



INVAPAY AUSTRALIA LTD

TERMS AND CONDITIONS

For Buyers

These Terms and Conditions as amended from time to time define the basis on which Invapay Australia Ltd will provide you with certain services. These Terms and Conditions will take effect and will be binding on you when you accept them; and you will be deemed to accept these Terms and Conditions every time you use such services.

IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THESE TERMS AND CONDITIONS BEFORE ACCEPTING THEM.

Capitalised terms used in these Terms and Conditions have the meanings assigned to them in the text or in Schedule 1 (*Definitions and Interpretation*).

1 Information About Us

- 1.1 We are Invapay Australia Ltd (ACN 605 813 009) ("**Invapay**", "**we**", "**us**" or "**our**").
- 1.2 Our registered address is at Level 34, AMP Centre, 50 Bridge Street, Sydney, NSW 2000, Australia.

2 Our Services

- 2.1 Invapay provides payment execution and processing services enabling you as a business undertaking ("**Buyer**", "**you**" or "**your**") to make payment ("**Payment**") to third party vendors (each, a "**Seller**") for goods or services ("**Goods**") ordered and paid for through the website operated by Invapay (the "**Website**").
- 2.2 Buyer may make such Payments by:
 - (a) using any payment card ("**Card**") that is acceptable to Invapay ("**Card Service**"); or
 - (b) using the direct billing services provided by Invapay together with the Funding Institution ("**Direct Billing Service**").

together, the "**Services**".

3 Your Relationship with Seller

- 3.1 Any contract between you and a Seller in respect of any Goods ordered and paid for through the Website is independent of these Terms and Conditions and is entirely between you and such Seller.
- 3.2 Any Payments to be made by you to a Seller, through the Website, pursuant to the contract under Clause 3.1 are your sole obligation which shall not be discharged until the amount of the relevant Payment has been received by the relevant Seller under that contract.



3.3 For the avoidance of doubt, we shall not act as agent on behalf of any Seller in respect of receiving the amount of any Payments under Clause 3.2 and our receipt of the amount of any such Payments shall not constitute settlement of your obligation to the relevant Seller described under Clause 3.2.

3.4 The Buyer agrees to receive electronic invoices (including Tax Invoices) from Invapay on behalf of the Seller. Invapay will prepare and issue electronic invoices in its role as third party invoicing agent, on behalf of the Seller.

4 Use of Services

4.1 You must register with us on the Website and accept these Terms and Conditions in order to use the Services. You must also apply for and maintain an account with the Funding Institution ("**Funding Account**") pursuant to any terms and conditions or other agreements between you and the Funding Institution (the "**Funding Terms**") in order to use the Direct Billing Service.

4.2 We may carry out enquiries to verify and authenticate your Card and you agree to provide such information as reasonably requested by us for the purposes of such inquiries.

4.3 In case of any conflict between these Terms and Conditions and the Funding Terms in relation to the Direct Billing Service, the Funding Terms shall prevail.

4.4 You shall keep safe the security features, including password and login details for access to the Website, and be responsible for ensuring that such security features are used by and available to only you or any person authorised by you.

4.5 You shall notify us by calling our contact number immediately upon becoming aware that the security features have been compromised, misappropriated or rendered unsafe in any manner.

4.6 We shall use reasonable efforts to enable access to and use of the Website and/or the Services at all times subject to Clause 4.7. We do not guarantee or warrant that access to and use of the Website and/or the Services will be uninterrupted, reliable or fault free.

4.7 We may suspend, modify, deny, discontinue, cancel or stop any access to or use of the Website and the Services ("**Interruption**") at any time for the following reasons:

- (a) the maintenance of, or technical or other enhancements to the Website;
- (b) the security of the Website;
- (c) any material breach by you of any of your obligations under these Terms and Conditions;
- (d) suspected unauthorised or fraudulent use of the Website and/or the Services; or
- (e) any event under Clause 19.6 (*Force Majeure*).



