

# Openpay Terms and Conditions (New Zealand)

Effective from 19 August 2019

Please take a moment to read these Terms and Conditions as they explain the terms and conditions that govern your access to and use of Openpay Plans provided by us including your obligations and rights in respect of such plans.

## Key Terms:

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- Openpay allows you to pay for a purchase in the instalments and frequency as is set out in your Openpay Plan.
- To establish an Openpay Plan you must be 18 years or older and provide us with details of an eligible credit/debit card issued in your name.
- [We may conduct a pre-authorisation on your credit/debit card for a portion of the total amount due under the Openpay Plan before we agree to fund your purchase.]
- Instalment payments will be charged to your credit/debit card on the date on which the instalment is due. You may make any instalment payment sooner than its due date or pay off your remaining balance early without penalty.
- If an instalment payment is not paid when due a Default Fee will apply. A further Referral Fee will apply if that payment is still unpaid eight (8) days after it was due.
- If you fail to rectify an unpaid instalment payment within fourteen (14) days following the due date we may terminate this Agreement and require you to pay us all future instalments (even if they are not otherwise due) and all other amounts payable including any Default Fee or Referral Fee. You can contact us if you are facing hardship and may not be able to make any payments on time.
- You may make complaints about your Agreement using the channels set out in clause 15.
- We reserve the right to conduct credit checks on new applicants and to reject applications to be registered as an Openpay customer and/or to establish Openpay Plans.

## 1. Your Agreement with us

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- 1.1 Your Agreement with Openpay Pty Ltd (NZBN 9429030254053) of 139 Moray Place, Dunedin Central, Dunedin 9016(**we, our, us**) consists of:
  - 1.1.1 these Terms and Conditions; and
  - 1.1.2 each Openpay Plan emailed to you as a confirmation of each purchase financed under these Terms and Conditions.
- 1.2 You will be taken to have accepted your Agreement when you pay the first instalment in accordance with clause 5.1.
- 1.3 By entering into this Agreement, you declare that all information you have given in connection with it is accurate and not misleading and you are aware that we are relying on it. This includes the identification information provided by you to us to process your application.

- 1.4 Where more than one of you has entered into an Openpay Plan, each person is individually liable for all the money owing and for all other obligations owing under that Openpay Plan and if any one of you is not, or ceases to be, liable at any time, each other person will continue to be liable under that Openpay Plan.

## 2. Varying these Terms and Conditions

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These Terms and Conditions may be varied by us from time to time by publishing an updated version on our website. The updated version of these Terms and Conditions will take effect immediately upon such publication and will apply to any Openpay Plan entered into after that time (or to all Openpay Plans if the change is required by applicable law or to correct any error or is of a technical or administrative nature and will not prejudice or disadvantage you in any material respect). We may also take additional steps to bring the changes to your attention, including by notifying you directly in accordance with clause 11. You are responsible for reviewing these Terms and Conditions regularly to ensure that you are aware of any updates.

## 3. Definitions

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In these Terms and Conditions capitalised words have the meaning given in the Openpay Plan or as follows:

<i>Agreement</i>	has the meaning set out in clause 1.1.
<i>Default Fee</i>	has the meaning set out in clause 6.2.1.
<i>Instalment</i>	means any instalment specified in any Openpay Plan that forms a part of this Agreement.
<i>Nominated Card</i>	means the credit or debit card specified in the “Nominated Card” section of an Openpay Plan that forms a part of this Agreement including any card you later notify us in substitution for that card. This card must be issued in your name.
<i>Openpay Plan</i>	means the plan that outlines details of the finance to be provided by us and your repayment obligations in respect of a purchase from a Participating Merchant.
<i>Outstanding Balance</i>	means, at any time, the aggregate of all amounts owing under this Agreement at that time.
<i>Participating Merchant</i>	means a merchant that allows you to finance a purchase of goods or services under an Openpay Plan. A current list of Participating Merchants is available on the website at <a href="http://www.openpay.com.au">www.openpay.com.au</a> .
<i>Referral Fee</i>	has the meaning set out in clause 6.2.2.
<i>Terms and Conditions</i>	means these terms and conditions, as amended from time to time in accordance with clause 2.

## 4. Your Openpay Plan

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### 4.1 Customer registration with Openpay

To establish an Openpay Plan you must first register with us. To register you must be 18 years or older and provide the following personal information:

- 4.1.1 Your name, residential address and date of birth;
- 4.1.2 A valid email address and two contact phone numbers;
- 4.1.3 Valid New Zealand Visa or MasterCard credit or debit card information e.g. card name and number;
- 4.1.4 Valid New Zealand Passport information; and
- 4.1.5 Any further information that we reasonably require in order to comply with all laws and regulations in New Zealand (including but not limited to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009).

### 4.2 To validate the above information, you may be asked to provide copies of, or otherwise evidence:

- 4.2.1 A valid New Zealand driver's licence;
- 4.2.2 A valid Visa or MasterCard credit or debit card issued by a New Zealand financial institution in your name. We do not accept payment via any other debit or credit cards;
- 4.2.3 A valid New Zealand Passport; and
- 4.2.4 Other valid government issued photographic identification.

