited (ABN 49 116 825 033);
- (t) *Our App* means the smart-device application or applications published from time to time by Us allowing access to the mPOS Solution via smart-devices, as amended or updated from time to time;

- (u) *Personnel* mean the Customer's employees, agents, advisers, auditors, consultants or contractors;
- (v) *PPSA* means the *Personal Property Securities Act 2009* (Cth), as amended.
- (w) *Services* mean the provision of access to software (including access to Our App and Merchant Portal), services, Documentation and the mPOS Solution enabling the Customer to utilise the Merchant Services offered by the Acquiring Bank; and
- (x) *Support Services* means the maintenance and support services relating to the Equipment and Services, as advised by Us from time to time.

1.2. Interpretation

In these Terms and Conditions, unless inconsistent with the context:

- (a) words importing the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation of these Terms and Conditions;
- (c) a provision of these Terms and Conditions shall not necessarily be construed adversely to the party that drafted it;
- (d) a reference to a clause, paragraph or Schedule is a reference to a clause, paragraph or Schedule of these Terms and Conditions;
- (e) where any word or phrase is given a definite meaning in these Terms and Conditions, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (f) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
- (g) a reference to '\$', AU\$ or AUD is a reference to Australian currency;
- (h) a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;
- (i) a reference to a party includes that party's legal personal representatives, successors and permitted assigns;
- (j) a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally; and
- (k) a reference to a body, whether statutory or not;
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body;is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

2. Our Obligations

We will supply the Equipment, Services and Support Services to enable the Customer to utilise Merchant Services provided by the Acquiring Bank.

3. The Customer's Obligations

The Customer must:

- (a) pay all applicable Fees with respect to the Merchant Services, Equipment, Services, Documentation and Support Services;
- (b) only use the Merchant Services, Equipment, Services, Documentation and Support Services for the legitimate business purposes of the Customer.

4. Intellectual Property

- 4.1. The Customer acknowledges and agrees that all intellectual property rights in the Equipment, Documentation, Services and Support Services (including Our App and Merchant Portal) provided to the Customer under these Terms and Conditions is owned by Us and nothing in these Terms and Conditions shall be construed to constitute a transfer of any intellectual property in the Equipment, Documentation, Services or Support Services (including Our App and Merchant Portal) to the Customer.
- 4.2. We grant the Customer a non-exclusive, non-transferable licence to use Our intellectual property for the sole purpose of the Customer's use of the Equipment, Documentation, Services (including Our App and Merchant Portal) and Support Services for the duration of these Terms and Conditions.

5. The Equipment, Our App and Merchant Portal

5.1. Equipment

The Customer must indicate on the Application Forms whether it elects to lease or purchase the Equipment. The Fees for lease or purchase of the Equipment are detailed in the Application Forms.

Where the Customer elects to lease the Equipment, We will lease the Equipment to the Customer, for the *Lease Period* subject to payment of the Fees set out in the Application Forms and in accordance with these Terms and Conditions. After the expiration of the Lease Period, We will lease the Equipment to the Customer on a month by month basis until the Customer's use of the Services is terminated in accordance with these Terms and Conditions.

5.2. Care of the Equipment, Our App and Merchant Portal

The Customer must, procure its employees, agents, contractors or any third party to:

- (a) follow Our instructions (whether included in the Documentation or otherwise) with respect to the use of the Equipment, Our App and Merchant Portal;
- (b) properly maintain the Equipment, Our App and Merchant Portal;
- (c) not alter, tamper with, copy or attempt to reverse engineer the Equipment, Our App or Merchant Portal (or any part of the Equipment, Our App or Merchant Portal) or intercept electronic messages through Our App or Merchant Portal in any manner or allow any third party to do so;
- (d) ensure the Customer's premises or operating locations enable a cardholder attempting to utilise the Equipment to safely, securely and privately enter their personal identification number and other transaction details; and
- (e) not permit use of or access to the Equipment or the Services (including Our App and Merchant Portal) by any person or company other than as contemplated by these Terms and Conditions.

5.3. Risk

If the Customer elects to lease the Equipment, at all times:

- (a) legal title to the Equipment shall remain with Us;
- (b) the Customer shall be entitled to exclusive possession of the Equipment for the purposes stated in clause 5.1;
- (c) the Equipment shall be at the risk of the Customer. The Customer is responsible for any loss or damage to the Equipment from the date of delivery of the Equipment to the Customer. If the Equipment is lost or damaged, the Customer must pay Us the full cost of replacing or repairing that Equipment as detailed in the Application Forms, including any freight costs associated with the repair or replacement. Loss or damage to the Equipment includes, but is not limited to, damage due to malicious acts, accidental damage, spillage of liquids, flood, fire and electrical surges. We will determine whether the Equipment can be repaired or whether the Customer must pay the cost of replacing the Equipment as detailed in the Application Forms.