- 4.8 We shall notify you of any Interruption as soon as reasonably practicable and we shall use reasonable efforts to minimise the duration and/or impact of such Interruption.
- 4.9 We shall not be liable for any Loss suffered or incurred by you or any other person arising out of any Interruption.
- 4.10 You shall cooperate with any investigation or inquires carried out by us or pursuant to any Applicable Regulations, in connection with the use of the Website and/or the Services.

5 Payment Authorisation and Execution

- 5.1 We shall not execute any Payment unless you have provided us, upon receipt of the Goods for which the Payment is to be made, with a consent through the Website ("**Consent**"):
 - (a) confirming that the Goods meet all your requirements;
 - (b) authorising us to execute the Payment by collecting the amount of the Payment from your Card or Funding Account, where applicable, and without undue delay transmitting electronically such amount to the relevant Seller(s); and
 - (c) authorising us to debit your Card or Funding Account, where applicable, for the amount of any Fees that you owe us for executing the Payment.
- 5.2 You indemnify us, and our officers, directors and employees, and must keep us, and our officers, directors and employees, indemnified on demand in connection with:
 - (a) any fraudulent payment authorisations committed by your organisation staff or financial claims by any suppliers and any third party;
 - (b) any Card chargeback risks, due to non-delivery of goods, goods unfit for purpose and other contractual deficiencies caused by the Seller, your staff or any third party; and
 - (c) chargeback/fraud risks for any Payment requests sent to us using public/unsecure email services instigated by your organisation, your staff, any supplier or any third party.

The indemnities in this clause 5.2 survive termination of these Terms and Conditions.

- 5.3 The time of receipt of the Consent under Clause 5.1 shall be:
 - (a) the day on which the Consent is received by us;
 - (b) if the day under Clause 5.3(a) is not a Business Day, the Business Day following that day;
 - (c) if the Consent is received after 17:00 on a Business Day, the Business Day following that day;



- (d) if the Consent specifies a particular date on which a Payment must be made, that date.
- 5.4 We may refuse to execute or delay executing any Payment if:
- (a) your Card or Funding Account, where applicable, has been blocked, suspended or restricted by any third party service provider;
 - (b) funds standing to the credit of your Card or Funding Account, where applicable, are not sufficient for such Payment;
 - (c) you have brought a dispute or claim against Invapay and/or the Funding Institution, where applicable, and that dispute or claim has not been resolved;
 - (d) we have reason to believe that there is any unauthorised or fraudulent use of the Website or the Services; or
 - (e) we do so pursuant to any Applicable Regulations.
- 5.5 We shall not be liable for any Loss suffered or incurred by you or any other person arising out of the refusal to execute or delay in the execution of, any Payment as a result of us taking action under Clause 5.4. In the event of such refusal or delay we will notify you as soon as reasonably practicable.
- 5.6 In case of any unauthorised Payment, or non-execution or defective execution of any Payment:
- (a) you shall notify us without undue delay upon becoming aware of such unauthorised or non-execution or defectively executed Payment;
 - (b) our records shall be conclusive evidence as to proper authorisation and/or correct execution of such defectively executed Payment; and
 - (c) subject to Clauses 5.6(a) and 5.6(b), we shall refund the amount of such Payment to you without undue delay unless you have:
 - (i) acted fraudulently; or
 - (ii) with intent or gross negligence, failed to comply with any of your obligations under these Terms and Conditions.
- 5.7 If a Payment is rejected by the Seller(s), we shall refund the amount of such Payment to you within 30 Business Days of such rejection.
- 5.8 In case of any refund under Clauses 5.6 or 5.7, you shall be liable for any charges or costs incurred by us and notified to you.
- 5.9 After execution of each Payment, such information as references enabling you to identify the Payment, amount of the Payment, Fees payable for the Payment and other relevant transaction data for reconciliation purposes will be generated automatically and provided to you electronically.



