

## GENERAL TERMS AND CONDITIONS

### 1. Definitions and Interpretation

**1.1 Definitions:** In this Agreement, unless the context indicates otherwise:

**Acquirer** means a bank or any financial institution or a card issuer of financial or non-financial transactions which receives and transmits Transactions via Payment Express;

**Agreement** means this Agreement, including the Application Form, and any attachments that may be agreed between the parties, as each may be amended in writing from time to time;

**Application Form** means Customer's online Payment Express application form submitted to PX via the PX Website, of this Agreement;

**Business Day** means any day of the week except Saturday, Sunday or a statutory holiday in Sydney, New South Wales, Australia;

**Commencement Date** means the commencement date recorded in the Agreement (such Commencement Date may be postponed in writing, at PX's sole discretion, until the date PX receives a copy of the Agreement countersigned by Customer);

**Confidential Information** means, in relation to either party, any information:

- (a) relating to the terms of this Agreement;
- (b) relating directly or indirectly to research or development by, accounting for, or the marketing of, the business of that party or its suppliers or customers;
- (c) disclosed by that party to the other party on the express basis that such information is confidential; or
- (d) which might reasonably be expected by the other party to be confidential in nature;

**Customer** means the customer specified in this Agreement and where applicable includes its employees, contractors and agents.

**Default Interest Rate** means interest at the rate of 5% above the base lending rate charged by PX's bankers to PX from time to time;

**Delivery** takes place when the Customer receives the Goods from PX, or, in the case of returns, when the Goods arrive at PX's premises;

**Documentation** means any user, training or system manuals for Payment Express (whether in printed or electronic form) which describes and provides guidance on the use of Payment Express (or any aspect of Payment Express);

**Emergency Support Services** means telephone support provided by PX for emergency breakdowns resulting in repeated failures in the transmission of Transactions and is available 24 hours a day, seven days a week by calling 1300 73 78 40 outside of Support Hours. PX will use reasonable efforts to respond to any emergency phone call within 30 minutes of receiving the support request;

**Fees** means and includes each of the fees detailed in the.;

**Goods** means the Goods and/or Devices (if any);

**GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or any like tax.

**Intellectual Property** means registered and unregistered trade marks (including logos and trade files), domain names, copyright, patents, petty patents, utility models, registered and unregistered designs, circuit layouts, rights in computer software, databases and lists, Confidential Information, software (whether in object code or source code), and all other rights anywhere in the world resulting from intellectual activity, whether registerable or not;

**Payment Express** means the Payment Express solution provided by PX for the transmission of data relating to Payment Express Supported Transactions between a Customer and an Acquirer, incorporating the Software and including access (via the internet) to the Payment Express Host and the Support Services;

**Payment Express Host** means the PX host server known as Payment Express Host to which Customer may be connected using the Software and which is in turn linked to an Acquirer to enable Payment Express Supported Transactions to be processed in real time;

**Payment Express Supported Transactions** means transactions from Customers:

- (a) accepting payment for goods and services by means of credit card, debit card, prepaid card, gift card or any other means of payment which PX agrees to support through Payment Express from time to time;
- (b) accepting loyalty cards, rewards cards, points cards, discount cards or club cards; or
- (c) providing services in relation to the sale and use of any of the cards referred to in paragraphs (a) and (b) above including the issue of such cards and the crediting or debiting of value to such cards;

**Payment Manager** means the Payment Express Merchant Portal which Customer is able to access by logging onto the PX Website with an assigned username and password;

**PCI Standards** means the Payment Card Industry standards, requirements and guidelines issued by the Payment Card Industry Data Security Council from time to time including the Payment Card Industry Data Security Standard PIN Entry Device requirements and guidelines, and the Payment Application Data Security Standard;

**Permitted Use** means the transmission to, and receipt from, an Acquirer of data relating to Payment Express Supported Transactions and expressly excludes, without limitation, use for the processing of transactions of, or for the benefit of, any person other than Customer;

**Personal Information** means personal information as defined in the *Privacy Act 1988* (Cth).

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**PX** means Payment Express Australia Pty Limited (ACN: 111 433 339), a company incorporated in Australia, in its capacity as general partner of Payment Express Limited Partnership (ABN: 39 517 028 648);

**PX Logo** means the PX logo supplied (in electronic format) by PX to Customer (as may be updated from time to time by PX);

**PX Website** means the website maintained by PX and accessible by Customer for viewing transactions, data entry, refunding, report generating and other features related to Transactions;

**Related Company** is a related entity that is part of the same ownership structure (either vertically or horizontally) as Customer, including a company incorporated outside Australia;

**Security Interest** means a right, interest, power or arrangement in relation to any property which provides security for, or protects against default by a person in, the payment or satisfaction of a debt, obligation or liability, including a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance or hypothecation and a security interest as defined in section 12(1) and (2) of the PPSA.