If the Customer elects to purchase the Equipment, at all times:

- (a) legal title to the Equipment shall pass upon payment of the Fees and remain with the Customer; and

- (b) the Equipment shall be at the risk of the Customer. The Customer is responsible for any loss or damage to the Equipment from the date of delivery of the Equipment to the Customer. If the Equipment is lost or damaged, the Customer must pay Us the full cost of replacing or repairing that Equipment as detailed in the Application Forms, including any freight costs associated with the repair or replacement. Loss or damage to the Equipment includes, but is not limited to, damage due to malicious acts, accidental damage, spillage of liquids, flood, fire and electrical surges. We will determine whether the Equipment can be repaired or whether the Customer must pay the cost of replacing the Equipment as detailed in the Application Forms.

5.4. Defects

- (a) We warrant that the Equipment will be free of Defects for a period of:
 - (i) 12 months after the delivery of the Equipment to the Customer; or
 - (ii) the period of any warranty extended by the manufacturer of the Products, whichever is the earlier (*Warranty Period*).
- (b) Where any Equipment is Defective:
 - (i) the Customer must return the Defective Equipment to Us; and
 - (ii) We will within 5 Business Days of receiving notice of the Defect:
 - (A) provide the Customer with replacement Equipment of equivalent quality; or
 - (B) repair or rectify the Equipment.

5.5. Return of Leased Equipment

At the conclusion of the Lease Period or termination of the lease referred to in clause 5.1, the Customer must immediately:

- (a) return the Equipment to Us in good working order and condition at a place specified by Us;
- (b) if applicable, pay to us on demand all applicable Fees detailed in the Application Forms; and
- (c) if applicable, pay to Us on demand the amount of any loss reasonably incurred by Us in terminating the lease.

5.6. PPSA

- (a) The Customer acknowledges that under the PPSA, We have a security interest in the Equipment that We lease to the Customer and that We may register our interest on the Personal Property Securities Register.
- (b) Any provision of the PPSA that may be lawfully excluded by agreement of the parties and which requires the giving of notices to a grantor, or prescribes the form of such notices, or confers rights on the grantor, or limits the rights of the secured party, does not apply in relation to Our security interest in the Equipment.
- (c) The Customer must do everything to ensure that We maintain a first ranking, perfected security interest in the Equipment. The Customer must comply with any request We make to ensure that this happens, including providing information to Us. The Customer must not do anything that may cause Us to no longer have a first ranking, perfected security interest in the Equipment.

6. Disputed Transaction and Fraud

The Customer acknowledges that We are not responsible for transactions processed utilising the Services or the Equipment.

The Customer must refer any dispute relating to a disputed transaction or fraud directly to the Acquiring Bank to be dealt with in accordance with the process set out in the the Acquiring Bank Merchant Terms and Conditions, or any other agreement between the Customer and the Acquiring Bank.

7. Fees

- 7.1. Subject to confirmation of the Customer's Application Forms, the Customer will be required to complete direct debit authorities in the form attached to the Application Forms, authorising the Acquiring Bank and Us to deduct any amount owing pursuant to the contract consisting of the Application Forms and these Terms and Conditions from the Customer's selected account.
- 7.2. All Fees relating to Equipment leased by Us to the Customer under these Terms and Conditions will be debited by Us from the Customer's nominated account in advance, on a pro-rated basis and thereafter on the 1st day of each calendar month during the Lease Period, in advance.
- 7.3. All Fees relating to the Equipment purchased from Us by the Customer under these Terms and Conditions will be debited by the Acquiring Bank or Us from the Customer's nominated account.
- 7.4. If the Customer defaults in any payment of the Fees, We may, in addition to any other remedy available to Us under these Terms and Conditions or at law, terminate the lease referred to in clause 5.1 and enter upon the premises of the Customer and recover possession of the Equipment or any part thereof.
- 7.5. All Fees relating to the Services which are provided by Us under these Terms and Conditions will be debited by the Acquiring Bank and Us from the Customer's nominated account, and the Acquiring Bank will remit those Fees to Us on the Customer's behalf.
- 7.6. If the Customer defaults in any payment of the Fees:
- (a) We may suspend or cancel the Services or any other service provided by Us; and
 - (b) We may charge additional Fees to resume the Services; and
 - (c) the Customer will pay all collection costs and any legal fees (on a full indemnity basis) reasonably incurred by Us as a result of any default.

