

## AU Terms and Conditions 17 September 2019

Please take a moment to read the Openpay Credit Contract as it explains 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:

- 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.
- You may be charged Establishment Fees or Redraw Fees depending on your Openpay Plan. You may also be charged a Plan Management Fee on instalments you repay. Details of these fees are set out in your Openpay Plan.
- If an instalment payment is not paid when due a late payment fee will apply. A further fee will apply if that payment is still unpaid eight days after it was due.
- Fees payable under your Openpay Plan (excluding fees relating to late payments) are capped (see clause 5.3).
- If you fail to rectify an unpaid instalment payment within 14 days following the due date we may terminate this credit contract and require you to pay us all future instalments (even if they are not otherwise due) and all other amounts payable including any applicable fees. 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 credit contract using the channels set out in clause 18.
- 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

- 1.1. Your credit contract with Openpay Pty Ltd (ACN 159 699 126) of Suite 304, 22 St Kilda Road, St Kilda VIC 3182 (**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 the credit contract.

1.2. You will be taken to have accepted the terms of your credit contract when you pay the first instalment in accordance with clause 4.1.

1.3. By entering into this credit contract, 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.

## 2. Definitions

In this credit contract capitalised words have the meaning given in the Openpay Plan or as follows:

<i>Available Credit</i>	means, at any time, the difference between the Credit Limit and the Outstanding Balance at that time.
<i>Credit Limit</i>	means the credit limit specified in your most recent Openpay Plan forming part of this credit contract.
<i>Fee</i>	means any fee specified in clause 5.2 and any Openpay Plan that forms a part of this credit contract.
<i>Instalment</i>	means any instalment specified in any Openpay Plan that forms a part of this credit contract.
<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 credit contract including any card you later notify us in substitution for that card. This card must be issued in your name.
<i>Openpay Checkout Process</i>	means the process undertaken by a Participating Merchant to arrange finance for the purchase of goods or services supplied by the Participating Merchant including by the use of the checkout function using the Openpay app or Openpay website and by a manual sales process.
<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 credit contract 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> .

### **3. Your Openpay Plan**

#### **3.1. 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:

- 3.1.1. Your name, residential address and date of birth;
- 3.1.2. A valid email address and two contact phone numbers;
- 3.1.3. Valid Australian Visa or MasterCard credit or debit card information e.g. card name and number;
- 3.1.4. Valid Australian Passport information; and
- 3.1.5. Valid Medicare information.

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

- 3.2.1. A valid Australian Driver's License;
- 3.2.2. A valid Visa or MasterCard credit or debit card issued by an Australian financial institution in your name. We do not accept payment via any other debit or credit cards;
- 3.2.3. A valid Australian Passport;
- 3.2.4. A valid Medicare Card; and
- 3.2.5. 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.

#### **3.3. 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 16). 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.

### **4. Your payment obligations**

#### **4.1. First instalment payment**

4.1.1. At the time you make a purchase which is, or is to be, financed under this credit contract, you must pay us an initial payment (**first instalment**) inclusive of any Establishment Fee and a Plan Management Fee for the first instalment.

4.1.2. 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. If the total of your subsequent instalments exceeds the Credit Limit for that Openpay Plan then you will be required to pay a larger first instalment at the time of purchase to ensure that Credit Limit is not exceeded.

#### 4.2. Pre-Authorisation

4.2.1. When you make a purchase which is to be financed under this credit contract, 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.

4.2.2. 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.

#### 4.3. Paying the Participating Merchant

4.3.1. 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.

#### 4.4. Your Repayments

4.4.1. 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 government stamp duty or tax that we may be required to pay in connection with your purchase and any payment you make to us.

4.4.2. If for any reason the Outstanding Balance exceeds the Credit Limit, you must immediately make such payment as is necessary to reduce the Outstanding Balance to or below the Credit Limit.

4.4.3. Unless you inform us that you wish to make a particular instalment payment by cheque or money order (see section 4.6 below) or you make an instalment payment before its due date, you direct and authorise us to charge the amount of any instalment (together with any Plan Management Fee) to your Nominated Card on the date on which the instalment is due without any set-off or deduction.

4.4.4. You may make any instalment payment sooner than its due date without any additional cost (other than the applicable Plan Management Fee).

4.4.5. 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.

