

Merchant Services Terms and Conditions

Introduction

Moneytech Payments Pty Limited (ACN: 126 015 227) ("**Moneytech Payments**") operates a payment processing and settlement service ("Facility").

Moneytech Payments is an authorised representative of Moneytech Limited, an Australian Financial Services Licensee (AFSL). Moneytech Limited's AFSL number is 421414 and Moneytech Payments' authorised representative number is 428863. All Services specified herein are provided by Moneytech Payments on behalf of Moneytech Limited.

Subject to the following terms and conditions which comprise your Agreement with Moneytech Payments ("**Transaction Documents**") the Facility will enable you or your Retailers to accept Cards, and/or Direct Debit Arrangements from your customers in payment for goods and services which you supply to them:

- 1) Moneytech Payments Application Form;
- 2) Direct Debit Authorisation;
- 3) The Combined Financial Services Guide and Product Disclosure Statement; and
- 4) Merchant Services Terms and Conditions ("Agreement");

Your Agreement will become binding when you execute the Moneytech Payments Application Form or process your first Transaction.

Operative Provisions

Definitions

In this Agreement, unless the contrary intention appears, words and expressions have the following meanings:

Account means the account nominated by you for acceptance of credit and debit entries under this Agreement and for related purposes is specified in the Direct Debit Authorisation.

Acquiring Institution means the merchant acquiring services provided by ANZ Bank (or any other bank as nominated from time to time) to Moneytech Payments for the acceptance and processing of Transactions processed through the Facility.

Approval means an approval granted by Moneytech Payments for the Merchant to use and access the Facility, and Approve and Approved have corresponding meanings.

Authorised/Authorisation is confirmation by Moneytech Payments (via the Merchant Terminal) that there are funds available on the Card to allow the Transaction.

BPAY Payer Terms means the BPAY Payer Terms available for download online at:
<http://www.moneytech.com.au/about/forms-and-downloads>

BPAY Payment means a payment facilitated by a Cardholder in accordance with the BPAY Scheme;

BPAY Scheme means the electronic payment and biller service promoted by BPAY Pty Limited (ABN 69 079 137 518);

Card means a credit or debit card that has been designated by the issuer as a Visa, eftpos or MasterCard card, or a card issued by any other Card Scheme which you have agreed to accept and we have agreed to process. For the purposes of this Agreement a Card includes a Device.

Cardholder means the person in whose name the Card or Device has been issued.

Card Schemes means, Visa, MasterCard, American Express, Diners Club or other card schemes notified to you by us from time to time.

Card Scheme Rules means the rules and regulations which regulate participants in the Card Schemes.

“Chargeback” or “Chargedback” means a Reversal.

Customer/s means (whichever the case may be):

- (a) a customer of yours that has completed, signed and returned a valid direct debit authorisation and has agreed to participate in the Direct Debit Arrangement; or
- (b) a Cardholder.

Device means a prepaid certificate, voucher, token, card, coin or other object issued by Moneytech Payments in accordance with ASIC Exemption [16-0128] by which a Cardholder may use or access stored value for the purposes of making a payment via the Facility.

Direct Debit Arrangement means the collection of recurring fees, variable amounts, invoice payments and or payment plan amounts from your Customer’s bank, building society, credit union account/s and/or Cards.

Direct Debit Authorisation means the authorisation you grant to Moneytech Payments to deduct payments from your Account.

Financial Product Advice has the meaning ascribed to it under the *Corporations Act* 2001 (Cth).

Interchange Party/ies means Moneytech Payments and any other third party (including financial institution, bank or union) that is involved in the settlement of Transactions.

Itemised Receipt means an automatic till printout (or if not available, a manually written receipt such as from a carbon book) which lists the items sold (by product name or by an identifiable code for the item such as “food”, “household item”) and the item price.

Licence has the meaning ascribed to it in Clause 7.

Material Adverse Effect means that the reasonable costs and expenses that would be incurred by the Merchant in implementing the required changes in order of it to comply with these Terms and Conditions will exceed \$5,000.00.

Merchant means the person or entity which is a party to the Moneytech Payments Application Form and who is Approved by Moneytech Payments to effect Transactions via the Facility subject to the Transaction Documents.

Merchant Terminal means any electronic point of sale terminal, terminal application or online

payment gateway which enables the Merchant to transmit information via the Facility, and which can include a terminal purchased or leased through Moneytech Payments.