**Security Standards** means each of:

- (a) any data protection or data security standards issued by an Acquirer which receives and accepts Payment Express Supported Transactions from Customer; and
- (b) the PCI Standards;

**Special Conditions** means the special conditions (if any) recorded in the Agreement;

**Software** means the software and other related PX products which:

- (a) form part of Payment Express; and

- (b) is owned or licensed by or developed by, or on behalf of, PX and supplied to Customer, including all upgrades, updates, alterations and modifications and other changes to such software by or on behalf of PX from time to time, but excluding any third party software and firmware forming part of, or supplied with, the Payment Express solution;

**Support Services** means and includes:

- (a) Online Help: from time to time PX may display Frequently Asked Questions and Answers on the PX Website;
- (b) General Support: enquiries may be sent to: support@paymentexpress.com or made by telephone to 1800 006 254. PX will respond to such enquiries during Support Hours;

**Support Hours** means the period from 6am to 7pm (AEST) on any Business Day and 7am to 3pm on non-Business Days; and

**Transaction** means a message pair consisting of a message relating to a Payment Express Supported Transaction transmitted by Customer to an Acquirer through Payment Express and a response to that message from the Acquirer to Customer through Payment Express.

**Term** means the Initial Term includes any Renewal Terms as agreed by the parties and recorded i and defined in clause 2.2;

**Tokenized Data** means data for which PX has substituted a sensitive data element with a non-sensitive equivalent that has no extrinsic or exploitable meaning or value.

**1.2 Interpretation:** In this Agreement, unless the context indicates otherwise:

- (a) expressions defined in this Agreement, clause 1.1, have the defined meaning throughout this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (d) the term **includes** or **including** (or any similar expression) is deemed to be followed by the words without limitation;
- (e) references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (f) references to any statutory provision are to statutory provisions in force in Australia and include any statutory provision which amends or replaces it, and any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (g) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (h) all monetary amounts are stated exclusive of GST and in Australian dollars
- (i) in the event of any inconsistency between the terms of any of the following, they will have precedence in the descending order of priority set out below:
- (i) General Terms and Conditions;
- (ii) the Application Form.

## 2. Term

**2.1 Initial Term:** This Agreement commences on the Commencement Date and will continue for the Initial Term, unless earlier terminated under this Agreement, clause 12.

**2.2 Renewal:** Upon expiry of the Initial Term, this Agreement will automatically continue for further periods of the number of consecutive months recorded (each such further period being a **Renewal Term**) on the same terms and conditions unless either party gives the other party not less than 3 months' notice in writing prior to the expiry of the Initial Term or the then current Renewal Term that it does not wish this Agreement to continue beyond the Initial Term or that Renewal Term as the case may be.

## 3. Payment

**3.1 Fees:** Customer will pay PX the Fees without setoff or deduction monthly in arrears on the 10th day of the month following the date of the invoice for those Fees.

**3.2 Taxes:** Customer is responsible for all GST and any other taxes, duties and levies (other than PX's income tax) assessed in connection with its use of Payment Express and the provision of services under this Agreement.

**3.3 Default Interest for Late Payment:** Subject to this Agreement, clauses 3.4(b) and 3.4(b)**Error! Reference source not found.**, Customer must pay PX interest at the Default Interest Rate on any overdue amounts under this Agreement, calculated daily from the due date until the actual date of payment. Customer will pay PX all reasonable costs (including collection costs and legal costs on a solicitor-client basis) that PX incurs in attempting to recover or recovering any such overdue amounts.

**3.4 Disputed invoices:** Where Customer has reasonable grounds to dispute any portion of any amount invoiced by PX to Customer under this Agreement (**disputed portion**):

- (a) Customer will notify PX of such dispute and the grounds for such dispute within 5 Business Days of receiving the invoice;
- (b) any undisputed portion of the invoice will remain payable on the due date for payment;
- (c) provided that Customer has complied with this Agreement, clause 3.4(a), Customer will not be required to pay:
- (i) the disputed portion until the parties' dispute has been resolved by agreement between the parties or in accordance with this Agreement, clause 20.2; or
- (ii) interest under clause 3.3 on the disputed portion unless the dispute is resolved with the effect that Customer is required to pay all (or part) of the disputed portion, in which case Customer will pay the interest on the disputed portion (or that part of that disputed portion) in accordance with clause 3.3. Interest will be payable from the date that payment would have been due under clause 3.1 but for the dispute until the date that disputed portion is paid to PX in full.