6 Our Fees

- 6.1 You shall pay our fees in consideration for the provision of the Services and you shall also pay any charges imposed by third party service providers in connection with the provision of the Services (together, the "**Fees**"), in accordance with this Clause 5 and the requirements set out in any relevant notices sent to you under this Clause 6.
- 6.2 The details of the Fees will be notified to you when you register with us in accordance with Clause 4.1 and prior to the execution of each Payment.
- 6.3 We may amend or vary such Fees, and such amendment or variation shall take effect on the date specified in the relevant notice of amendment.
- 6.4 If you fail to pay any Fees due and payable under these Terms and Conditions, we may, in our absolute discretion, and without prejudice to other remedies available to us, charge interest on any amount due and payable under these Terms and Conditions.
- 6.5 Interest under clause 6.4 is calculated for the period in each calendar month during which the amount is outstanding at the rate equal to the aggregate of 3 per cent per annum plus the 90 day bank bill swap reference rate (Bloomberg) as last published prior to the commencement of that month in The Australian Financial Review or, if that rate is not published, at a similar rate chosen by us, acting reasonably).

7 Representations and Warranties

- 7.1 You represent and warrant that at the time of your registration with us in accordance with Clause 4.1 and each time you use the Website:
- (a) you act for the purposes of your business when you use the Website and the Services;
 - (b) you have proper authority and power to enter into these Terms and Conditions, purchase and pay for the Goods through the Website, given Consent to the execution of any Payment and perform any and all of your obligations under these Terms and Conditions;
 - (c) the ordering and purchase of the Goods and making Payment by you for such Goods through the Website do not violate any applicable laws or regulations;
 - (d) you have complied and will comply with all laws, regulations and rules applicable to you (including all applicable privacy laws) and you have obtained and will maintain all consents, permissions and licences necessary for carrying on your business;
 - (e) you and any person authorised by you shall use the Website and/or the Services only in accordance with these Terms and Conditions;
 - (f) you and any person authorised by you shall not introduce to the Website or any of our systems any viruses including trojan horses, worms or other deleterious material that can harm, interfere with, intercept or expropriate



the Website, the Services or any of our systems, nor use any device, software or routine to bypass our robot exclusion headers, or interfere or attempt to interfere, with the Website or the Services;

- (g) you and any person authorised by you shall not monitor or copy the Website without our prior written permission;
- (h) you and any person authorised by you shall not take any action that may cause us to lose any of the services from our internet service provider, payment processor or other suppliers; and
- (i) all information provided by you or any person authorised by you, pursuant to these Terms and Conditions or for the purposes of executing any Payment, is correct, true, accurate, complete and not misleading.

8 Indemnity

8.1 You indemnify us, and our officers, directors and employees, and must keep us, and our officers, directors and employees, indemnified on demand against any Loss sustained or incurred by us, or any of our officers, directors and employees, in connection with any incorrect or misleading information or instructions received from you, or the unauthorised use of the Website and/or the Services caused by you, or any failure on your part to comply with any reasonable instructions issued by us from time to time.

8.2 You indemnify us, and our officers, directors and employees, and must keep us, and our officers, directors and employees, indemnified on demand against any Loss sustained or incurred by us, or any of our officers, directors and employees, including in connection with any claim brought by a third party as a direct or indirect result of your breach of your obligations under these Terms and Conditions or your use of the Website or the Services, except to the extent such Loss arises from our negligence, wilful default or fraud.

8.3 You indemnify us, and our officers, directors and employees, and must keep us and our officers, directors and employees, indemnified on demand against any Loss sustained or incurred by us, or any of our officers, directors and employees, as a result of processing a Payment to a Seller pursuant to instructions and/or authorisations received by us from a third party whom we have reason to believe is acting on your behalf.