#### 4.5. Redrawing

4.5.1. We will not allow you to redraw any amount under an Openpay Plan until you have made at least 20 per cent of the instalment payments owing in connection with your most recent purchase financed under the credit contract with us.

4.5.2. Subject to clause 4.5.1, you may draw down any Available Credit under this credit contract to finance future purchases with any Participating Merchants. A Redraw Fee may be payable when you draw down any of the Available Credit under a second (and any subsequent) Openpay Plan forming part of this credit contract.

#### 4.6. Methods of payment

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

4.6.1. by your Nominated Card; and/or

4.6.2. by cheque or money order sent by post to Openpay Pty Ltd, Level 9, 469 La Trobe St, Melbourne, VIC 3000 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 credit contract 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 an Australian financial institution or pay the outstanding balance and all other amounts payable under this credit contract.

### 5. **Fees and interest**

#### 5.1. Interest

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

#### 5.2. Fees

The fees payable under this credit contract are those fees set out in this clause and disclosed to you before you enter into an Openpay Plan during the Openpay Checkout Process:

5.2.1. An **Establishment Fee** or **Redraw Fee** may be applicable on all approved Openpay Plans. The Establishment Fee or Redraw Fee (as applicable) varies at each Participating Merchant. For

purchases made via the Openpay website or app, click on the “Initial Payment” Button to see the Establishment Fee or Redraw Fee applicable. For instore purchases at a Participating Merchant, view the onscreen information generated by the sales assistant to confirm the Establishment Fee or Redraw Fee amount (if any).

5.2.2. A **Plan Management Fee** as described at the time of purchase is charged on each instalment payment made under your Openpay Plan. For purchases made via the Openpay website or app, click on the “Initial Payment” Button to see the Plan Management Fee applicable to each instalment payment made under that particular Openpay Plan. For instore purchases made at a Participating Merchant’s premises, view the onscreen information generated by the sales assistant to confirm the Plan Management Fee amount.

5.2.3. Other fees which may become payable under this credit contract include a:

5.2.3.1. **Default Fee** of up to \$9.50 if you fail to pay an instalment due under this credit contract; and

5.2.3.2. **Referral Fee** of \$19.50 if you have failed to pay an instalment due under this credit contract and the payment is still unpaid eight days after the payment is due.

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

### 5.3. Maximum Fees Payable

The aggregate of the fees you must pay in connection with an Openpay Plan (excluding Default Fees and Referral Fees) is capped as follows:

5.3.1. in the first 12 months after commencement of this credit contract, \$200; and

5.3.2. in each subsequent 12-month period, \$125.

## 6. **Default and its consequences**

### 6.1. Events of default

You default under this credit contract if:

6.1.1. you fail to pay any amount when due;

6.1.2. you fail to comply with any of your obligations under this credit contract;

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

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

### 6.2. Consequences of default

If you default under this credit contract:

6.2.1. a Default Fee will apply and must be paid immediately; and

6.2.2. 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 credit contract and the Outstanding Balance will become immediately payable together with all other amounts payable under this credit contract; and

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

6.2.4. On termination of this credit contract 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 fees 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.

### 6.3. Nominated Cards

6.3.1. 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. The Plan Management Fee will apply for each scheduled instalment regardless of whether it is paid.

6.3.2. 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.

### 6.4. 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 credit contract. You must pay for any reasonable enforcement expenses we incur in exercising our rights to recover any outstanding amounts due under the credit contract.

### 6.5. 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 these terms and conditions 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.

## **7. Refunds**

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 credit contract, 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; however, we will not refund any Plan Management Fees, Establishment Fee or Default Fees you have already paid in respect of that purchase.

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

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.

## **9. Special terms and conditions where a warranty product has been purchased**

9.1. You acknowledge that if you default under these terms and conditions and remain in default for a period of more than 14 days, we may provide written notification to the warranty provider of this default. You acknowledge that in this circumstance, your warranty may be cancelled from the date on which this written notification is provided.

9.2. You acknowledge that the warranty provider may not transfer any warranty financed by us where there is an Outstanding Balance under the relevant Openpay Plan.

## **10. Special terms and conditions for financing of goods requiring installation at your residential property, or marketing costs associated with selling a residential property**

10.1. You agree that by taking out the Openpay Plan you are the registered proprietor of the property being marketed or at which the financed goods are being installed.