Moneytech Payments Application Form means the form called "*Moneytech Payments Application Form*" (or any variations or previous or subsequent versions) submitted by you to Moneytech Payments and accepted by Moneytech Payments;

Moneytech Payments Account means the account in Moneytech Payments name that Moneytech Payments has established with an ADI for the purposes of receiving funds from Merchants or Cardholders in order for Moneytech Payments to complete the Transactions generally.

Moneytech Payments Material means any material:

- a) owned by Moneytech Payments or which Moneytech Payments has or acquires a licence to use, and
- b) which is provided by Moneytech Payments to the Merchant for the purposes of this Agreement.

MOTO means mail order or telephone order.

Relevant Law means any statute, ordinance, exemption, code or other law including regulations pursuant to them and any code of practice, practice notes, guidelines, rules, membership rules or standards issued by relevant regulators or industry bodies, whether or not having the force of law, applicable to this Agreement.

Replacement Cost means the cost of having a Merchant Terminal replaced and which cost is defined in the Return and Damage Policy.

Reserve means Merchant funds held by Moneytech Payments on deposit and which are set aside to cover Chargebacks, refunds, or other payment obligations arising under this Agreement.

Retailer/s means those persons or entities nominated by the Merchant to use or access the Facility and for whose acts or omissions the Merchant is liable.

Return and Damage Policy means the policy available online for download at www.moneytech.com.au/legal

Reversal "Reversal/s" or "Reversed" means Moneytech Payments reverses the settlement of funds from a processed Card transaction that you received because: (a) the Transaction is invalidated by the card issuer; (b) the settlement funds were sent to you in error by: (i) Moneytech Payments or the Acquiring Bank; (ii) the processors or suppliers of Moneytech Payments; or (iii) any of the respective affiliates, agents, directors and employees of any of the entities listed in (i) or (ii) above; (c) the sender of the payment did not have authorisation to send the payment (for example: the Customer used a Card that did not belong to the Customer); or (d) you received the payment for activities that violated this Agreement or any other Transaction Document.

Store/s means a retail outlet or taxi/hire car business or other approved business operated by a Merchant at which one or more Merchant Terminals have been activated to accept and process Transactions.

Transaction means a transaction to debit or credit the Cardholder's Card and/or a transaction to debit or credit a Customer's bank, building society or credit union account in accordance with a Direct Debit

Arrangement.

Us or we means Moneytech Payments Pty Limited A.C.N 126 015 227.

Value means the monetary value stored on the Device from time to time, that remains available to the Cardholder, but which shall not exceed AUD \$1000 at any one time.

You means Merchant.

1. Moneytech Payments' Role

The Facility enables you to accept and process credit card, debit card, Devices and other types of card payments and/or Direct Debit Arrangements from Customers who want to pay you for your products or services or facilitate a BPAY Payment using Value stored on the Cardholder's Device.

Moneytech Payments is not a bank and Moneytech Payments does not offer banking services under any Relevant Law. In addition, Moneytech Payments does not assume any liability for the products or services purchased using the Facility. You are required to register with Moneytech Payments to use the Facility by completing the Moneytech Payments Application Form.

By accepting this Agreement and the Transaction Documents, you unconditionally and irrevocably authorise Moneytech Payments to hold, receive, and disburse funds on your behalf (or at your instruction) when such funds from your Transactions are settled by the Acquiring Institution. You further unconditionally and irrevocably authorise Moneytech Payments to instruct the Acquiring Institution in the manner of how your Transaction settlement funds should be disbursed to you (or such party as you determine) and the timing of such disbursements.

By accepting this Agreement and the Transaction Documents, you also unconditionally and irrevocably authorise Moneytech Payments to hold settlement funds in the Moneytech Payments Account pending disbursement of the funds to you in accordance with the terms of this Agreement. You agree that you are not entitled to any interest or other compensation associated with the settlement funds held in the Moneytech Payments Account pending settlement to your designated bank settlement account, that you have no right to direct that Moneytech Payments Account, and that you may not assign any interest in the Moneytech Payments Account.

Your authorisations will remain in full force and effect until your access to the Facility is closed or terminated in accordance with the terms of this Agreement.

2. Merchant Terminals

2.1 You agree that risk in the Merchant Terminal passes to you on delivery of the Merchant Terminal to the nominated delivery address. You are liable for any loss or damage to, or caused by, the Merchant Terminal or its operation and all costs incurred in respect of the Merchant Terminal including the cost of repairing or replacing the Merchant Terminal at the Replacement Cost.

2.2 You must notify us within 48 hours after delivery of the Merchant Terminal of any claimed shortage or damage. Where permitted by law, failure to notify within the prescribed 48 hours will result in your deemed acceptance of the Merchant Terminal.