8.4 The indemnities in this clause 8 survive the termination of these Terms and Conditions.

9 Limitation of Liabilities

9.1 Subject to any condition, warranty or right implied by, or any statutory consumer guarantee contained in, any law (including the Competition and Consumer Act 2010 (Cth)) which cannot by law be excluded by agreement:

- (a) we give no warranties, and you has no other rights, apart from those, if any, expressly set out in these Terms and Conditions; and
- (b) all implied conditions, warranties and rights are excluded.



9.2 Where any condition, warranty or right is implied by law, or any statutory consumer guarantee applies, and cannot be excluded, we limit our liability for breach of, or other act contrary to, that implied condition, warranty or right or statutory consumer guarantee:

- (a) subject to the qualifications in section 64A of Schedule 2 of the Competition and Consumer Act 2010 (Cth) or any other law in connection with the supply of Services, to one of the following (as we may determine):
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again; and
- (b) otherwise, to the extent permitted by law.

9.3 We shall not be liable for:

- (a) any Goods you purchase and are paid for through the Website using our Services;
- (b) any Loss suffered or incurred by you or any other person arising from or in connection with any contract entered into between you and a Seller;
- (c) any of your obligations to make Payments under or in connection with any contract entered into between you and a Seller;
- (d) any Loss suffered or incurred by you or any other person arising out of any services (including suspension, delay or loss of such services) provided to you by any third party service provider in respect your Card or Funding Account;
- (e) any Loss suffered or incurred by you or any other person arising from or in connection with any act or omission of the relevant Seller including failure to make delivery of the Goods purchased and paid for by you through the Website;
- (f) any error, delay or failure in relation to execution of Payments or the provision of the Service caused by incomplete or incorrect information provided to us by you or any person authorised by you to act on your behalf;
- (g) any unauthorised use of or access to data relating to you or your Payments which is held by us (unless such use or access is caused by our negligence, fraud or failure to comply with applicable privacy laws); and
- (h) any Loss suffered or incurred by you or any other person arising from or in connection with the use of a Card which does not have imprinted on it a credit card verification number (a "**CVV2 Number**") or other security code prescribed by the Card Issuer or Card Association, to make Payment to a Seller using the Website.

9.4 Subject to the provisions of clauses 9.1 and 9.2, and despite any implication arising from any other provisions of these Terms and Conditions, we are not, and will not



be, liable to you in contract, in tort (including negligence), under any statute (to the extent permitted by law) or otherwise for, or in respect of, any:

- (a) indirect or consequential loss or damage; or
- (b) loss of profits, sales, turnover, reputation (or damage to it), production, anticipated savings, goodwill, business opportunities, customers, software or data, or loss of use of any software or data, or loss under, or in relation to, any other contract; in each case, whether of a direct, indirect or consequential nature,

suffered by you or any other person and arising out of any breach or other act or omission in connection with these Terms and Conditions.

9.5 Subject to this clause 9, and despite any implications arising from any other provisions of these Terms and Conditions, our total liability in contract, in tort (including negligence), under statute (to the extent permitted by law) or otherwise for, or in respect of, any direct loss or damage arising out of any breach or other act or omission in connection with these Terms and Conditions, together with any amounts payable to you under obligations of indemnity, restitution or other entitlements to compensation, will not exceed the amount of the Fees that have been paid by you.

9.6 The limitations on our liability in clause 9.5 does not apply where that liability is in respect of death or personal injury caused by our negligence.

10 Use of Trademark etc.

10.1 We are the owner or licensed user of our software and grant you a limited non-exclusive, royalty-free licence to use our software, (including any updates, upgrades, new versions and replacement software), where applicable, in accordance with all documentation, for your personal use only in using our Website and/or the Services and not otherwise. You may not assign, transfer or sub-licence your rights to use the software to anyone. You agree not to alter, reproduce, adapt, distribute, display, publish, reverse engineer, translate, disassemble, decompile or otherwise attempt to create any source code which is derived from the software. You acknowledge that as between you and us all rights to our software are owned by us or our licensors.

