

# Terms & Conditions

These consumer terms and conditions form the basis of your Continuing Credit Contract with Payright for your Payright Account

The full details of your Continuing Credit Contract with Payright are included in:

- these Terms and Conditions;
- the Application; and
- the Credit and Repayment Schedule.

## 1. How to apply for your Payright Account

1.1 An application for a Payright Account can be made at a Participating Merchant by completing an Application and entering into a Credit and Repayment Schedule in relation to a proposed purchase. You can either complete your application online or in paper form. The online application form can be completed by either yourself or a Participating Merchant on your behalf.

1.2 If your application is approved, you will be provided with an amount of credit to apply to your intended purchase from that Participating Merchant. This amount of credit is your Initial Credit Amount.

1.3 If you wish to make subsequent purchases using your Payright Account, you will be required to complete a new Application and meet the conditions in clauses 3.3 and 3.4. You will enter into a new Credit and Repayment Schedule in relation to each subsequent purchase. Each application for credit will be assessed at the time it is made.

1.4 A Payright Account can only be used to make purchases from Participating Merchants.

1.5 By providing the authentication number contained in the SMS sent to your nominated mobile telephone number or by submitting your Application, you accept these Terms and Conditions and agree to be bound by them.

1.6 To apply for a Payright Account you must (among other things):

- (a) be an Australian citizen or permanent resident;
- (b) be over 18 years of age;
- (c) be deriving an income;
- (d) if employed, provide your employer's details for verification purposes;
- (e) provide a valid Australian driver's licence or Australian passport, when you submit your Application; and
- (f) provide a suitable credit or debit card for the purpose authorising regular direct debit repayments.

## 2. Your representations

2.1 By accepting these Terms and Conditions you acknowledge that Payright has agreed to establish your Payright Account based on the information contained in your Application. You represent and warrant to Payright that the information that you have provided in your Application is true and correct in every respect. If any of your personal details change (including your name or any contact details) or there is any change to your financial situation that may make it difficult for you to meet your repayment obligations under your Payright Account, then you must notify Payright immediately. If you do not notify Payright of any changes to your personal information or financial situation then Payright will not be responsible for any issues or claims that may arise as a result of it being unaware of your changed circumstances.

2.2 By accepting these Terms and Conditions you also:

- (a) consent to Payright using your personal information to administer your Payright Account, in accordance with Payright's [Privacy Policy](#) and these Terms and Conditions;
- (b) consent to Participating Merchants using your personal information to administer and facilitate your purchases and related payments;
- (c) consent to Payright using your personal information in its dealings with credit reporting agencies in relation to your application for a Payright Account and Payright's subsequent management of your Payright Account;
- (d) agree to repay all amounts charged to your Payright Account including all applicable fees and charges and any other amount properly charged in accordance with this Continuing Credit Contract; and
- (e) warrant that the account details that you have provided in the Application for the purpose of the direct debit payments are true and correct, that you are the account holder of the nominated account and that direct debiting is available in connection with that account.

## 3. How your account works

3.1 When Payright receives your Application it will assess your application for credit in relation to the proposed purchase. Payright reserves the right to approve or deny your initial application at its complete discretion. If it is your first application and Payright decides that you are suitable, it will notify you that the Continuing Credit Contract is in effect and open your Payright Account immediately, after which you will be able to use it for your proposed purchase. You will receive a communication from Payright informing you of the details of your Payright Account.

3.2 After the Initial Credit Amount is advanced, the Amount of Credit available through your Payright Account will be set to zero. You will not be able to request any further credit advances to make subsequent purchases until you have repaid some of the Initial Credit Amount.

3.3 Subject to clause 3.4, if you already have a Payright Account and you have repaid some of the Initial Credit Amount and any fees and charges, you may request further amounts of credit. The amount you may request is the difference between your Credit Limit and the amount outstanding under the Payright Account.

3.4 Payright will only approve your request for a further advance if:

- (a) you have completed an Application ;
- (b) the advance is for a purchase from a Participating Merchant;
- (c) you are not in default under this Continuing Credit Contract and you have not been late on more than 3 repayments;
- (d) your Payright Account has not been closed, suspended or terminated;
- (e) you provide any documentation necessary by Payright or the Participating Merchant to consider your application; and
- (f) you provide any documents Payright may reasonably require from time to time.