We may vary the Fees payable in respect of the Equipment, Documentation, Services or Support Services at any time by giving the Customer 30 days' written notice of any such variation.

The Customer acknowledges that We may be entitled to receive a commission relating to the Customer's use of the Merchant Account.

The Customer acknowledges that the use of the Equipment and Services may incur charges from the Customer's mobile service provider including data and/or SMS/MMS services. Any such charges are the Customer's sole responsibility and any matters regarding these charges should be directed to the Customer's mobile service provider.

8. GST

Fees stated in the Merchant Facility Agreement are quoted exclusive of GST.

In the event that GST is payable for any supply made under these Terms and Conditions by either party, the party which made the supply may in addition to the Fees payable under these Terms and Conditions but subject to having issued a valid tax invoice (as required by the GST Legislation) recover from the other an additional amount on account of GST such amount to be calculated by multiplying the amount payable in respect of that supply by the rate at which GST is imposed by relevant GST Legislation.

9. Exclusions and Limited Warranty

To the maximum extent permitted by law and except as expressly provided to the contrary in these Terms and Conditions, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of these Terms and Conditions or to these Terms and Conditions generally, are excluded. Where legislation implies into these Terms and Conditions any condition or warranty and that legislation avoids or prohibits provisions in a contract from excluding or modifying the application or exercise of, or liability under, such condition or warranty shall be deemed to be included in these Terms and Conditions.

Our liability for any breach of such condition or warranty shall be limited, at Our option, to any one or more of the following:

- (a) If the breach relates to Equipment:
 - (i) the replacement of the Equipment;

- (ii) the repair of such Equipment;
 - (iii) the payment of the cost of replacing the Equipment or of acquiring equivalent Equipment;
 - (iv) or the payment of the cost of having the Equipment repaired;
 - (b) If the breach relates to Services:
 - (i) the supplying of the Services again;
 - (ii) the payment of the cost of having the Services supplied again.
- 9.3. To the extent permitted by law and except as expressly provided to the contrary of these Terms and Conditions, We shall not be under any liability (contractual, tortious or otherwise) to the Customer in respect of any loss or damage (including, without limitation, consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of Equipment, Services, Documentation or Support Services pursuant to these Terms and Conditions or Our act, failure or omission.
- 9.4. Without limiting any other provision of these Terms and Conditions, the Customer also acknowledges that:
- (a) the provision of the Services will not necessarily be continuous or of a consistent speed;
 - (b) the performance of the Services may be affected by factors outside of Our control such as internet latency, network availability, traffic flow through Us or the Acquiring Bank's systems and servers and other technical requirements;
 - (c) the Customer has not relied on any representations or warranties regarding the features, security, technical capacity or any other aspect of the Services or Equipment other than to the extent contained in these Terms and Conditions or the Documentation;
 - (d) the Customer is subject to the Acquiring Bank Merchant Terms and Conditions; and
 - (e) We shall not be obliged to put in place any substitute or alternative Service should there be a failure of or delay in the provision of the mPOS Solution.

10. Indemnity

To the maximum extent permitted by law, the Customer shall fully indemnify Us and keep Us indemnified, Our officers, employees and agents, against loss, costs, expenses, demands, taxes or liability whether direct or indirect arising out of a breach of these Terms and Conditions by the Customer or the Customer's wilful, unlawful or negligent act or omission. To the extent required, We hold the benefit of this indemnity on trust for Our officers, employees and agents.

11. Term and Termination

The Customer's acceptance of these Terms and Conditions shall occur when the Customer first uses the mPOS Solution to process a transaction.

These Terms and Conditions commence on the date the Customer first uses the mPOS Solution to process a transaction.

If the Customer has elected to lease the Equipment from Us and the Customer wishes to terminate its use of the Equipment and Services (by the giving of 30 days written notice to Us) prior to the expiration of the Lease Period, the Customer must pay to Us the Fees detailed in the Application Forms.

If the Customer has elected to purchase the Equipment from Us, either party may terminate the Customer's use of the Services at any time by the giving of 30 days written notice to the other party.