10.2 All rights in the design, text, graphics and other material on the Website and the selection or arrangement thereof are the copyright of us or other third parties. Permission is granted to copy electronically and print in hard copy portions of the Website solely in connection with the acquisition of Goods through the Website and/or use of the Services. Any other use of materials on the Website (including reproduction for purposes other than those noted above and alteration, modification, distribution, or republication) without our prior written permission is strictly prohibited.

10.3 We are the proprietor or licensed user of the "Invapay" trade mark in Australia and other countries. All other trade marks, product names and company names or logos used or displayed on the Website are our property or that of their respective owners. No permission is given by us in respect of the use of any such trade marks,



get-up, product names, company names, logos or titles and such use may constitute an infringement of the holder's rights.

11 Taxes

- 11.1 In this clause 11.1, terms used which are not defined in this document, but which are defined in the GST Law, have the meanings given in the GST Law. Unless stated otherwise, all consideration provided under an agreement to which this document relates is exclusive of GST. If GST is payable by the party making the supply ("**supplier**"), the recipient of the supply must, upon receipt of a Tax Invoice from the supplier, pay the supplier an amount equal to the GST payable on that supply.
- 11.2 You agree to pay all Taxes (other than taxes based on Invapay's income) related to the Services or payments made by you under an agreement to which this document relates. All payments due to Invapay must be made without any deduction or withholding on account of any Taxes (other than taxes based on Invapay's income) unless required by law. If a deduction or withholding is required to be made by law, the sum payable by a party in respect of which such deduction or withholding is to be made must be increased to the extent necessary to ensure that, after making such deduction or withholding, Invapay receives an amount equal to the payment it would have received if no such deduction or withholding had been required.
- 11.3 You are responsible for collecting, reporting and paying any Taxes that may arise from your use of the Services. You agree to comply with applicable tax laws in connection with your use of the Services.

12 Anti-money laundering requirements

- 12.1 Invapay is required by the applicable law on the prevention of money laundering and terrorist financing to obtain sufficient customer and account opening details and information to satisfy itself as to your identity. In order to comply with these requirements, we require the completion of all account opening formalities, including where we deem necessary, confirmation from third parties (at your expense) of the authenticity of any identification documentation, prior to any Services being provided and Payments being processed. We reserve the right to close any account if within a reasonable period, we are unable to obtain and complete, or are prevented from obtaining and completing satisfactory customer due diligence.
- 12.2 You authorise us to make any inquiries necessary to verify your identity. This includes requesting further information from you, requiring you to provide evidence of ownership of your email address or financial accounts, ordering a credit report and verifying your information against third party databases or other sources

13 Confidentiality

- 13.1 Subject to Clause 13.2, neither party to these Terms and Conditions shall without the prior written consent of the other, use or disclose any information relating to the business, finances or other matters of a confidential nature of the other party, except to the extent such use or disclosure is to any of its affiliates or is required by Applicable Regulations, or in response to a request for information from any regulatory authority, or is necessary or desirable for the purposes of, or to enable



the disclosing party to properly perform its obligations under, these Terms and Conditions. The provisions of this Clause 13 shall continue to apply following the termination of these Terms and Conditions.

- 13.2 The obligation of confidence in clause 13.1 does not apply to confidential information that is:
- (a) in the public domain otherwise than as a result of a breach of these Terms or Conditions or another obligation of confidence;
 - (b) independently developed by the recipient; or
 - (c) already known by the recipient independently of its interaction with the disclosing party and free of any obligation of confidence.