## 4. Joint Responsibilities

Each party represents and agrees:

**4.1 Power and Authority:** that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement; and

**4.2 Requirements:** to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice.

## 5. Customer Responsibilities

Customer:

**5.1 Suitability:** has made, and will continue to make, its own assessment of the suitability, adequacy, compatibility and appropriateness of Payment Express for its purposes;

**5.2 Comply with Instructions:** will comply with PX's restrictions, instructions and Documentation in relation to the use of Payment Express, including those set out in this Agreement;

- 5.3 Use by Others:** will ensure that only authorised persons use Payment Express and that Payment Express is used only for the Permitted Use and as expressly authorised under this Agreement;
- 5.4 Responsibility for Use:** will accept all responsibility for the reliance on and use of Payment Express by Customer and its employees, contractors and agents;
- 5.5 Obtain Equipment etc.:** will obtain and maintain all equipment, software and services needed to enable it to receive and use Payment Express;
- 5.6 Accurate Customer Information:** warrants that all information provided by Customer to PX in the Application Form is accurate and correct, and that Customer will notify PX in writing if such information changes or ceases to be accurate in any way;
- 5.7 Provide Sufficient Information:** will ensure that sufficient information is given to PX to enable PX to comply with its obligations under this Agreement and that such information is timely, complete and accurate;
- 5.8 Personal Information:** acknowledges that any Personal Information concerning Customer or its personnel which is provided to PX by or on behalf of Customer may be:
- (a) used by PX for the purpose of providing Payment Express, the Support Services and any other services to Customer; and
  - (b) disclosed by PX to its Related Companies and other services providers to enable PX to provide Payment Express, the Support Services and any other services to Customer.
- A copy of the Personal Information held by PX will be provided on written request. Further information is available in our Privacy Policy. Available online at [www.paymentexpress.com](http://www.paymentexpress.com);
- 5.9 Notify of Third Party Infringement:** will immediately notify PX upon becoming aware of any third party infringing PX's Intellectual Property rights in any manner;
- 5.10 Responsible for Connecting to Payment Express Host:** is responsible for all charges and costs associated with connecting to the Payment Express Host to operate Payment Express. PX will provide Customer with reasonable technical information and Software necessary to enable Customer to connect to the Payment Express Host; and
- 5.11 Comply with Law Generally:** will comply with all relevant laws, including all statutory, regulatory and common laws, in its use of Payment Express and carrying out its obligations under this Agreement.
- 5.12 Improperly Deposited Funds:** If PX deposits funds in Customer's bank account(s) that do not rightfully belong to Customer ("Improperly Deposited Funds"), Customer shall return the Improperly Deposited Funds to PX without offset within five (5) calendar days of a written request to do so by PX. If Customer fails to comply with the terms of this Section, PX may immediately suspend services to Customer until Customer returns the Improperly Deposited Funds. Customer will be liable to PX for the Improperly Deposited Funds, and all costs (including legal costs on a solicitor-client basis) incurred by PX in recovering the Improperly Deposited Funds.
- 5.13 Requisite Review of Payline Portal:** Customer shall be required, on a daily basis, to review with due care Customer's payline portal, established by PX, to review for transactions for errors. If an error is discovered by Customer, Customer must notify PX in writing within three (3) business days of the date an error occurs; provided, that PX will have no liability or obligations of any kind with respect to errors that are not reported to PX within such three (3) business day period. In addition, Customer shall be required to, on a daily basis review with due care bank settlement files to ensure deposits occur without error. If an error is discovered by Customer, Customer must notify PX in writing within three (3) business days of the date an error occurs; provided, that PX will have no liability or obligations of any kind with respect to errors that are not reported to PX within such three (3) business day period. PX's liability under this Section 5.13 (Requisite Review of Payline Portal) of the Agreement is governed by, and fully subject to, the terms of Section 10 of this Agreement.
- 5.14 Return of Old Goods:** For Goods that Customer ceases using for the Permitted Use ("Unused Goods"), Customer will return such Unused Goods to PX within 30 calendar days. Unused Goods include, but are not limited to, Goods Customer has ceased using due to the Goods becoming obsolete, Goods that no longer operate, and Goods that are replaced per the warranty set forth in this Agreement, clause 7.3 of this Agreement. Customer will pay all shipping fees and costs associated with returning the Unused Goods to PX. Alternatively, instead of returning Unused Goods to PX, Customer may provide PX a secure destruction certificate evidencing that the Unused Goods were destroyed in compliance with the Security Standards within the same 30 calendar day period.

## 6. PX's General Responsibilities

PX will:

- 6.1 Care and skill:** perform its obligations under this Agreement with due care, skill and diligence; and
- 6.2 Good faith:** comply with all relevant laws and reasonably co-operate with Customer (and Customer's service providers) in connection with Payment Express.
- 6.3 No Requirement to Decrypt Tokenized Data:** Unless expressly required to do so by law, PX will be under no obligation to decrypt and transmit Tokenized Data for the benefit of Customer or any third party.