- 11.1. Without limiting any other clause in these Terms and Conditions, We may terminate the provision of Services to the Customer, in whole or in part, immediately on notice in writing to the Customer if:
- (a) any payment due from the Customer pursuant to these Terms and Conditions remains unpaid for a period of 14 days;
 - (b) the Customer breaches these Terms and Conditions and such breach is not remedied within 14 days of written notice by Us;

- (c) the Customer (being a Company) becomes “Insolvent” (as that term is defined by the *Corporation Act 2001* (Cth));
- (d) the Customer (being a partnership), dissolves, threatens or resolves to dissolve or is at risk of dissolving;
- (e) the Customer being a natural person, becomes bankrupt or dies; or
- (f) the Customer ceases to carry on business.

11.2. If either party terminates the Customer’s use of the Services pursuant to this clause 11:

- (a) We may retain any monies paid;
- (b) We may charge for all Services provided up to and including the date of Termination;
- (c) the Customer will immediately discharge Us from any further obligations under these Terms and Conditions; and
- (d) We may pursue any additional or alternative remedies provided by law.

12. Severability

If anything in these Terms and Conditions is unenforceable, illegal or void then it is severed and the rest of these Terms and Conditions remain in force.

13. Entire Agreement

These Terms and Conditions, together with the Application Forms, the documents referred to therein and the terms of use of Our App and Merchant Portal:

- (a) contain the entire agreement and understanding between the parties on everything connected with the subject matter of these Terms and Conditions; and
- (b) supersede any prior agreement or understanding on anything connected with that subject matter.

14. Further assurance

Each party will promptly from time to time do all things (including executing all documents) necessary or desirable to give full effect to these Terms and Conditions.

15. Waiver

A party’s failure or delay to exercise a power or right does not operate as a waiver of that power or right.

The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

A waiver is not effective unless it is in writing.

Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

16. Confidentiality

A party must not disclose anything in respect of the terms of these Terms and Conditions except as required by applicable law but to the extent possible, it must consult with the other party before making the disclosure and use reasonable endeavours to agree on the form and content of the disclosure.

A party must not disclose anything in respect of the terms of these Terms and Conditions except to the officers and professional advisers of that party but it must use its best endeavours to ensure all matters disclosed are kept confidential.

17. Notices

17.1. A notice or other communication required or permitted to be given by one party to another must be in writing and is taken to have been given when (unless otherwise proved):

- (a) delivered personally, at the time it is delivered to the party;

- (b) sent by pre-paid mail to the address of the addressee specified in the Application Forms page:
 - (i) from Australia to an address within Australia, on the second Business Day after posting;
 - (ii) from Australia to an address outside Australia or from outside Australia to an address within Australia, on the fifth Business Day (at the address to which it is mailed) after posting;
 - (c) sent by fax to the fax number of the addressee with acknowledgment of receipt from the fax machine of the addressee before 4pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - (d) sent by email to the email address of the addressee or such other email address notified as being the email address to use for the purposes of this clause:
 - (i) where the email is sent during a Business Hour on a Business Day, upon the return of a receipt which confirms successful transmission of the email to the email address of the recipient or, where no return receipt is produced by the recipient's email system, by the end of the last Business Hour on the day the email was sent; or
 - (ii) where the email is sent after the end of the last Business Hour on a Business Day or on a non-Business Day, the email will be deemed to be received at the beginning of the first Business Hour on the next Business Day.
- 17.2. The address for service of each party is set out in the Application Forms. A party may change its address for service by giving notice of that change in writing to the other parties.

18. About these Terms and Conditions

- 18.1. We may modify these Terms and Conditions or any additional terms that apply to Equipment, Services, Documentation and Support Services to, for example, reflect changes to the law or changes to our Equipment, Services, Documentation and Support Services.
- 18.2. The Customer is responsible for reviewing the terms on a regular basis. We will post notice of modifications to these Terms and Conditions on Our website.
- 18.3. We will post notice of modified additional terms in the applicable Equipment, Services, Documentation and Support Services.
- 18.4. Changes will not apply retroactively and will become effective no sooner than fourteen days after they are posted. However, changes addressing new functions for Equipment, Services, Documentation and Support Services or changes made for legal reasons will be effective immediately.
- 18.5. If the Customer does not agree to the modified terms for Equipment, Services, Documentation and Support Services, then the Customer should discontinue its use of that Equipment, Services, Documentation and Support Services.

19. Governing Law and Jurisdiction

These Terms and Conditions are governed by the laws of New South Wales.

Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.