2.3 Use of the Merchant Terminal is deemed acceptance of our Return and Damage Policy. To the maximum extent permitted by law, we are not liable for any damage to Merchant Terminals due to a dysfunction of any network on which the Merchant Terminal is used out of our reasonable control.

3. Merchant's obligations

- 3.1 The Merchant must and (where applicable) must ensure its Retailer's:
- (a) honour a valid Card tendered by a Cardholder in exchange for the supply of goods and services (subject to this Agreement, any legal right the Merchant may have to refuse to serve a Customer and the availability of the Facility);
 - (b) process all Transactions in Australian dollars;
 - (c) not retain possession of a Cardholder's Card (whether for the convenience of the Cardholder even if requested by the Cardholder);
 - (d) not accept a Card as security or collateral for any credit or loan provided by the Merchant to any person;
 - (e) ensure that any refund in relation to a Transaction is processed as a refund transaction for the full refund amount to the Cardholder's Card or account through the Facility, with no amount refunded as cash;
 - (f) provide an Itemised Receipt and the corresponding point-of-sale record for each Card Transaction to the relevant Cardholder at the time of the transaction;
 - (g) verify the identity of the Cardholder and ensure that a Transaction is not obtained by fraud or deception or is not unauthorised;
 - (h) ensure that the instruction and information entered into the Facility through your Merchant Terminal are correct and reflect the underlying Transaction;
 - (i) Make all reasonable efforts to resolve disputes from Customers in relation to a Transaction;
 - (j) Not facilitate a BPAY Payment if the Transaction value exceeds the Value stored on a Device;
 - (k) Stop accepting Cards if directed to do so by Moneytech Payments.
- 3.2 The Merchant must not and (where applicable) must ensure its Retailers do not, accept a Card or process (or continue to process) a Transaction;
- (a) if the Merchant ceases to be Approved for the purposes of the Facility;
 - (b) if to do so would result in the Transaction being processed through the Facility more than once;
 - (c) contrary to any messages displayed on the Merchant Terminal;
 - (d) if the Merchant is aware that the Merchant Terminal or the Facility is not online or is not functioning normally;
 - (e) using a handwritten voucher or an imprint machine (also known as a "click-clack" machine);
 - (f) (unless expressly authorised in writing by Moneytech Payments) to enable a Cardholder to obtain any cash, whether as a "cash out" transaction, a refund transaction (including a refund) or otherwise;
 - (g) where the Merchant becomes aware that the Card is being used fraudulently;
 - (h) where the Merchant is aware that the person attempting to use the Card is not the authorised Cardholder;
 - (i) process any Transaction (whether directly or indirectly) which was not originated as

- a result of a Transaction between you and a Customer to whom you have actually supplied the goods or services; or
- (j) to repay any debt (or part thereof), including an installment payment under a term credit arrangement for goods or services previously provided to the Cardholder by the Merchant or any third party;
 - (k) in relation to a Device, where to do so would result in a breach of the BPAY Paymer Terms;
 - (l) to pay a deposit or make recurring payments for goods or services not yet rendered.

3.3 A Transaction is invalid if:

- (a) the Transaction it records is illegal;
- (b) the Customer's authorisation to a Transaction is obtained by fraud or deception, unauthorised or otherwise invalid;
- (c) the particulars on the Itemised Receipt are not identical with the particulars on the Cardholder's copy;
- (d) the Card relating to the Transaction is not current at the time of the Transaction;
- (e) the Itemised Receipt is incomplete or illegible;
- (f) the authority for completion of the Transaction is forged, unauthorised by the true Cardholder, not signed where a signature was required or, in the case of a MOTO, the Transaction is not authorised by the Cardholder;
- (g) you do not observe this Agreement in relation to the Transaction, or the provisions set out in clause 3.2 above; or
- (h) any event referred in Clause 3.5 occurs.

3.4 We may refuse to accept, or may debit your Account, any Transaction if:

- (a) the Transaction is invalid;
- (b) the Customer claims the Transaction is invalid or disputes liability or the Transaction for any reason;
- (c) the Customer asserts a claim for set-off or a counterclaim;
- (d) we are ordered to do so by any governmental or regulatory authority under any Relevant Law

For the avoidance of doubt, Chargebacks may be processed to your Account up to 12 months after the date of the original Transaction.