## 7. PX Warranties

- 7.1 Security Standards:** PX confirms that PX will throughout the term of this Agreement use its best endeavours to comply with the requirements of the Security Standards.
- 7.2 Limitations on Warranties:** To the fullest extent permitted by law, except as expressly set out in this Agreement, PX excludes all warranties, conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise, including any condition or warranty of merchantability or fitness for a particular purpose. To the fullest extent permitted by law, PX does not warrant that:
  - (a) Payment Express, the Goods, the Software or the Documentation will meet Customer's requirements; or
  - (b) Payment Express the Goods, the Software and the Documentation will be uninterrupted or error free, or that all errors will be corrected; or
  - (c) that the Goods will be free of defects in design, materials or workmanship or will comply with any applicable equipment manufacturer's or software developer's specifications.
- 7.3 Supply Warranty:** PX warrants that the Goods to be delivered under this Agreement will be free from defects in workmanship (labour and parts included, but transport excluded) during a warranty period commencing on the Commencement Date and concluding twelve (12) calendar months later ("Original Warranty Period"). As to repaired or exchanged Goods, during the Original Warranty Period here above mentioned, the warranty period on the exchanged or repaired Goods shall expire at the conclusion of the Original Warranty Period. With respect to PX's supply warranty:
  - (a) Any defective Goods, under warranty, shall be replaced or repaired, free of charge, at PX's discretion (to the exclusion of compensation for any other damage), and the work shall be carried out at PX or its partner's or subcontractor's premises. Customer will pay the costs of transport of the Goods (including insurance) to PX.
  - (b) PX has the choice to repair the Goods with spare parts or new parts. The defective elements, repaired, will become the property of PX.
  - (c) The time when the Goods are repaired or unavailable during the warranty period will not give rise to an extension of the warranty period as set forth in this Section, subject to legal mandatory provisions.

- (d) Customer must return warranted Goods that are replaced subject to this warranty back to PX within 30 calendar days of replacement Goods being shipped to Customer. Customer shall pay the shipping fees to return the old, warranted Goods back to PX.

**7.4 Exclusions to Supply Warranty:** PX will have no liability under the Supply Warranty described in Section 7.3 in respect of:

- (a) Defects, breakdowns, or malfunctions due to failure to properly follow the installation process and instructions for use or an external cause to the Goods (including, but not limited to, shock, lightning fire, vandalism, malicious action, contacts with various liquids or vermin or water damage of any nature, and inappropriate electric voltage); or modifications to the Goods made without the written approval of PX; or a lack of every day maintenance (as described in the Documentation); or a lack of supervision or care; or improper storage or poor environmental conditions, particularly those related to temperature and hygrometry effects of variations of electric voltage from the electric network; or from the earth or repair work; or maintenance of the Goods by persons not authorized by PX;
- (b) Damage due to insufficient or bad packaging of the Goods when returned to PX;
- (c) Wear and tear from normal use of the Goods and accessories;
- (d) Communication problems related to an unsuitable environment, including problems accessing the Internet, transmission faults, local network faults, and modification of the parameters of the relevant cellular network after sale of the Goods.
- (e) Supply of new versions of Software;
- (f) Malfunction due to the use of products or accessories that are non-compatible with the Goods;
- (g) Goods returned to PX without PX's prior consent or that PX has not had an opportunity to troubleshoot.
- (h) Defects, breakdowns, or malfunctions due to **obstructing material** being placed on or into the Goods. Examples of obstructing material include, but is not limited to, paper, plastic, and metal objects apart from credit or debit cards.

## 8. Intellectual Property

All Intellectual Property rights in Payment Express, the Goods, the Software, the Documentation and any work or thing developed or created by or on behalf of PX under or in connection with this Agreement (such work or thing being **Developed Works**), are exclusively owned by PX (or PX's licensors or suppliers). Customer acknowledges that there is no transfer of title, Intellectual Property rights or ownership of:

**8.1** Payment Express, the Goods, the Software, the Documentation or any part thereof; or

**8.2** any Developed Works;

to Customer under this Agreement and Customer will not dispute PX's (or PX's licensors or suppliers) ownership of the property referred to in this clause 8.

## 9. Indemnity

- 9.1** Customer indemnifies PX at all times against any liability, loss (including consequential loss), damage or cost (including legal costs on a solicitor-client basis) suffered or incurred by PX, its employees, contractors and agents, and all actions, proceedings, claims or demands made against PX as a result of any negligent act or omission or any breach of this Agreement by Customer, its personnel or agents.

## 10. Liability

To the fullest extent permitted by applicable law:

- 10.1 Remedy:** Subject to this Agreement, clauses 10.2 and 10.3, Customer's sole and exclusive remedy for breach of any warranty or of any of PX's obligations under this Agreement is (at PX's option) the supply or re-supply of Payment Express, the Goods, the Software, or the Documentation or the refund or waiver of Fees for the relevant part of Payment Express the Goods, the Software, or the Documentation which is the subject matter of, or directly related to, the breach.
- 10.2 Limitation:** To the fullest extent permitted by law, in no event will PX's total liability to Customer in connection with this Agreement for any one or more defaults as described in this Agreement, clause 10.1 exceed the amount paid by Customer to PX under this Agreement in the 3 months following execution of this Agreement.
- 10.3 Exclusion:** To the fullest extent permitted by law, in no event will PX be liable to Customer whether in contract, tort (including negligence) or otherwise in respect of any:
  - (a) loss of data, lost profits, loss of revenue, loss of goodwill, loss of business or for any indirect, consequential or special loss, damage, cost or expense suffered or incurred by Customer arising out of, or in connection with, this Agreement;
  - (b) loss, damage, cost or expense suffered or incurred by Customer, to the extent this results from any act or omission by Customer; or
  - (c) any event described in this Agreement, clause 14.
  - (d)

