

08.05.09

INVAPAY PAYMENT SOLUTIONS LIMITED

BUYER WEBSITE USER TERMS AND CONDITIONS

1. **Our contract**

By using or subscribing to our site you enter into a binding contract with us on the following terms and conditions (**terms**).

2. **A UK business service only**

2.1 Our site is directed exclusively at commercial enterprises in the United Kingdom.

2.2 As a Buyer you represent to us and to all Sellers that all purchases made by you through our site will be made for purposes integral to your business and will be within the scope of your authority to conclude contracts on behalf of your business.

3. **Our promises**

3.1 We will permit you to access, use and interact with our site subject to these terms.

3.2 We will:

- (a) exercise reasonable care in compiling our site;
- (b) use reasonable efforts to make our site available to you at all times; and
- (c) take the steps set out in our privacy policy to endeavor to secure any personal data and credit card information you give us.

4. **Obligations and limitations**

4.1 We do not represent or warrant that access to our site, or any part of it will be uninterrupted, reliable or fault free.

4.2 We do not represent or warrant to you that our site or any of its contents will be accurate, complete or reliable.

4.3 Subject to the following provisions we warrant that the Goods you purchase from a Seller using this site to pay for those Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship.

4.4 The above warranty in paragraph 4.3 is given by us subject to the following conditions:

- (a) we shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by you;
- (b) we shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without our approval;
- (c) subject as expressly provided in these terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (d) a claim by you which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to us within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and you do not notify us accordingly, you shall not be entitled to reject the Goods and we shall have no liability for such defect or failure.
- (e) Where a valid claim in respect of any of the Goods which is based on a defect in the quality

or condition of the Goods or their failure to meet specification is notified to us in accordance with these terms, we may arrange for the replacement of the Goods (or the part in question) free of charge or, at our sole discretion, refund to you the price of the Goods (or a proportionate part of the price), in which case we shall have no further liability to you.

- (f) Except in respect of death or personal injury caused by our negligence, or liability for defective products under the Consumer Protection Act 1987, we shall not be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by our negligence or that of our employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by you, and our entire liability shall not exceed the price of the Goods, except as expressly provided in these terms.
 - (g) We shall not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the Goods, if the delay or failure was due to any cause beyond our reasonable control.
- 4.5 The Services supplied to you will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with any specification.
- 4.6 We shall have no liability to you for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by you which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of yours.
- 4.7 Except in respect of death or personal injury caused by our negligence, or as expressly provided in these terms, we shall not be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our negligence or that of our servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by you, and our entire liability under or in connection with the Contract shall not exceed the amount of the charges for the provision of the Services, except as expressly provided in these terms.
- 4.8 We shall not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the obligations in relation to the Services, if the delay or failure was due to any cause beyond our reasonable control.
- 4.9 To the extent permitted by law, we exclude all liability (whether arising in contract, tort or otherwise and whether or not due to our negligence) which we may otherwise have to you as a result of:
- (a) any technical, factual, textual or typographical inaccuracies, errors or omissions on or relating to our site or any information on our site;
 - (b) the unavailability of our site (or any part of it);
 - (c) any delay in providing, or failure to provide or make available, goods or services or any negligent provision of goods or services;
 - (d) any goods not being of satisfactory quality or fit for their intended purpose; or
 - (e) any misrepresentation on or relating to our site, the goods or the services (other than a fraudulent misrepresentation made by us or on our behalf).
- 4.10 Our maximum liability to your business in respect of your use of our site or any services we provide or make available to you through or in relation to our site will be the amount of any charges or subscription fees paid on behalf of your business during the calendar year in which the liability arose. You agree that we shall have no liability for indirect or consequential losses, loss of data, income or profits or damages for loss of or damage to property.
- 4.11 None of the exclusions or limitations in this clause 4 shall exclude or restrict our liability for death or

personal injury caused by our negligence.

- 4.12 None of the above exclusions shall affect any statutory rights which are not capable of being excluded. However, in such case our obligation, where permitted by law, will be limited to the re-supply of our site to you.
- 4.13 We give no warranty or assurance with respect to our online service and all implied warranties are excluded to the maximum extent permitted by law.
- 4.14 Although security measures have been implemented to protect the privacy of information transmitted via our service, we do not warrant that information will be fully protected from unauthorised access.
- 4.15 We will use reasonable efforts to enable access to the service on a 24/7 basis but do not warrant that the use of the service will be uninterrupted whether for scheduled maintenance or otherwise.
- 4.16 We may suspend, modify or discontinue our site service at any time for any reason including maintenance, enhancement, breach of security or breach by any Buyer or third party of any of its obligations to us and whenever practicable we will notify the party concerned accordingly.
- 4.17 We may at our discretion delay or decline to update any transmitted information which it considers to be unacceptable for any reason, including suspected unauthorised access or fraud.
- 4.18 Unless terminated earlier by us, the rights of access to the service will cease on termination of your use of the service and you will ensure that our site and each part thereof is deleted from all electronic media, including intranet and electronic storage devices operated for and on your behalf.
- 4.19 Each of the above exclusions or limitations shall be construed as a separate, and severable, provision of these terms and conditions.