14 Privacy

- 14.1 You acknowledge that in the course of providing the Services to you, we may collect, hold, use and disclose Personal Information about you or your employees, agents or representatives. Such Personal Information may be collected, held, used or disclosed by us for the following purposes (the "**Permitted Purposes**"):
- (a) administering the relationship between you and us and carrying out our obligations under these Terms and Conditions;
 - (b) carrying out statistical analysis and business reporting;
 - (c) marketing products and services to you as described below; and
 - (d) complying with any legal or regulatory requirements or responding to regulatory inquiries or otherwise defending, preserving or establishing our legal rights.
- 14.2 You acknowledge and agree that we may, for any Permitted Purpose, disclose Personal Information to our affiliates or a third party, including fraud prevention and law enforcement agencies, to any person to whom our rights or obligations under these Terms and Conditions might be, or are, transferred or assigned, to any person acting on our behalf. You consent to the processing and disclosure of Personal Information for the Permitted Purposes and agree to procure such consent from your employees, agents and representatives. You may request us to make available to you a copy of the Personal Information in line with the Privacy Law. You may also request us to correct inaccurate Personal Information.
- 14.3 You agree that we may use such Personal Information for marketing to you our or our affiliates' products and services, and those of third parties which we consider may be of interest to you, and we also may disclose such Personal Information with our affiliates, marketing partners, update providers and other suppliers for such purposes. Such marketing may be by post, telephone or other electronic communications, including e-mail. You shall notify us at the time you enter into these Terms and Conditions or any time in writing if you do not want us to use or share such information for marketing purposes.



- 14.4 You agree that we may disclose, for the Permitted Purposes, Personal Information provided to us by you, to the recipients located in countries outside of Australia which may not afford the same level of data protection as within Australia. These countries may include the United Kingdom. You acknowledge that we will not be accountable under the Privacy Law for such disclosure and that you may not be able to seek redress under the Privacy Law.
- 14.5 You undertake that, when collecting Personal Information from an individual which will be disclosed to us, you must inform the individual of, and cause the individual to agree to, the following:
- (a) that we are the organisation for whom the Personal Information is being collected in order that we may provide the Services;
 - (b) the collection of some or all of the individual's Personal Information may be required or authorised by laws regulating financial crime or other laws;
 - (c) the Personal Information is collected for the Permitted Purposes;
 - (d) if the individual's Personal Information is not collected by us, we may not be able to provide or continue to provide all or part of the Services;
 - (e) the individual's Personal Information may be disclosed to recipients of the kind referred to in this clause 14, whether such recipients are located in Australia or overseas (including the countries referred to in clause 14.4); and
 - (f) the fact that the individual's Personal Information will be dealt with by us in accordance with our privacy policy, as amended from time to time;
 - (g) that such privacy policy contains information regarding how the individual may request access to the Personal Information from us and seek correction of such Personal Information make complaints; and
 - (h) that such privacy policy contains information regarding how the individual may complain about a breach of the Australian Privacy Principles under the Privacy Law and how we will deal with such a complaint.
- 14.6 You must comply with the Privacy Law in the handling of any Personal Information.

15 Complaint

- 15.1 If you have any complaints about our Services, please write to Customer Relations Manager at Invapay Australia Ltd, AMP Centre, 50 Bridge Street, Sydney, New South Wales 2000 or email to customerservices@invapay.com.

16 Variation

- 16.1 We may amend or modify these Terms and Conditions at any time.
- 16.2 Any change or variation to these Terms and Conditions shall be notified to you on the Website or, at our absolute discretion, provided to you by email or post and shall become effective on the date specified in the relevant notice.



16.3 You are deemed to have accepted such changes unless you notify us that you do not accept these changes in which case either party may terminate these Terms and Conditions pursuant to Clause 17.

16.4 You may only amend or vary these Terms and Conditions with our prior written agreement.

17 Termination

17.1 These Terms and Conditions shall remain effective and binding unless terminated by either party in accordance with this Clause 17.

17.2 Either party may terminate these Terms and Condition by giving the other party three months notice or, in case of Clause 16.3, immediately prior to the date of relevant changes under Clause 16.3 becoming effective.

17.3 Upon termination, the rights of access to the Website and the Services will cease and you shall ensure that the Website and each part thereof is deleted from all electronic media, including intranet and electronic storage devices operated for and on your behalf.