## 11. Competition and Consumer Act

- 11.1** This Agreement must be read and construed subject to any statutory provisions which cannot lawfully be excluded, restricted or modified, including the Australian Consumer Law. If any such statutory provisions apply then, to the extent to which PX is entitled to do so and at PX's option, PX limits its liability pursuant to such provisions for any goods to the replacement or repair of goods, or for services, to the re-supply or the payment of the cost of having the services supplied again.

## 12. Termination

### 12.1 Termination Upon Notice:

- (a) PX may terminate this Agreement at any time on not less than 3 months' prior written notice to Customer.
- (b) Customer may terminate this Agreement at any time on not less than 3 months' prior written notice to PX, provided:
  - (i) During the Initial Term, Customer will be liable for the Fees for the remainder of the Term, which, notwithstanding clause 3.1, shall be payable immediately on giving such notice;
  - (ii) During any Renewal Term, Customer will be liable for the Fees for the remainder of the Renewal Term, which, notwithstanding clause 3.1, shall be payable immediately on giving such notice.

### 12.2 Termination for Cause:

Either party (the **First Party**) may terminate this Agreement at any time and with immediate effect by written notice to the other party (**Second Party**) if the Second Party:

- (a) is in material breach of any of its obligations under this Agreement, and has failed to remedy the breach within 10 Business Days of receiving written notice from the First Party to remedy the breach; or
- (b) goes into liquidation or has a receiver appointed; or
- (c) is unable to pay its debts as they fall due; or

(d) is insolvent or deemed insolvent under the *Corporations Act (2001)* (Cth).

**12.3 Breach of Licence Terms:** Without limiting this Agreement, clause 12.2(a), any use of Payment Express, the Goods, the Software, or the Documentation by Customer for any purpose other than the Permitted Use, or any breach by Customer of the provisions of this Agreement, clause 16 will be deemed to be a material breach of this Agreement which for the purposes of clause 12.2(a) is not capable of remedy.

**12.4 Consequences:**

- (a) Amounts owing at termination: If this Agreement is terminated by PX prior to the expiry of the Term, Customer must pay the unpaid balance of the Fees due under this Agreement and the cost of PX's reasonable expenses in terminating this Agreement.
- (b) Expiry or termination of this Agreement will not affect the rights or obligations of the parties which have accrued prior to or accrue on termination or which by their nature are intended to survive termination (including this Agreement, clauses 3, 5.9, 7, 8, 9, 10, this 12.4, 13, 16, 17, 18, 19, 20.2 and 20.7, together with those clauses which are incidental to, and required in order to give effect to, those clauses).

**13. Confidentiality**

**13.1 Confidential Information:** Each party will maintain as confidential at all times, and will not at any time, directly or indirectly:

- (a) disclose or permit to be disclosed to any person;
  - (b) use for itself or to the detriment of the other party;
- any Confidential Information of the other party except as, and then only to the extent:
- (a) required by law;
  - (b) that the information is already or becomes public knowledge, otherwise than as a result of a breach, by the receiving party, of any provision of this Agreement;
  - (c) that the information is disclosed to the receiving party, without restriction, by a third party and without any breach of confidentiality by the third party;
  - (d) that the information is developed independently by the receiving party without reliance on any of the Confidential Information of the other party;
  - (e) authorised in writing by the other party; or
  - (f) reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information of the other party only to those of its officers, employees or professional advisers on a "need to know" basis, as is reasonably required for the implementation of this Agreement).

**13.2 PX's Intellectual Property:** Without limiting the effect of clause 13.1, Customer will treat information about PX's Intellectual Property as the Confidential Information of PX.

**14. Force Majeure**

Neither party (**Affected Party**) will be liable for any act, omission or failure by it under this Agreement if that act, omission or failure results directly from an event or circumstances beyond the reasonable control of the Affected Party, provided that:

- 14.1 Notice:** whenever the Affected Party becomes aware that such a result has occurred or is likely to occur, the Affected Party will, as soon as practicable, notify the other party by written notice accordingly;
- 14.2 Continued Performance:** each party will continue to use its best endeavours to perform its obligations as required under this Agreement; and
- 14.3 No Deemed Acceptance of Extra Costs:** neither party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause or otherwise resulting from such act, omission or failure; and
- 14.4 Charges:** this clause 14 will not apply in respect of Customer's obligation to pay any charges or Fees payable under this Agreement.