5. **Charges**

If you fail at any time to pay any charges due in accordance with these terms we may, in our discretion and without prejudice to our other rights, deny you access to those areas of our site which are exclusively available to you. We need not provide you with advance notice in such circumstances.

6. **Links to other sites**

Certain links, including hypertext links, in our site will take you outside our site. Links are provided for your convenience and inclusion of any link does not imply endorsement or approval by us of the linked site, its operator or its content. We are not responsible for the content of any website outside our site.

7. **Termination of use**

- 7.1 We may terminate your use of the site immediately if you are in material breach of any of these terms. You may terminate your use of the site at any time on notice to us. You will remain liable for all obligations after your account is closed.
- 7.2 Any rights that have accrued to either party at the date of termination will remain enforceable after termination.

8. **No commercial use**

You agree that you will use our site only for your internal business purposes and that you shall not exploit our site or any of its contents for any commercial or other purpose of any kind.

9. **Unauthorised Use**

Please advise us immediately if you think there has been an unauthorised use of your account or your password or if your account has been used in any way without your authority. To notify us of Suspicious Access please call 0207 868 1667. We will investigate the matter and report back to you as soon as practicable.

10. **Software**

We and our licensors grant you a limited non-exclusive license to use our software in accordance with all documentation, updates, upgrades, new versions and replacement software, for your personal use only in using our service and not otherwise. You may not assign 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 all rights to our software are owned by us.

11. **Your indemnity**

You agree to defend, indemnify and hold us, our officers, directors and employees harmless from any claim or demand (including legal fees) made or incurred by any third party due to or arising out of your breach of these terms.

12. **Reversals and charge backs**

12.1 You are responsible for all claims, fees, fines, penalties and other liabilities incurred by us or a third party caused by or arising out of your breach of these terms, and/or your use of the site. You agree to reimburse us or any third party for any and all such liability.

12.2 As a user of the service provided by our site you agree:

- (a) to comply with these terms and conditions;
- (b) to comply with all applicable laws, statutes, ordinances, or regulations;
- (c) not to infringe our copyright, patent, trademarks, or other intellectual property rights;
- (d) not to provide false, inaccurate or misleading information;
- (e) to cooperate with any investigation;
- (f) to confirm your identity and all information you provide to us;
- (g) not to introduce to our system or website any viruses, Trojan horses, worms or other deleterious material that could harm, interfere with, intercept or expropriate any data or information;
- (h) not to use any device or process to monitor or copy our site without our prior written permission;
- (i) not to use any device, software or routine to bypass our robot exclusion headers, or interfere or attempt to interfere, with our site or the Services;
- (j) not to take any action that may cause us to lose any of the services from our internet service provider, payment processor or other suppliers.

13. **Bank account payments**

When you request us to transfer a payment from your bank account this permits us to make an electronic transfer from your bank account for the amount of the payment. A request to us to process payment from your bank account is your authority to us to process the transfer, and once you give that authority you cannot cancel the transfer. You give us the right to resubmit any payment request you authorize that is returned for insufficient or uncollected funds in your bank account.