3.5 The Merchant must notify Moneytech Payments immediately if the Merchant:

- (a) suspects or becomes aware that a Card has been used, or attempted to be used, at a Store in a fraudulent manner or contrary to the terms of this Agreement;
- (b) becomes aware of any technical or operational error in relation to a Card; or
- (c) becomes aware that the Merchant Terminal is unable to process a Transaction or is otherwise not functioning general;
- (d) if circumstances arise which may have a material adverse effect on the Merchant's business, assets or financial condition or the Merchant's ability to perform the Merchant's obligations under the Agreement;
- (e) if the Merchant sells, leases or transfers its business;
- (f) if a Merchant changes the address where it carries on business or otherwise changes its contact details (eg. telephone number, facsimile number or email address);
- (g) When requested by Moneytech Payments, the Merchant must promptly complete and

submit all forms and documents supplied or requested by Moneytech Payments within ten (10) days of a request;

- (h) where the Merchant is not listed on the Australian Securities Exchange, there is any change in the direct or indirect beneficial ownership or control of the business;
- (i) it disposes of the whole or any part of its assets, operations or business to the extent that such assets, operations or business include one or more Stores;
- (j) it ceases to carry on business or closes one or more Stores;
- (k) it ceases to be able to pay its debts as they become due;
- (l) any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operations or business;
- (m) any step is taken to enter into any arrangement between the Merchant and its creditors;
- (n) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business; or
- (o) where the Merchant is a partnership, any step is taken to dissolve that partnership.

3.6 MOTO Transactions;

In processing Transaction initiated by telephone you must give the Cardholder the following information at the time of the Transaction:

- (a) the receipt number;
- (b) the amount of the Transaction;
- (c) the type of Transaction (eg purchase, refund or credit)
- (d) Confirm the Card details charged; and
- (e) Your trading name.

3.7 On receiving a MOTO, you must maintain a written record of the following details:

- (a) Card number (last 4 digits only);
- (b) Expiry date;
- (c) Full name of the Cardholder as it appears on the Card
- (d) Full address of the Cardholder (no PO Box);
- (e) Telephone;
- (f) Details of goods or services supplied;
- (g) Price of goods or services supplied;
- (h) Delivery instructions; and
- (i) Date of transaction.

3.8 You warrant that by processing any Transaction that:

- (a) all information given to us in respect of that Transaction is true and correct;
- (b) the Transaction is valid; and
- (c) the sale in respect of the Transaction is not subject to any dispute set-off or counterclaim.

You further agree and acknowledge that MOTO Transactions are riskier than other Transactions and much more likely to result in a Chargeback. It is your responsibility to know and identify your customer. Each MOTO Transaction is at your risk.

This Clause 3 survives termination.

4. Merchant Account and Financial Information

- 4.1 You must maintain an Account and advise us of the details of that Account. We will credit your Account with the amount of the Transactions that you notify to us. You will notify us immediately if your Account details change.
- 4.2 In addition to the terms stipulated in your Direct Debit Authority, we can debit your Account with the following:
- (a) all service charges, fees and other charges set by us in the Fee Schedule and which are notified to you from time to time;
 - (b) all government charges and taxes including GST that apply;
 - (c) any over credits we have made in respect of Transactions due to errors or omissions;
 - (d) the value of Transactions which are invalid;
 - (e) the value of any Chargeback Transactions, regardless of the reason for, or timing of, the reversal or Chargeback;
 - (f) any fees, fines or penalties that we are required to pay to Interchange Parties as a direct or indirect result of your failure to observe your obligations under these Terms and Conditions;
 - (g) any other money you owe us under your Agreement with us.
- 4.3 You must pay on demand the amount of any debt you owe us under your Agreement which remains unpaid.
- 4.4 We can also debit or credit your Account with the amount of any deficiencies or charges we establish are payable following an audit or check of your Account.
- 4.5 We may withhold from processing credits to your Account if we determine, in our absolute discretion, that it is necessary to establish a Reserve amount as security for your obligations to us under the Agreement. The circumstances in which we may establish such a Reserve include, but are not limited to, the following circumstances:
- (a) if we have concerns about your solvency;
 - (b) in the event of your involvement in a disproportionately high number of Reversals or invalid Transactions; or
 - (c) under other circumstances where we have legitimate concerns about you or your business or Transaction processing.
- 4.6 We may deduct from or offset against such a Reserve any and all amounts you owe us. We will notify you if we establish such a Reserve.
- 4.7 Upon request, you will provide us with quarterly financial statements and/or annual audited financial statements, prepared in accordance with generally accepted accounting principles.

5. Moneytech Payments' Obligations to Merchant

- 5.1 Subject to Clause 3.3, for the purposes of this Agreement a Card Transaction shall have been authorised by Moneytech Payments if the Transaction has been completed through the Facility (and instigated by the use of a Card and the Card has been verified by physical presentment of the Card or the Merchant is otherwise authorised by Moneytech Payments to accept a card not present Transaction), and the Facility has responded to the Merchant

Terminal with a signal that the Transaction has been “Approved.”