**15. Licence**

**15.1 Grant of Licence:** PX grants to Customer a non-exclusive, non-transferable licence to use Payment Express, the Goods, the Software and the Documentation for the Term of this Agreement solely for the Permitted Use. Any other use or dealings by Customer with Payment Express, the Goods, the Software or the Documentation without the prior written consent of PX will be a material breach of this Agreement. Except to the extent specifically authorised under this Agreement, Customer must not sub-licence, transfer, assign, rent or sell any of Payment Express, the Goods, the Software or the Documentation or the right to use Payment Express, the Goods, the Software or the Documentation.

**15.2 PX Warranty:** PX warrants that PX has the right and authority to grant to Customer the licence set out at clause 15.1, in accordance with the terms of this Agreement.

**16. Terms of Use**

**16.1 Adequacy:** Customer must satisfy itself as to the adequacy, appropriateness and compatibility of Payment Express and/or the Goods for its requirements. Without limiting this Agreement, clause 7.1, Customer acknowledges that it has not relied on any statements or representations on the part of PX as to performance or functionality, verbal or otherwise, except as expressly recorded in this Agreement.

**16.2 PX Logo:** If Customer uses a capture method for credit or debit card processing using a system which is not hosted by PX, Customer agrees to display the PX Logo in a readily visible position on the user interface of Customer's system where the credit or debit card data is captured. The PX Logo must not be altered or used for any other purpose without the prior written consent of PX. Except as provided for in this Agreement, Customer will have none of the powers conferred on authorised users of trade marks by section 26 of the *Trade Marks Act 1995* (Cth).

**16.3 Compliance:** If Customer is not compliant with one or more of the Security Standards, Customer must not capture or store any credit or debit card number or expiry date locally on Customer's or a non-compliant third party's system.

**16.4 No Right to Copy, Alter or Modify:** Subject to this Agreement, clause 16.8, Customer must not, and must not permit any other person to, copy, reproduce, translate, adapt, vary, repair or modify all or any part of Payment Express, the Goods, the Software or the Documentation by any means or in any form without PX's prior written consent.

**16.5 Permitted Use:** Customer may not:

- (a) use Payment Express, the Goods, the Software or the Documentation for any purpose other than the Permitted Use; or
- (b) use the Software independently of the other components of Payment Express unless PX has given prior written consent to do so.

If this Agreement is terminated, Customer's right to use Payment Express, the Software and the Documentation will automatically terminate and Customer must immediately remove all copies of the Software from its system(s) and return Payment Express, the Goods, the Software and the Documentation to PX

**16.6 Reverse Engineering:** Except as expressly permitted by this Agreement, and except to the extent that applicable laws (including the *Copyright Act 1968* (Cth)) prevent PX restraining the Customer from doing so, the Customer must not adapt, modify, reverse engineer, decompile or disassemble the Software.

**16.7 No Third Party Use:** Except as expressly provided for in this Agreement, the Customer must not provide, or otherwise make available, Payment Express the Goods, the Software or the Documentation or any component thereof in any form to any person (**Third Party**) without the prior written consent of PX. If

PX grants such consent, Customer must ensure that the Third Party complies with the provisions of clauses 5.2, 5.9, 15.1, 16, 8 and 13 (so far as those provisions relate to Customer) as if the Third Party were a party to this Agreement. Customer will be liable to PX for all acts or omissions of any Third Party in contravention of the provisions of clauses 15.1, 16, 8 and 13.

**16.8 Backup Copies:** Customer may make a reasonable number of copies of the Software for backup and disaster recovery purposes only.

**16.9 Installation:** Customer will be responsible for, and all bear all costs associated with, the installation, operation, maintenance and support of the Goods.

**16.10 Labels:** Customer will not remove or deface any labels affixed by PX to the Goods. Customer will not affix any label to the Goods.

**16.11 PX Testing Prior to Launch:** Prior to any permitted use of PX products and/or Software by Customer or any third party, PX shall be entitled at its sole discretion to test all PX products and Software that Customer purchases, rents, or intends to use for up to seven (7) business days ("Pre-launch Testing"). Such Pre-launch Testing shall also entitle PX to three (3) business days to test transaction processing and settlement.