17.4 We may terminate your use of the Website and Services immediately without notice if you are in material breach of any of your obligations under these Terms and Conditions.

17.5 Any rights and obligations that have accrued to or incurred by either party at the date of termination shall survive termination.

18 Notice

18.1 Any notice expressly required to be provided to either party under these Terms and Conditions shall be sent to the email address(es) provided to the other party by that party or, if requested by that party, to the other party's place of address by post.

18.2 Subject to Clause 18.1, all notices issued by us under these Terms and Conditions shall be made by posting them on the Website.

18.3 Any notice shall be deemed to be received, if sent by email, at the time it is shown that such notice is sent to the designated email address(es) successfully; if sent by post, three Business Days after the date of posting in Australia; if posted on the Website, the time it is so posted.

19 General

19.1 Links to other site. The Website may contain links and pointers to other Internet sites and resources. Links to such site or resources do not constitute an endorsement by, or association with, us of any third party or their contents. Links do not imply that we are affiliated or associated with or are legally authorised to use any trademark, trade name, logo or copyright symbol displayed in or accessible through the links. We do not represent or endorse the accuracy or reliability of, and expressly disclaim, any advice, opinion, statement, or other information displayed or distributed through any such linked sites or resources. You acknowledge that



any reliance upon any opinion, advice, or information displayed on or otherwise available through any such linked sites or resources shall be at your sole risk.

- 19.2 Non-exclusivity. The Services rendered by Invapay to you are not exclusive and you acknowledge that we may service other customers and intend to do so in the future.
- 19.3 Our records. Our records, unless shown to be wrong, will be conclusive evidence of your dealings with us in connection with our Services. You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer.
- 19.4 Assignment. You may not transfer any obligations or assign any rights you have under these Terms and Conditions without our prior written consent. You hereby agree that we may transfer our obligations or assign our rights under these Terms and Conditions at any time.
- 19.5 Severability. If any provision of these Terms and Conditions is, or becomes, illegal, invalid or unenforceable in any respect under the law of any jurisdiction, such illegality, invalidity or unenforceability shall not affect the other provisions of these Terms and Conditions which shall remain in full force and effect.
- 19.6 Force majeure. Neither party shall be liable to the other party for any partial or non-performance of its obligations (including, in the case of Invapay, non-execution or defective execution of any Payments), by reason of Force Majeure.

For the purposes this Clause 19.6, "Force Majeure" means any abnormal and unforeseeable circumstances beyond either party's control the consequence of which would have been unavoidable despite all efforts to the contrary including:

- (a) any breakdown, malfunction or failure of transmission, communication or computer facilities including any loss or delay in transmission of messages and/or information arising out of the use of any Internet access service provider or caused by any browser or other software, or suspense, disruption, error or interruption as a result of viruses or malicious acts of any third parties, that may affect the provision of the Services and/or operation of the Website;
 - (b) industrial action, fire, accident, and other natural disaster; and
 - (c) act or regulation of any governmental, regulatory or supra national bodies or authorities.
- 19.7 Delay or omission. No delay or omission on our part in exercising any right, power or remedy provided by law or under these Terms and Conditions, or partial or defective exercise thereof, shall:
- (a) impair or prevent further or other exercise of such right, power or remedy; or
 - (b) operate as a waiver of such right, power or remedy.



- 19.8 Waiver. No waiver of any breach of any term of these Terms and Conditions (unless expressly agreed in writing by the waiving party) shall be construed as a waiver of a future breach of the same term or as authorising a continuation of a particular breach.
- 19.9 Rights of third parties. A person who is not a party to these Terms and Conditions has no right to enforce any of the terms hereunder or rely on any exclusion of limitation contained herein.
- 19.10 Governing law and jurisdiction. These Terms and Conditions and any non-contractual obligations arising out of or in connection with these Terms and Conditions shall be governed and construed in accordance with the laws of New South Wales, Australia. The parties irrevocably agree that the English courts of New South Wales, Australia shall have exclusive jurisdiction to settle any dispute arising out of or in connection with these Terms and Conditions.



SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. Definitions

The defined terms in these Terms and Conditions are capitalised and set out below:

"Applicable Regulations" means any laws, rules, regulations or official directive of any Government Agency that are applicable to Invapay;

"Business Day" means any day other than a Saturday, Sunday or a bank holiday in New South Wales, Australia;

"Buyer", **"you"** or **"your"** has the meaning given to it in Clause 2.1;

"Card" has the meaning given to it in Clause 2.2;

"Card Association" means MasterCard, VISA or any other card association;

"Card Issuer" means an entity which has entered into an arrangement with the Buyer pursuant to which the Buyer may use one or more Cards issued by the Card Issuer;

"Card Service" has the meaning given to it in Clause 2.2;

"Consent" has the meaning given to it in Clause 5.1;

"CVV2 Number" has the meaning given to it in Clause 9.3.

"Direct Billing Service" has the meaning given to it in Clause 2.2;

"Force Majeure" has the meaning given to it in Clause 19.6;

"Funding Institution" means any bank or financial institution with which the Buyer contracts to fund its Payments to be made using the Direct Billing Service;

"Funding Account" has the meaning given to it in Clause 4.1;

"Funding Terms" has the meaning given to it in Clause 4.1;

"Goods" has the meaning given to it in Clause 2.1;

"Government Agency" means the Crown, a government, any governmental, semi governmental, statutory, parliamentary, provincial, public, municipal, local, administrative, fiscal, judicial or quasi judicial body, department, commission, authority or tribunal, or a person (whether autonomous or not) who is charged with the administration of a law;

"GST" has the meaning given to it in the GST Law;



"**GST Law**" has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"**Invapay**", "**our**", "**we**" or "**us**" means Invapay Payment Solutions Limited;

"**Interruption**" has the meaning given to it in Clause 4.7;

"**Loss**" includes any liability, damage, cost (including reasonable legal costs on a solicitor and own client basis) and other outgoing, and any diminution in value of, or deficiency of any kind in, anything.

"**Payment**" has the meaning given to it in Clause 2.1;

"**Permitted Purposes**" has the meaning given to it in Clause 14.1;

"**Personal Information**" means all personal information as defined under the Privacy Act 1988 (Cth) which is collected, held, used or disclosed by us in connection with the provision of the Services.

"**Privacy Law**" means:

- (a) the Privacy Act 1988 (Cth);
- (b) the Australian Privacy Principles or any approved privacy code that applies to a party; and
- (c) any other statute, regulation or law in Australia which relates to the protection of Personal Information and which the parties or either of them must observe.

"**Seller**" has the meaning given to it in Clause 2.1.

"**Services**" has the meaning given to it in Clause 2.2.

"**Taxes**" means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them.

"**Tax Invoice**" has the meaning given to it in the GST Law.

"**Terms and Conditions**" means these Terms and Conditions for Buyers, including the Schedules; and

"**Website**" has the meaning given to it in Clause 2.1.

2. **Interpretation**

In these Terms and Conditions:

- (a) references to a person shall include bodies corporate, unincorporated associations, partnerships and individuals;
- (b) the headings to clauses and schedules are for convenience only and shall not affect the interpretation or construction of these Terms and Conditions;



- (c) references to "Clauses" and "Schedules" are references to clauses, paragraphs and schedules in these Terms and Conditions;
- (d) words importing the singular shall include the plural and vice versa and words importing the masculine shall include the feminine and the neuter;
- (e) references to the word "include" and "including" (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "other" (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things; and
- (f) reference to any statute or statutory provision shall include a reference to that statute or statutory provision as from time to time amended, extended, replaced or re-enacted.
- (g) any reference in any documentation between you and us to an earlier version of these Terms and Conditions, shall, from the date these Terms and Conditions take effect, be read as a reference to these Terms and Conditions or to the relevant or corresponding part thereof.