- 5.2 Providing the Merchant complies with its obligations, Moneytech Payments shall effect settlement on behalf of Merchant of all Transactions effected by Cardholders through the Facility. Settlement statements shall be delivered to Merchant’s nominated email address by 4pm AEST. With regards to Direct Debit Arrangements, Moneytech Payments will collect payments as authorised in writing from time to time, by Merchant subject to Merchant’s Customers having completed a valid Direct Debit Arrangement (in printed or electronic format).
- 5.3 Merchant authorises Moneytech Payments to debit or credit (as the case may be) daily, the Account with the value of Transactions effected through the Facility by Cardholders together with the value of each and every other indebtedness and obligation of Merchant to Moneytech Payments under this Agreement.
- 5.4 Moneytech Payments will settle the Merchants settlement obligations based on information provided by other Interchange Parties. The parties agree that Moneytech Payments cannot be held responsible for errors made by other Interchange Parties. The parties agree to cooperate and use their best endeavours to correct any such errors.
- 5.5 Merchant acknowledges and agrees that the performance of the settlement is conditional upon:
- (a) the Facility being operational;
 - (b) communication links between relevant parties being operational; and
 - (c) other Interchange Parties’ computer systems being operational.
- 5.6 Merchant agrees that Moneytech Payments cannot be responsible for delays in the settlement processes caused by other Interchange Parties’ computer systems being inoperable or communication links being down.
- 5.7 Moneytech Payments acknowledges that the integrity of the Facility depends on Merchants being assured that authorised Transactions effected using a Card or Direct Debit Arrangement will not be reversed if the appropriate authorisation procedures are observed by the Merchant.
- 5.8 Moneytech Payments will provide you with customer service to resolve any issues relating to your access to, and use of, the Facility , and the distribution of funds to your designated Account. You, and you alone, are responsible for providing service to your Customers for any and all issues related to your products and services, including but not limited to issues arising from the processing of Transactions through the Facility.
- 5.9 You acknowledge and agree, notwithstanding anything contrary to other provision of this Agreement, that Moneytech Payments if fully released from any liability arising from or in connection with:
- (a) the Acquiring Institution;
 - (b) any Reversal;
 - (c) the Customer;
 - (d) any illegal or fraudulent misuse of the Facility.

6 Operating Procedures and Service Level Agreement

- 6.1 The Merchant shall meet the cost of maintaining an active connection to the Facility.
- 6.2 Subject to Clause 11 (Liability), Moneytech Payments shall use reasonable endeavours to make the Facility available to the Merchant on a 24 hours per day basis. For the avoidance of doubt, Moneytech Payments shall not be obligated to maintain the Facility and/or Facility if required to attend to scheduled or urgent equipment or software maintenance. Where possible Moneytech Payments will provide to the Merchant notification of any proposed scheduled maintenance to the Facility and use all reasonable endeavors to ensure that such maintenance not be carried out at peak Transaction volume times during business hours.
- 6.3 The Merchant shall ensure that it adheres to all relevant guidelines and standards from time to time reasonably declared by Moneytech Payments with regard to the technical and security aspects of the Facility.

7 Costs and charges

- 7.1 The Merchant shall pay to Moneytech Payments in respect of each Transaction which is authorised or declined, the transaction fees and such other fees defined in the with Moneytech Payments Fee Schedule annexed to your Transaction Documents.
- 7.2 All fees and charges set out or referred to in the Fee Schedule (including any fees which are varied pursuant to clause 7.3), are stated before the calculation of goods and services tax which shall, if required by law, be paid on all such fees and charges.
- 7.3 Moneytech Payments shall be entitled to vary the Fee Schedule at any time and shall notify the Merchant of the variation not less than two (2) weeks before such variation takes effect. Merchant shall be permitted to exit the Agreement on 7 days written notice to Moneytech Payments should you not approve the change to Fees.

8 Intellectual Property

- 8.1 The Merchant acknowledges and agrees that it has no right, title or interest in Moneytech Payments' Material, other than the right to use Moneytech Payments' Material for the purpose of performing its obligations under this Agreement.

