



accordance with these Terms for the period that any amounts are payable by you under any current agreement. You must ensure that you have sufficient funds available in your bank account to pay the amounts due under any current agreement on the dates those amounts are due for payment.

If there are insufficient funds in your bank account to enable a payment, then third party charges may be incurred, such as bank charges levied on you and us. You agree to be liable for and pay all such costs and charges if any deduction made by us in accordance with any agreement we have with you does not proceed because of your failure to maintain sufficient funds in your nominated bank account. You agree that we may use the direct debit facility to enable us to pay such costs and charges.

#### 5. Our discretion

We may accept or reject any request by you to initiate a direct debit facility in our absolute discretion, without providing reasons for our decision.

**6. Queries, disputes and cancellations** If you wish to query or dispute any direct debit we make from your bank account, or cancel any direct debit facility, please contact us as follows:

**Email:** the email address specified in the "Contact Us" section of our website;

**Post:** PO Box A2417, Sydney, NSW 1235

In particular circumstances, you acknowledge that direct debit disputes may need to be directed to your financial institution for resolution.

We will use our reasonable endeavours to resolve direct debit disputes and give effect to cancellations as soon as practicable.

**7. Changes to the direct debit facility** We will use our best efforts to give you at least 5 Business Days notice of any changes we need to make to the direct debit facility. If we need to make changes: to ensure the correct operation of your or our banking facilities; or,

to protect the security of your or our information or banking facilities,

then it may not be practicable to give you notice before making those changes.

You acknowledge that we will need at least 5 Business Days to make any changes you request to your direct debit facility with us. You will need to make allowance for such time frames in any request to us.

#### 8. Notice

A notice relating to these Terms must be in legible, written English. We may give you notice by electronic mail, conventional mail, facsimile or personal service. You may give us notice only by email to the email address specified in the "Contact Us" section of our website. Notice is sent by the sender and received by the recipient: if delivered by hand, upon delivery to the receiving party; if sent by registered mail within Australia, 2 Business Days after the registration of the notice of posting; if sent by ordinary mail within Australia, 3 Business Days from and including the date of postage; or if sent by email, upon sender receiving back from recipient's email address a confirmation read receipt (including any receipts generated by automated means). A reference to a person receiving a notice includes a reference to the recipient's officers, agents or employees.

If a notice is received outside business hours, then it is deemed received the next Business Day.

#### 9. Confidentiality

A party to these Terms must not disclose to any third party, without the prior written consent of the other party or as contemplated under this Agreement, any Confidential Information provided from the other. This obligation does not extend to information which:

is, or becomes public knowledge without the fault of the receiving party; or is, or becomes available to the receiving party from a source other than the disclosing party.

Clause 9 survives termination.

#### 10. Liability

We exclude all implied conditions, warranties and terms, except those that cannot be excluded in law ("*Non excludible Condition*"),

eg such as warranties under the *Trade Practices Act 1974* and the equivalent laws of a State or Territory.

To the extent permitted by law, our total liability for breach of any Non-excludable Condition (other than one implied by section 69 of the *Trade Practices Act 1974*) or for any other breach by us of these Terms (for which our liability is not excluded under this Agreement) is limited at our option, to any one of:

resupplying or replacing, or paying the cost of resupplying any goods; or supplying again, or paying the cost of supplying any services again.

#### 11. Definitions

In this Agreement, unless the context indicates otherwise:

**"Assignment Agreement"** means the contract of that name between a lender and us, under which a lender agrees to provide funds to us;

**"Borrower"** means an entity holding a credit account from us, the service provider;

**"Borrower Terms & Conditions"** means the service contract between borrowers and us, under which borrowers agree the process they must follow to borrow money in the form of a credit account, and other general conditions regarding the use of our website and services;

**"Business Day"** means any day except Saturday or Sunday or a day that is a public or bank holiday in Sydney, New South Wales;

**"Confidential Information"** means confidential information of a party and includes information whether verbal, written or in some other form, including but not limited to electronic form relating to: (a) knowledge or information regarding the business transactions, accounts or finances, affairs, property, policies, procedures or activities of the party; and (b) any document or information which a party advises the other party is confidential.

**"Terms"** means the agreement consisting of clauses 1 to 11 of this document;

**"Territory"** means any State or internal territory of Australia;

**"We"** and **"Us"** means Payment Express Australia Pty Ltd (ACN:111 433 339) (and its assignees);

**"Website"** means the website [www.paymentexpress.com](http://www.paymentexpress.com) including any materials and subdirectories accessible from and forming part of that website;

**"You"** means the person who enters into these Terms (other than us).