You may register through our app or at the point of sale in-store at a Participating Merchant.

Once you have registered with us and wish to make a purchase from a Participating Merchant you must provide your customer number to the sales assistant. You will be asked to select your payment preferences and to confirm the details of your Openpay Plan. Once your preferences have been confirmed you will receive an email to your nominated primary email account confirming your plan details, including your payment obligations.

### 4.3 Credit checks

We may conduct a credit check on you, which may include ordering a report from a credit reporting body and any information we collect about you will be handled in accordance with our privacy statement (see clause 14). We may also seek further information to verify your identity, which you must provide to us on request. We reserve the right to reject for any reason an application to be registered as an Openpay customer and/or an application for an Openpay Plan.

## 5. Your payment obligations

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### 5.1 First instalment payment

At the time you make a purchase which is, or is to be, financed under this Agreement, you must pay us an initial payment (**first instalment**) for the first instalment.

This first instalment must be paid using your Nominated Card and is payable within the Participating Merchant's store at the time of purchase or, where you make a purchase from a Participating Merchant's website, at the time of your online purchase.

## **5.2 Pre-Authorisation**

When you make a purchase which is to be financed under this Agreement, we may conduct a pre-authorisation on your Nominated Card for a portion of the total amount due under the Openpay Plan before we agree to fund your purchase.

Once the pre-authorisation is processed, we will then instruct your financial institution to cancel the pre-authorisation.

Note: No funds are taken from your account at pre-authorisation but a temporary 'hold' is placed on the funds. Once we have cancelled the pre-authorisation, it may take up to seven days for your financial institution to release the funds and before you are able to access them.

## **5.3 Paying the Participating Merchant**

Subject to you paying the first instalment, we will finance the balance of the purchase price in the amount specified in the relevant Openpay Plan by paying that amount to the Participating Merchant on your behalf and debiting that amount to your account with us.

## **5.4 Your Repayments**

You must repay the amount of credit we provide in relation to a purchase we finance under an Openpay Plan by making each instalment payment specified in the relevant Openpay Plan without set-off or deduction and on or prior to the payment date for each instalment. You must reimburse us any tax that we may be required to pay in connection with your purchase and any payment you make to us.

Unless you inform us that you wish to make a particular instalment payment by cheque or money order (see clause 5.5 below) or you make an instalment payment before its due date, you direct and authorise us to charge the amount of any instalment to your Nominated Card on the date on which the instalment is due without any set-off or deduction.

You may make any instalment payment sooner than its due date without any additional cost.

Openpay will send to your nominated primary email address payment reminders before each scheduled instalment payment date. Openpay accepts no liability for emailed payment reminders sent to your nominated email address that fail to arrive due to system failures, power outages, hardware or software defects or natural events.

## **5.5 Methods of payment**

You may make instalment payments under your Openpay Plan in the following ways:

5.5.1 by your Nominated Card; and/or

5.5.2 by cheque or money order sent by post to Openpay Pty Ltd, 139 Moray Place, Dunedin Central, Dunedin 9016, quoting your Openpay Plan reference number.

You may also contact us for electronic funds transfer details if you wish to make full payment of the Outstanding Balance.

For all instalments made by your Nominated Card, you must ensure there are sufficient funds available to allow each instalment to be charged to the Nominated Card when it is due. You agree to notify us promptly in writing if the Nominated Card specified in any Openpay Plan that forms a part of this Agreement is cancelled, suspended, expires or is due to expire or otherwise ceases to be a means by which we may collect payments while payments remain owing. In this case, you must immediately nominate another credit or debit card in your name issued by a New Zealand financial institution or pay the outstanding balance and all other amounts payable under this Agreement.

## 6. Fees and interest

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### 6.1 Interest

Openpay Plans are interest free. You will not be charged interest on your Openpay Plan.

### 6.2 Fees

If you meet all your payment obligations under this Agreement, you will not be charged any Default Fee or Plan Closure Fee in connection with this Agreement.

Fees may become payable under this Agreement if you fail to pay an instalment as follows:

6.2.1 **Default Fee** of up to \$7.50 if you fail to pay an instalment due under this Agreement; and

6.2.2 **Referral Fee** of \$17.50 if you have failed to pay an instalment due under this Agreement and the payment is still unpaid eight days after the payment is due.

Openpay may, at its discretion, reasonably delay applying, or waive wholly or partly, any Default Fee or Referral Fee. No such delay or waiver will be taken to restrict us in charging those fees in the future. If any Default Fees or Referral Fees are or may be incurred as a result of Openpay's error, please let us know, and we will waive or refund those fees.

## 7. Default and its consequences

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### 7.1 Events of default

You default under this Agreement if:

7.1.1 you fail to pay any amount when due;

7.1.2 you fail to comply with any of your obligations under this Agreement;

7.1.3 you become bankrupt, die or have a guardian or administrator appointed;

7.1.4 your Nominated Card is cancelled or suspended or our attempt to process a payment is declined for any reason; or

7.1.5 we discover you deliberately gave us misleading or untrue information about a matter material to our risk in relation to this Agreement.