9 Codes, Conduct and Regulations

- 9.1 If there is any change in, any making of, or any change in the interpretation or application of any law or any control, request or directive of a Government Agency or the Acquiring Institution, Moneytech Payments (acting reasonably) reserves the right to further vary any of the terms of this Agreement, to take into account those new circumstances.
- 9.2 If the circumstances occur as referred to in this Clause 8, Moneytech Payments agrees, where Moneytech Payments is able to do so, to:
- (a) provide the Merchant with reasonable notice of any changes Moneytech Payments will be required to make to this Agreement; and
 - (b) give the Merchant reasonable time to implement any changes required as a result of Moneytech Payments varying this Agreement.

- 9.3 If the changes that Moneytech Payments is required to implement will likely result in the Merchant suffering a Material Adverse Effect, then the Merchant will be entitled to terminate this Agreement by providing Moneytech Payments with not less than thirty (30) days (or such shorter period by which the changes requested by Moneytech Payments were to come into effect) prior written notice.
- 9.4 Each party warrants and represents that it holds, and will continue to hold, maintain and keep current, all licences, permits and authorisations required by law to perform its respective obligations pursuant to the Agreement.
- 9.5 To the extent relevant to this Agreement, the Merchant agrees to comply with all legislation and laws that are relevant to the transactions that arise from the operation of this Agreement. Merchant is required to obey all Relevant Laws applicable to your use of the Facility (for example, those governing financial services, consumer protection, anti-money laundering and counter terrorism financing and or deceptive or misleading conduct).
- 9.6 Merchant warrants that for the duration of the Agreement it will not undertake the giving of Financial Product Advice or breach the anti-hawking provisions of the Corporations Act 2001 (Cth) which apply to unsolicited meetings with another person.

10 Anti Moneytech Laundering Sanctions

10.1 The Merchant agrees that Moneytech Payments may, in its sole and absolute discretion:

- (a) Delay, block or refuse to process a Transaction;
- (b) Delay, block or refuse to settle any Transaction; or
- (c) Refuse to perform any one or more of its obligations under this Agreement or the Transaction Documents;

Without incurring any liability, if Moneytech Payments suspects, for any reason, that:

- (a) An action it is required or requested to take under this Agreement;
- (b) Its involvement in any Transaction that is in any way connected with this Agreement or the Transaction Documents;
- (c) Its performance of any services for any person in connection with this Agreement or the Transaction Documents;

Might in any way cause Moneytech Payments;

- i. To breach any Relevant Law;
- ii. To avoid an unlawful act;
- iii. To deal in any way with a person (natural, corporate or government) that is sanctioned or is connected in any way to any person that is sanctioned, under economic and trade sanctions imposed by the United Nations, the EU or any country.

10.2 The Merchant must provide all information to Moneytech Payments which Moneytech Payments reasonably requires in order to:

- (a) Manage anti-money laundering, counter terrorism financing risk;
- (b) To comply with any Relevant Laws, regulations or prohibitions that may be applicable to Moneytech Payments with respect to any Transaction; and/or

- (c) To avoid any unlawful act.
- 10.3 The Merchant further warrants and undertakes that it will not request Moneytech Payments to take any action or perform any obligation, in connection with this Agreement that might cause Moneytech Payments to be involved in any unlawful act or breach any Relevant Law.
- 10.4 The Merchant agrees that Moneytech Payments may disclose any information concerning the Merchant to any law enforcement agency or court where require to do so under any Relevant Law (including that of a foreign place or jurisdiction).

11 Moneytech Payments' Liability

11.1 Moneytech Payments:

- (a) does not warrant that the Facility will be fully operational at all times;
- (b) does not warrant that the Facility is free from inaccuracies, defects or errors; and
- (c) must use reasonable endeavours to ensure that the Facility is, to the best of Moneytech Payments knowledge, information and belief, substantially free of any known errors.

11.2 Moneytech Payments is not liable to the Merchant for any loss or damage suffered or incurred by it or to any third party for or arising out of:

- (a) anything done by Moneytech Payments in good faith and not otherwise in breach of this Agreement;
- (b) the fraudulent use or misuse of Cards (or the information stored on the Card), whether lost, stolen or otherwise;
- (c) a missing or erroneous payment made beyond the reasonable control of Moneytech Payments;
- (d) any process, computer failure or Facility disruption beyond the reasonable control of Moneytech Payments;
- (e) termination of the Agreement in accordance with Clause 15.

11.3 Where permitted by law, Moneytech Payments' total liability and Merchant's sole and exclusive remedy for:

- (a) any one claim (of any type); and
- (b) the aggregate of all claims (of any type) that occur in a 12 month period,

shall be AUD \$10,000.00

11.4 Subject to the *Competition and Consumer Act* 2010 (Cth), Moneytech Payments makes no and hereby specifically disclaims any, representations or warranties, express or implied, regarding the Facility, the Facility and other deliverables contemplated by the Agreement or otherwise arising under or in connection with the Agreement, and Moneytech Payments specifically disclaims any implied warranty of merchantability, fitness for a particular purpose, title, or non infringement, and implied warranties arising from course of dealing or course of performance.