## 17. Rental/Loan of Goods

**17.1** Where Customer agrees to rent/loan Goods from PX, the following terms and conditions apply:

- (a) **Ownership:** Legal and beneficial ownership of, and title to, Payment Express, the Goods, the Software and the Documentation remains at all times with PX;
- (b) **Risk:** Customer will bear the risk of, and be responsible for, all loss (including theft) of or damage to, the Goods from the time that they are first Delivered to Customer until the time that they are Delivered back to PX;
- (c) **Maintain Goods:** Customer must take reasonable steps to avoid exposure of the Goods to heat, dust and moisture, liquids and electrical and physical shock;
- (d) **Licence Terms:** Customer must comply with all manufacturer's licence terms applicable to the Goods (as supplied with the Goods or otherwise notified by PX to Customer from time to time);
- (e) **Theft, Seizure, Loss, Damage, Repairs:** To the maximum extent permitted by law, and subject to clause 11.1, if for any reason the Goods are stolen, seized, lost, damaged or require repairs, Customer must immediately advise PX of the theft, seizure, loss, damage or repairs required. Customer must pay all costs and comply with PX's directions in connection with recovering the Goods, repairing any damage or the replacing of any parts (fair wear and tear excepted). Customer must continue to pay the Fees while the Goods are being repaired or, in the event of theft, seizure or loss, while the Goods are missing. PX will not be liable for any loss or damage in relation to the unavailability of the Goods;
- (f) **No Dealing or Modifying or Security Interests:** Customer must not sell, lend, lease, transfer, modify or otherwise deal with the Goods without first obtaining PX's written consent. Customer must not create, or allow to be created, a Security Interest over the Goods;
- (g) **Inspection:** Customer must allow PX to inspect the Goods at any time during normal business hours, provided that PX first gives Customer not less than 2 Business Days' notice;
- (h) **Return of Goods:** When this Agreement ends (either by completion of the Term or by way of termination), Customer will, at Customer's expense, return the Goods, in good working order and undamaged condition (fair wear and tear excepted) to PX's place of business. If the Customer fails to return the Goods within 14 Business Days of the end of the Agreement, Customer will pay PX the fair value of the Goods as at the completion of the Term;
- (i) **Repossession:** If Customer does not return the Goods in accordance with this Agreement clause 17.1(h), PX may enter any premises where PX reasonably believes that the Goods may be located and Customer will provide all reasonable authority and assistance to enable recovery of those Goods by PX. Customer will be liable to PX for all costs (including legal costs on a solicitor-client basis) incurred by PX in recovering the Goods;
- (j) **Further supply:** The rental/loan of Goods by PX to Customer does not guarantee Customer that PX will supply Goods beyond the Initial Term;
- (k) **PPSA:** if PX determines that this Agreement contains a Security Interest for the purposes of the PPSA, PX may consult with Customer in relation to what steps (if any) it may take to ensure that the Security Interest is enforceable, perfected and otherwise effective. PX does not need to give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded. To the extent permitted by law, the sections of the PPSA listed in section 115(1) of the PPSA will not apply on the enforcement by PX of any Security Interest provided for, created or evidenced by this Agreement.

## 18. Purchase of Goods

**18.1** Where Customer agrees to purchase Goods from PX, the following terms and conditions apply:

- (a) **Title:** Title in any of the Goods (excluding any Software and firmware forming part of, or supplied with, the Goods) will pass to Customer upon Customer making payment in full for those Goods, including any interest payable on overdue amounts;
- (b) **No Dealing or Modifying or Security Interests:** Customer must not sell, lend, lease, transfer, modify or otherwise deal with the Goods without first obtaining PX's written consent. Customer must not create, or allow to be created, a Security Interest over the Goods until title has passed to Customer;
- (c) **Risk:** Risk in any of the Goods will pass to Customer upon Delivery of those Goods to Customer;
- (d) **Licence to Software/Firmware:** Customer will be licensed to use any third party software and/or firmware forming part of, or supplied with, the Goods on the relevant manufacturer's or software developer's licence terms (as supplied with the Goods or otherwise notified by PX to Customer). Customer must comply with all such licence terms;
- (e) **Warranty:** To the maximum extent permitted by law, and subject to clause 11.1, PX will repair or replace, at PX's option, faulty Goods for a period of 1 year commencing from the date the Goods are delivered to Customer, fair wear and tear accepted and provided damage is not caused by the Customer. (i.e. liquid damage is not covered by this warranty). Our Goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure;
- (f) **Hold for Benefit of Customer:** To the maximum extent permitted by law, and subject to clause 11.1, where it is unable to pass to Customer any manufacturer's warranties in respect of any of the Goods supplied to Customer under this Agreement, PX will hold any such warranties for the benefit of Customer; and
- (g) **Recovery of Unpaid Retail Equipment:** If Customer fails to pay PX in full for any Goods which have been Delivered, PX may enter any premises where PX reasonably believes that the Goods may be located and Customer will provide all reasonable authority and assistance to enable recovery of those Goods by PX. Customer will be liable to PX for all costs (including legal costs on a solicitor-client basis) incurred by PX in recovering the Goods.