### 7.2 Consequences of default

If you default under this Agreement:

7.2.1 a Default Fee will apply and must be paid immediately; and

7.2.2 if the default is of a kind which can be fixed, we may send you a notice requiring you to fix the default within 14 days, failing which, we may terminate the Agreement and the Outstanding Balance will become immediately payable together with all other amounts payable under this Agreement; and

7.2.3 if the default is of a kind which cannot be fixed, we may send you a notice terminating the credit contact and requiring payment of the Outstanding Balance within 14 days together with all other amounts payable under this Agreement.

On termination of this Agreement due to your default, you authorise us to charge the Outstanding Balance to your Nominated Card and you acknowledge that it may be necessary for us to charge your Nominated Card such instalments and applicable Default Fee or Referral Fee individually. This may mean the statement for your Nominated Card lists multiple debits charged by us that in total equal the overall amount you owe us.

### **7.3 Nominated Cards**

If you change your Nominated Card without telling us or if your Nominated Card is dishonoured, we may charge to any previous Nominated Card any outstanding amounts under your Openpay Plan unless you have instructed us otherwise.

Where your payment of an instalment is dishonoured, we may reattempt to debit the amount from your Nominated Card at a later date. You will be liable to your card issuer or financial institution for any dishonour fees incurred on your Nominated Card.

### **7.4 External debt collection services**

If you are in default and we are unable to collect any outstanding amounts you owe to us, we may engage a debt collector to recover amounts owing under this Agreement. You must pay for any reasonable enforcement expenses we incur in exercising our rights to recover any outstanding amounts due under the Agreement.

### **7.5 Withholding goods or services**

You acknowledge that where goods or services you purchase using an Openpay Plan are to be delivered after the time of your purchase, the Participating Merchant may, under instructions from us, withhold delivery of those goods and services if you are in default under this Agreement and we believe it is reasonably necessary to protect our legitimate interests. You authorise us to act as your agent to suspend, terminate or cancel your agreement with the Participating Merchant for delivery of the relevant goods or services in accordance with that agreement's terms and conditions.

## **8. Refunds**

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If a Participating Merchant approves and pays to us a refund of the purchase price for any purchase you made from that Participating Merchant that was financed under your Agreement, we will refund the amount of any instalment payments you have made by crediting those amounts to your Nominated Card account and you will not need to make any further instalment payments in respect of that purchase. We do not charge you a fee in connection with this.

## **9. Relationship between Openpay and Participating Merchants**

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You acknowledge that a Participating Merchant may pay us a fee in respect of each Openpay Plan used by you to finance the purchase of goods or services from the Participating Merchant.

## 10. Dealing with our rights and obligations

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We may assign or novate to any person or entity or otherwise deal in any manner with any of our rights, obligations or interests under this Agreement and you consent to us assigning or novating this Agreement.

## 11. Notices

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- 11.1 You agree that we may give you any notice or document regarding this Agreement and otherwise communicate with you by email, post or personal delivery to any addresses you notify to us.
- 11.2 You may give us any notice or document regarding this Agreement by email to [info@openpay.com.au](mailto:info@openpay.com.au), by post or by delivery to our office at 139 Moray Place, Dunedin Central, Dunedin 9016.
- 11.3 You agree to notify us promptly in writing if you change your name, residential address, email address or other contact details.
- 11.4 You agree to notify us promptly in writing if your Nominated Card is cancelled or suspended or otherwise ceases to be a means by which we may collect payments and you must immediately nominate another card or pay the outstanding balance of instalments and all other monies (including any Default Fee or Referral Fee) payable under this Contract and your Plan.

## 12. Termination of your Openpay Plan

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- 12.1 Without limiting our rights under clause 7.2 to terminate this Agreement for your default, we may also terminate this Agreement by notice to you after the expiry of all Openpay Plans forming part of this Agreement.
- 12.2 If 12 months has elapsed following expiry of all Openpay Plans, this Agreement shall be deemed to have terminated.
- 12.3 You can terminate this Agreement at any time by contacting us, provided the Outstanding Balance (if any) has been paid in full to us and no disputes or refunds are in progress.
- 12.4 On termination of this Agreement for any reason, you must immediately pay all amounts owing under this Agreement including any Default Fee or Referral Fee without set-off or deduction.

## 13. Governing law

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This Agreement will be governed by and construed in accordance with New Zealand law. You agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

## 14. Privacy statement and consent

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You agree that we may collect, use, disclose and store any personal information that you provide to us, or authorise us to collect, in accordance with our Privacy Policy, available at [\[insert hyperlink\]](#) Please read this policy carefully as it contains important information,

including about our use of credit checks. It also sets out how you can access, and request correction of, the information we hold about you.

## 15. **Customer Complaints**

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If you have any questions, concerns or complaints about your Agreement, please contact our Customer Service team on:

Telephone:

**+61 1300 168 359**

Email:

[info@openpay.com.au](mailto:info@openpay.com.au)

We take all complaints seriously and will respond to your complaint within a reasonable period.