3.5 A separate Credit and Repayment Schedule will be provided for each subsequent purchase.

3.6 You may not be entitled to use your Payright Account to pay for the entire cost of a purchase from a Participating Merchant. After assessing your Application, Payright will advise the Participating Merchant of the Amount of Credit available to you in relation to the proposed purchase. You may be required to pay part of the purchase price by way of deposit. Payright will advise the Participating Merchant of the minimum deposit required in relation to a particular purchase (if any). You must pay any required deposit either directly to the Participating Merchant or if you applied online to Payright during the application process. You will not be able to apply your Payright Account to the balance until the deposit has been paid and the Participating Merchant confirms they have provided or delivered the purchase.

3.7 Your Payright Account is not transferrable and can only be used by you.

3.8 Payright may review your Payright Account at any time and you must provide Payright with any information it reasonably requires to conduct such review.

3.9 You may cancel your Payright Account at any time by notice to us provided any outstanding amounts have been paid and your Payright Account balance is zero.

3.10 Payright may close your Payright Account if outstanding amounts have been paid and your account balance has been zero for at least 12 months. Payright will give you 30 days' notice of its intention to close your account.

3.11 You must pay any outstanding amounts due under your Payright Account immediately on giving or receiving notice that it is to be closed.

3.12 If you wish to open a new Payright Account after your Payright Account has been cancelled, you will have to re-apply to Payright. Payright reserves the right to approve or deny this new application at its sole discretion. If your application for a new Payright Account is approved, it will form a new Continuing Credit Contract between you and Payright.

#### **4. Fees and charges**

4.1 Payright will not charge you any interest on any credit provided by us to you through your Payright Account. However, you will be required to pay the fees set out in the Credit and Repayment Schedule. Payright will not charge you any fees for providing credit under this Continuing Credit Contract that exceed \$200 in the first 12 months after you open your Payright Account or \$125 in any subsequent 12 month period.

4.2 You may also be required to pay additional reasonable fees related to the enforcement of the Continuing Credit Contract if you are in default, such as late payment fees or enforcement costs. These fees are not for providing the credit and do not fall within the limit described in clause 4.1.

4.3 Late payment fees will only be charged if you fail to make any scheduled Regular Repayments or if you fail to pay the total amount due under a Credit and Repayment Schedule by the due date. You will be notified of any applicable Late Payment Fees in a Late Payment Notice. These fees are not for providing the credit and do not fall within the limit described above.

4.4 While your Payright Account remains active, Payright may continue to charge account keeping fees which will be debited from your nominated account in accordance with the direct debit direction in the Application. This account keeping fee will be a monthly charge. Where there is an outstanding amount due under an existing Credit and Repayment Schedule, the monthly account keeping fee will be debited at the same time as a fortnightly repayment due under the Credit and Repayment Schedule (typically every second repayment). Where there is no existing Credit and Repayment Schedule, account keeping fees will be charged monthly on the final Business Day of the month.

4.5 Payright may charge to your Payright Account any fees or charges arising under the Continuing Credit Contract including any late payment fees or enforcement fees.

#### **5. Making purchases**

5.1 You will be required to submit an Application and enter into a Credit and Repayment Schedule in relation to each purchase you make using your Payright Account. The Credit and Repayment Schedule will set out the:

- (a) establishment fee (for new Payright Accounts only);
- (b) Amount of Credit applicable to the purchase;
- (c) total purchase price;

- (d) number and amount of minimum repayments required;
- (e) frequency of payments under the direct debit repayment plan; and
- (f) applicable fees and charges.

5.2 Your Payright Account will remain active and available for you to make additional purchases unless your Payright Account is closed in accordance with these Terms and Conditions.

## 6. Making payments

6.1 Payments will be made by direct debit at regular intervals in accordance with the direct debit information provided by you in the Application and these Terms and Conditions. Each Credit and Repayment Schedule will set out the frequency and amount of the direct debit repayments required to satisfy payment of any applicable fees and charges and repayment of the credit provided.

6.2 From time to time, a direct debit may be unsuccessful (for example, because of insufficient funds in your account). If a direct debit is unsuccessful, Payright may make further attempts to debit the amount of the missed Regular Payment from your account. Where a customer has multiple unsuccessful payments, Payright will limit the number of successful loan repayments to no more than three (3) on any one day. Your financial institution may charge you fees if this occurs. You must also pay the Late Payment Fee in accordance with clause 6.4 below (except where the reason the direct debit is unsuccessful is due to our act or omission). There will be no limit on the number of previously unsuccessful Late Fees that Payright will process in any one day.

6.3 You can make additional repayments at any time or repay the total amount owing under a Credit and Repayment Schedule at any time. Payright may charge you an additional payment fee in respect of any additional repayments you make. This additional payment fee is included in the calculation of the maximum fee amount in clause 4.1. For as long as there is an outstanding balance in respect of a Credit and Repayment Schedule you will be required to make the minimum repayments required in accordance with the direct debit arrangements regardless of whether you have made any additional repayments.