## 19. Payment Express Support Services

**19.1 Support:** PX will provide the Support Services to Customer.

- 19.2 Emergency Support Services and Other Services:** PX may make available the Emergency Support Services. If Customer requires Emergency Support Services and/or services additional to the Support Services PX may, if it agrees to provide those services to Customer, charge Customer for those services on a time and materials basis and on such other terms and conditions as may be agreed between the parties.
- 19.3 Alterations to Software:** PX may, at its sole discretion, alter, upgrade, update or change Payment Express at any time during the Term of this Agreement. Where PX believes that such alteration, upgrade, update or change will, or is likely to, materially affect Customer's use of Payment Express, PX will endeavour to notify Customer of this in advance. Customer acknowledges and agrees that, if Customer fails to promptly install all updates to any software forming part of Payment Express supplied by PX in connection with this Agreement, Customer may be unable to process Transactions and that:
- (a) PX will not be liable to Customer under this Agreement in respect of such inability; and
  - (b) PX will be released from any obligation to supply the Support Services during any period which Customer has failed to install any such update.
- 19.4 PX Website:** Customer acknowledges and agrees that PX may, at its sole discretion, determine what information, data, features and functionality is made available to Customer via the PX Website. Customer agrees to comply with any terms that PX may specify in relation to Customer's use of the PX Website. In the event of any inconsistency between the terms and conditions of this Agreement and those on the PX Website, the terms and conditions of this Agreement will apply to the extent of that inconsistency. PX will supply user names and passwords to enable authorised users of Customer to access the PX Website. Customer must keep such user names and passwords secure and made known only to authorised users and will be responsible for all use of the PX Website through use of Customer's user names and passwords. If Customer breaches any term of this Agreement or the terms of use of the PX Website, PX may disable Customer's user names and passwords.
- 19.5 Offline Mode:** Customer hereby authorizes PX to enable processing of credit cards offline in the event of an internet failure ("Offline Mode"). Additionally, Customer authorizes PX to enact service in Offline Mode until internet service is restored for a maximum of 4 hours per event. Transactions in Offline Mode shall be capped at fifty (50) dollars maximum per transaction per card, and a maximum of five-hundred (500) transactions processed per device per Offline Mode event, and a maximum of one-thousand (1000) dollars total per device per Offline Mode event. Customer and PX agree and acknowledge that PX will not be liable for unsuccessful transactions that are a result of Offline Mode transaction processing. Customer shall be responsible with acquiring approval from its banking partner for operation of Offline Mode. PX will not be liable if the terms of Clause 19.5 (Offline Mode) or the operation of Offline Mode causes Customer's account to be downgraded, shut down, disrupted, or otherwise adversely impacted.
- 20. General**
- 20.1 Entire Agreement:** This Agreement records the entire arrangement between the parties relating to all matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.
- 20.2 Disputes:** If the parties fail to negotiate a resolution to a dispute within a reasonable time (not exceeding 20 Business Days from formal notice of the dispute being given by one party to the other), either party may require that the dispute be submitted to mediation, such mediation to take place in Sydney, New South Wales, Australia. If the parties fail to agree on a mediator within 5 Business Days after the submission to mediation, one will be appointed by the President for the time being of the Law Society of New South Wales or its successor. In the event of any submission to mediation:
- (a) the mediator will not be acting as an expert or as an arbitrator;
  - (b) the mediator will determine the procedure and timetable for the mediation; and
  - (c) the parties will share equally the cost of the mediation.
- All discussions in mediation will be confidential and without prejudice. Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with the dispute resolution process above.
- 20.3 Waiver:** No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.
- 20.4 Severance:** Any provision in this Agreement which is or becomes unenforceable, illegal or invalid for any reason shall be severed or read down and shall not affect the enforceability, legality, validity or application of any other provision which shall remain in full force and effect.
- 20.5 Assignment:** PX may assign all or any of its rights and obligations under this Agreement to any person or entity without Customer's consent. Customer may not transfer or assign any of its liabilities or rights under this Agreement to any other person or entity without PX's prior written consent (such consent not to be unreasonably withheld, provided PX is satisfied as to the suitability of the assignee and Customer meets PX's reasonable costs in relation to the assignment).
- 20.6 Amendment:** Except as expressly provided for in this Agreement, no amendment to this Agreement will be valid unless recorded in writing and signed by a duly authorised senior representative of each party.
- 20.7 Governing Law and Jurisdiction:** This Agreement is governed by the laws of New South Wales and the parties submit to the jurisdiction of the New South Wales courts in respect of all matters relating to this Agreement.
- 20.8 Remedies:** The rights, powers and remedies provided in this Agreement are not exclusive of any rights, powers or remedies provided by law.
- 20.9 Subcontracting:** PX may appoint subcontractors to perform any of its obligations under this Agreement.
- 20.10 Counterparts and copies:** This Agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document. Any facsimile copy of this agreement or copy of this agreement sent via email in PDF format (including any facsimile copy or copy sent via email in PDF format, of any document evidencing either party's signature of this agreement) may be relied upon by the other party as if it were an original copy. This Agreement may be entered into on the basis of an exchange of such facsimile or PDF copies.
- 20.11 Conflicts:** In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order provided by Customer to PX, this Agreement shall govern and control.
- 20.12 Notices:** Any notice or other communication to be given under this Agreement must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:
- (a) By personal delivery – when received by the party.
  - (b) By post by registered or ordinary mail – on the second working day following the date of posting to the addressee's registered office.
  - (c) By email – when acknowledged by the party orally or by return email or otherwise in writing.
  - (d) By facsimile – when sent to the correct facsimile number (with written transmission confirmation).
- The addresses for the parties for Notices shall be as set out on Page 1 of this Agreement or such other address as either party specifies by notice in writing to the other.