- 11.5 When Merchant is a consumer in relation to any particular services or products supplied under this Agreement, certain legislation may imply warranties or conditions or impose obligations upon Moneytech Payments which cannot be excluded, restricted or modified. If such legislation applies, and to the extent Moneytech Payments is able to do so, Moneytech Payments' liability will be limited, at its option, to:
- (a) In the case of products: the replacement of products or resupply of equivalent products; repair of the products; payment of the cost of replacing the products or acquiring equivalent products; or the payment of the cost of having the products repaired; and
 - (b) In the case of services: the supply of the services again; or payment of the reasonable cost of having the services supplied again.

12 Merchant Indemnification

- 12.1 The Merchant and its successors and assigns shall defend, indemnify and hold Moneytech Payments, its officers, employees and agents (collectively "Indemnified Parties") harmless from and against any and all loss suffered or incurred (including reasonable legal costs and expenses) or liability incurred by the Indemnified Parties from any claim, demand, suit, action or proceeding where such loss or liability arose out of or in connection with:
- (a) any use of the Facility or Facility by the Merchant otherwise than in accordance with these Terms and Conditions;
 - (b) infringement, misuse or misappropriate of any third party Intellectual Property rights;
 - (c) failure to comply with any Relevant Laws;
 - (d) a refusal by Moneytech Payments to make payment where the refusal to pay arises from a direction to refuse payment given by the Merchant, its servants employees or agents, Merchants or Cardholders or as a result of Moneytech Payments of any of its rights pursuant to the Transaction Documents;
 - (e) a claim or demand of any kind against Moneytech Payments or its affiliates by the Merchant or Customer or any other person arising from or relating in any way to a Transaction;
 - (f) A payment made by Moneytech Payments as a result of a Card or the information stored on the Card being stolen or obtained by a person who uses it fraudulently or deceptively;
 - (g) Any loss suffered or incurred by any of the Customers or other third parties arising out of Moneytech Payments blocking, delaying, freezing or refusing any transactions as it is permitted to do so under the Transaction Documents;
 - (h) Any incorrect payment of money to, or the incorrect debiting of an account with a Merchant or another financial institution caused by the acts, omissions, negligence or fraud of the Merchant, its Retailers or any of your Customers; provided that the loss or liability is not caused by any fraud, negligence or wilful default on the part of Moneytech Payments, its employees, its servants or agents.
- 12.2 For the purpose of this clause 12, Moneytech Payments will not be taken to have been negligent if it had acted as required or contemplated by this Agreement or at the express request or direction of the Merchant and even if those acts of Moneytech Payments might otherwise be considered negligent.

13 Consequential Loss Exclusion

- 13.1 Neither Party shall be liable to the other for lost profits or business, loss of goodwill or damage to reputation, increased overheads or any costs or expenses incurred, loss of production, or any other indirect, consequential, special, incidental, exemplary or punitive damages or loss, whether based in Agreement or tort (including negligence, strict liability or otherwise) whether or not either Party has been advised of the possibility of such damages or loss (Consequential Loss) under this Agreement.

14 Audit and compliance review

- 14.1 The Merchant acknowledges and agrees that, subject to clause 13.2, Moneytech Payments or a person nominated by Moneytech Payments, may conduct audits and reviews of the Merchant's compliance with its obligations under this Agreement, including in relation to:
- (a) the Merchant's processes, practices and procedures as they relate to this Agreement;
 - (b) the accuracy of the Merchant's records and reports in relation to your Agreement with Moneytech Payments; or
 - (c) any other matters reasonably determined by Moneytech Payments to be relevant to compliance with this Agreement
- 14.2 Without limiting the above, the Merchant acknowledges and agrees that Moneytech Payments or a person nominated by Moneytech Payments may, without prior notice to the Merchant, undertake random compliance testing at any Store (during normal opening hours) to confirm the Merchant's compliance (or otherwise) with its obligations under this Agreement.
- 14.3 Generally, each party must bear its own costs of any audits or compliance reviews. However, if the audit or compliance review concludes that the Merchant has breached this Agreement or the Transaction Documents, Moneytech Payments may, by notice in writing to the Merchant, require the Merchant to reimburse Moneytech Payments for the Moneytech Payments reasonable costs incurred in conducting the audit or compliance review.