14. **Non acceptance**
If you send a payment and the recipient does not accept it we will return any unclaimed, refunded or denied payment to your applicable within 30 Days of refusal.
15. **Payment to Sellers**
When you send a payment to a Seller, you authorize the Seller to process your payment and complete the transaction. If a Seller delays processing your payment your authority to pay will remain valid for up to 30 Days.
16. **Assignment of your rights**
You cannot transfer or assign any rights or obligations you have under these terms and conditions without our written consent. We may transfer or assign our rights under these terms and conditions at any time.
17. **Notification**
We can provide any notification to you by posting it on our site, emailing it to the email address supplied to us by you, or mailing it to the postal address supplied to us by you.
18. **Credit or debit cards**
- 18.1 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.
- 18.2 You must comply fully with the terms and conditions of the your agreement with the bank who issues you with your credit or debit card payment facility. If your bank or credit/debit card issuer refuses authorisation of any card transaction, we are not liable to you or to your Seller for any payment which the paying bank does not authorise. All payments we authorise are subject to your issuing bank giving us authorisation that the card transaction will be paid by your bank.
- 18.3 You agree to indemnify us against all losses, costs, claims, damages and expenses which may be sustained or incurred by us as a result of incorrect information or instructions received from you or the unauthorised use of the service or any failure on your part to comply with any reasonable instructions issued by us from time to time.
- 18.4 If we are authorized to make a payment by your bank we are not liable to you the Buyer or the Seller if that payment is procured by any third party fraudulently or without your authority.
- 18.5 You must always check your statements regularly to ensure that all entries are correct. If there is any entry which may be wrong then you should advise your bank immediately in order that the bank can deal with it. You must fully co-operate with your bank if any entries are made which are suspicious.
19. **General**
- 19.1 **Third party rights**
You acknowledge and agree that all representations and warranties are intended to grant rights to, and operate for the benefit of, you only and no other person by virtue of the Contracts (Rights of Third Parties) Act 1999.

19.2 **Variations**

We reserve the right at any time without notice to revise the content of our site (including the services offered by us) and these terms and conditions. Any changes to these terms and conditions will be posted on our site and by continuing to use our site following any such change you will signify that you agree to be bound by the revised terms and conditions of use.

19.3 **Credit card security and registration**

We use a secure server that implements [Secure Socket Layer technology (certified to the standard for encrypted credit card transactions stipulated by VeriSign Inc) to prevent any person from gaining access to your credit card or registration information whilst it is on our site or being transmitted across the internet.

If you discover that Goods or Services have been ordered over our site using your credit card details in circumstances where you had not agreed to or authorised this, then (provided you have not, through failure to take reasonable care, allowed an unauthorised person to gain access to your credit card details, purchaser ID or password) you must inform your credit card company and us of the unauthorised purchase as soon as you discover it; and co-operate with your credit card company, us and, if necessary, the police in relation to the unauthorised use.

19.4 **The use of your information**

You agree that we may collect, store, and use information about you in accordance with our privacy policy. You acknowledge and agree to be bound by the terms of our privacy policy.

19.5 **Copyright**

All rights in the design, text, graphics and other material on our site 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 our site solely in connection with the acquisition of goods or services through our site. Any other use of materials on our site (including reproduction for purposes other than those noted above and alteration, modification, distribution, or republication) without our prior written permission is strictly prohibited.

19.6 **Trade marks**

We are the proprietor of the "Invapay" trade mark in the UK and other countries. All other trade marks, product names and company names or logos used in our site 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.

19.7 **Access**

We reserve the right in our sole discretion to deny users access to our site or any part of our site without notice and to decline to provide the service to any user that is in breach of these terms and conditions of use.

19.8 **Events beyond our control**

We shall not be liable to you for any breach of these terms and conditions of use or any failure to provide or delay in providing our services through our site resulting from any event or circumstance beyond our reasonable control including, without limitation, strikes, lock-outs and other industrial disputes, breakdown of systems or network access, fire, explosion or accident.

19.9 **Applicable law and jurisdiction**

These terms and conditions (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to them or their formation) shall be governed by and interpreted in accordance with English law and, for these purposes, the parties irrevocably submit to the exclusive jurisdiction of English courts.

19.10 **Unenforceability**

The enforceability or otherwise of any provisions of these terms and conditions shall not affect the enforceability of the rest of these terms and conditions.

19.11 **Whole Agreement**

These terms and conditions contain the entire understanding between you and us with respect to the service we provide. Any terms which by their nature should survive, will survive the termination of your use of the service. If any provision of these terms and conditions is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced.

20. **Definitions**

In these terms and conditions:

20.1 'Buyer' means a commercial buyer buying Goods or Services;

20.2 'Chargeback' means when a Buyer requests his or her credit card company or credit card issuing bank to invalidate a payment;

20.3 'Contract' means the contract for the provision of the Services or the supply of Goods;

20.4 'Goods' means the goods sold by a Seller to a Buyer;

20.5 'our site' and 'site' means our presence on the Internet;

20.6 'our', 'we' and 'us' means Invapay Payment Solutions Limited and, where applicable, its officers, employees and authorised agents;

20.7 'Seller' a commercial business selling goods or services;

20.8 'Services' means the services supplied to a Buyer by a Seller;

20.9 'you' and 'your' include any business with which you are associated and on behalf of which you use our site ('your business').