10.2. You acknowledge that any Outstanding Balances must be paid prior to selling such property.

## **11. Dealing with our rights and obligations**

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 credit contract and you consent to us assigning or novating this credit contract.

## **12. Notices**

12.1. You agree that we may give you any notice or document regarding this credit contract and otherwise communicate with you by email, post or personal delivery to any addresses you notify to us.

12.2. You may give us any notice or document regarding this credit contract by email to [info@openpay.com.au](mailto:info@openpay.com.au), by post or by delivery to our office at Level 9, 469 La Trobe St, Melbourne, VIC 3000.

12.3. You agree to notify us promptly in writing if you change your name, residential address, email address or other contact details.

### **13. Termination of your Openpay Plan**

- 13.1. Without limiting our rights under clause 6.2 to terminate this agreement for your default, we may also terminate this credit contract by notice to you after the expiry of all Openpay Plans forming part of this credit contract.
- 13.2. If 12 months has elapsed following expiry of all Openpay Plans, this credit contract shall be deemed to have terminated.
- 13.3. You can terminate this credit contract 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.
- 13.4. On termination of this credit contract for any reason, you must immediately pay all amounts owing under this credit contract including applicable fees without set-off or deduction.

### **14. Indemnity**

You agree to indemnify us in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (including legal expenses (on a full indemnity basis)) arising from or relating to a breach by you of these terms or any applicable law or regulation in connection with this credit contract.

### **15. Governing law**

These terms and conditions will be governed by the law for the time being in force in the State of Victoria, and you agree to submit to the non-exclusive jurisdiction of the courts in that State.

### **16. Privacy statement and consent**

You agree that we may collect your personal information to identify you, process any applications you make, provide our services to you, and for our own internal business development purposes. Unless you tell us not to, we may also use your information to let you know about products or services that may interest you. We may also share your information with the Participating Merchant at which your Openpay plan purchase was made. Your personal information may also be disclosed to a debt collector if you are in default under this credit contract. We may obtain a credit report about you in connection with your Openpay Plan and you consent to us doing this. A credit reporting body (CRB) may include information about you in credit reports to credit providers (such as us) to assist them in assessing your creditworthiness. If you fail to meet your payment obligations or if you commit a serious credit infringement, we may be entitled to disclose this to a CRB. The CRB we use is Equifax whose policy on the handling of personal information related to credit can be found at <http://www.equifax.com/privacy/>. You have a right to request a CRB not to use your information for the purposes of pre-screening direct marketing and you can also request a CRB not to use your information if you believe on reasonable grounds that you have been or are likely to be the victim of fraud.

We may be required to collect your information by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. If you do not provide us with your personal information we may not be able to provide our services to you.

We may disclose your personal information to our related entities, service providers and agents located overseas, including in the UK, USA, Israel, the Philippines and Hong Kong.

Our Privacy Policy, available at <https://www.openpay.com.au/au-privacy>, sets out how we manage the personal information we hold (including information about your credit) and how you can seek access to, or the correction of, the information we hold about you. It also sets out how you may complain about our information handling practices and how we deal with such complaints.

## 17. Varying these terms and conditions

These Terms and Conditions may be varied by us from time to time, provided any changes which materially affect your rights or obligations are made by giving you no less than 15 days' written notice. If you do not wish to agree to any variation (if any), you will be entitled to terminate this credit contract in accordance with clause 13.3 and no fee will be applied to such termination in these circumstances.

## 18. Customer Complaints

### 18.1. Complaints to us

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

Telephone:	<b>1300 168 359</b>
Email:	<a href="mailto:info@openpay.com.au">info@openpay.com.au</a>

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

### 18.2. Complaints to the Australian Financial Complaints Authority

If you are dissatisfied with our handling of your complaint, you can lodge a complaint with the Australian Financial Complaints Authority, or AFCA. AFCA provides fair and independent financial services complaint resolution that is free to consumers.

Website:	<a href="http://www.afca.org.au">www.afca.org.au</a>
Email:	<a href="mailto:info@afca.org.au">info@afca.org.au</a>
Telephone:	<b>1800 931 678 (free call)</b>
In writing to:	<b>Australian Financial Complaints Authority: GPO Box 3, Melbourne VIC 3001</b>

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