15 Termination

- 15.1 This Agreement and Merchant's access to the Facility automatically terminate with immediate effect upon the Merchant ceasing to be Approved for the purposes of the Facility.
- 15.2 Either party may voluntarily withdraw from the Facility at any time. Such party must give at least 30 days' written notice to the other.
- 15.3 For the avoidance of doubt, Moneytech Payments may immediately terminate this Agreement or suspend Merchant's access to the Facility, on written notice, upon the happening of any one or more of the following events:
- (a) Merchant or its Retailer is involved in, or Moneytech Payments acting reasonably suspects Merchant is involved in, any unauthorised or illegal act, fraud or dishonesty;
 - (b) Merchant or its Retailer breaches, or Moneytech Payments' acting reasonably

- (c) suspects Merchant may breach any Relevant Law or Class Order; Merchant or its Retailer is subject to any banning order or disqualification pursuant to any Relevant Law;
- (d) A change in any Relevant Law or Card Scheme by which Moneytech Payments' is bound materially impacts its ability to provide the Facility.

15.4 Upon termination of this Agreement:

- (a) the Merchant must not (and must ensure its Retailers do not) accept or process a Card Transaction;
- (b) the Merchant must promptly remove any Moneytech Payments logo or other Card display material from each Store;
- (c) the Merchant must return any Moneytech Payments Material to Moneytech Payments within ten (10) business days of the date of termination;
- (d) the Merchant waives all rights to damages, claims or other compensation from Moneytech Payments for any loss it suffers or may suffer as a result of the termination, however caused, and
- (e) the accrued rights or remedies of Moneytech Payments and the Merchant are not affected.

15.5 Subject to applicable law and the rules of any Card Scheme, for a period of two (2) weeks commencing from the date of the termination or expiry of this Agreement, Moneytech Payments will assist you in transferring Customer information (including Direct Debit Arrangements) from our Facility to Merchant's replacement service provider. Moneytech Payments will have no further obligations under this clause following the expiry of this two (2) week period in respect of the matter set out in this clause.

15.6 Within a reasonable time period following the termination or expiry of this Agreement, Moneytech Payments will:

- (a) Deduct all outstanding Fees or other amounts owing by Merchant to Moneytech Payments from the funds held by Moneytech Payments on your behalf in your Account; and
- (b) Pay to you the balance of the funds held by Moneytech Payments on Merchant's behalf.

16 Variation

16.1 Moneytech Payments may amend this Agreement at any time by giving you notice of the variation whether in writing or by posting a notice online at www.moneytech.com.au. Such notice may be given to you as the Client or generally as a group (and not to you specifically).

16.2 Subject to Clause 7.3, the variation takes effect on the day specified in Moneytech Payments notice. Merchant is bound by the amendments at the earlier of:

- (a) Ten (10) days after Moneytech Payments has posted notice of the amendment on its website at www.moneytech.com.au/legal ;
- (b) On the date you process a Card Transaction after the amendment is notified.

17 Privacy and Confidentiality

17.1 In connection with the use of a Card, the Merchant must:

- (a) only collect or retain personal information if required to do so by this Agreement or by law;
- (b) only disclose personal information collected or retained in accordance with paragraph (a) if the disclosure is required by this agreement or by law, consented to by the individual to whom the personal information relates, or is otherwise permitted by the Australia Privacy Principles.

17.2 You agree to keep all Confidential Information, confidential, including the terms of your Agreement with us, confidential.

17.3 Moneytech Payments is committed to compliance with the Privacy Act 1988 and the Australian Privacy Principles. Our Privacy Policy and Credit Reporting Policy sets out how we look after your personal information generally as well as containing specific details as to how we look after your credit related personal information. It is available for you to view online at www.moneytech.com.au.

18 General Warranties

18.1 The Merchant represents and warrants to Moneytech Payments that the information contained in the Transaction Documents is true and not misleading (by omission or otherwise).

18.2 The Merchant must notify Moneytech Payments immediately if any of the information contained in the Transaction Documents becomes incorrect or misleading in any respect.

18.3 The Merchant represents and warrants to Moneytech Payments that all Card Transaction information provided by the Merchant to Moneytech Payments from time to time is true and complete when provided.

19 Assignment

The Merchant may not assign its rights under this Agreement without the prior written consent of Moneytech Payments. Moneytech Payments' may assign this Agreement on written notice.

20 Governing law

This Agreement is governed by the laws of New South Wales and the parties agree to irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts of the State of New South Wales.

21 Independent legal advice

Merchant has obtained its own independent legal advice in respect of this Agreement and agrees to submit to and comply with the Agreement.