6.4 If you fail to make a minimum repayment by the due date (including because a direct debit is unsuccessful), Payright may issue you with a Late Payment Notice and charge you a Late Payment Fee or part thereof.

6.5 Payright may use any payment it receives from you to satisfy any amount that you are due to pay in any manner it chooses. For example, Payright may choose to apply a payment in satisfaction of outstanding enforcement fees or late payment fees in priority to any outstanding scheduled minimum repayments. Ordinarily, Payright will apply payments in the following order:

- (a) enforcement fees;
- (b) late payment fees;
- (c) other fees and charges; and
- (d) outstanding balances in relation to purchases.

6.6 Any fees and charges or other amounts that have accrued and remain outstanding on the final repayment date in the Credit and Repayment Schedule under this Continuing Credit Contract, must be paid along with the final repayment. Payright will debit your nominated account for the final minimum repayment and all outstanding accrued fees and charges and other amounts on the final repayment date in your Credit and Repayment Schedule.

## 7. Statements, notices and other information

7.1 You will be issued with statements by Payright upon request.

7.2 You should check your statements carefully to ensure that you agree with all of the entries. If you are aware or think there is an error on your statement, you must contact Payright immediately.

7.3 Payright will send you (and you consent to receiving) statements, notices and other information in electronic form and/or by means of electronic communication (including by email, SMS or making the same available to you online or by any other electronic method), unless you subsequently nominate an alternative preferred method of communication or Payright decides otherwise. Payright may from time to time email you with a link to information or notices that have been posted on its website.

7.4 Payright will not send you paper statements unless you specifically request them, Payright chooses to do so or Payright is required by law to issue a statement or notice in this form. If you would like to receive paper statements, please contact Payright to request this (Level 2, 789 Toorak Road, Hawthorn East VIC Australia 3123 or [care@payright.com.au](mailto:care@payright.com.au)).

7.5 You are responsible for ensuring that Payright has your most recent email address and for regularly checking your nominated email account for information from Payright regarding your Payright Account.

7.6 If you request a copy of any statement, notice or other information that has been sent to you by email, Payright may charge you a fee for providing a paper copy.

## 8. Default

8.1 You will be in default if you:

- (a) fail to make a Regular Payment, including because a direct debit is unsuccessful;
- (b) fail to pay the amount set out in a Late Payment Notice by the due date for payment;
- (c) fail to repay the total amount of credit provided together with all applicable fees and charges by the final due date for payment notified in the Credit and Repayment Schedule or otherwise agreed with Payright; or

(d) do any of the following and it has a material impact (as defined in 8.2 below) you:

- (i) breach a provision of this Continuing Credit Contract;
- (ii) do not comply with the law; or
- (iii) give us incorrect, incomplete or misleading information.

8.2 A default has a "material impact" if Payright reasonably considers that the event, by its nature, is material or the event has had, or is likely to have, a material impact on:

- (a) your ability to meet your obligations under this Continuing Credit contract;
- (b) Payright's credit or security risks (or Payright's ability to assess these); or
- (c) Payright's legal risks or reputation.

8.3 If you are in default Payright may do any or all of the following:

- (a) close, cancel or suspend your Payright Account;
- (b) require you to pay all or part of the outstanding balance of your Payright Account; or
- (c) take further action to enforce its rights and recover the amounts due including (but not limited to) referring you to a credit and collection agency.

8.4 Subject to clause 8.5, Payright will issue you with a Default Notice before it exercises any of its other rights. The Default Notice will advise you of the default and notify you of how to remedy it and by when it must be remedied. If you do not or cannot remedy the default within the time set out in a Default Notice all amounts you owe to Payright in your Payright Account and otherwise in connection with this Continuing Credit Contract will immediately become due and payable and Payright may take further action to enforce its rights and recover the amounts due.

8.5 If Payright believes that you have fraudulently induced it to enter into this Continuing Credit Contract and this has a material impact as defined in 8.2 above, or Payright cannot locate you after making reasonable attempts to do so, or Payright is otherwise authorised by a court or tribunal, then Payright is not required to give you a Default Notice and the amount outstanding in your Payright Account will immediately become due and payable without prior notice to you.

8.6 If your Payright Account is closed, cancelled or suspended, you must still make payments in accordance with any applicable Credit and Repayment Schedules until the outstanding balance of your Payright Account is paid in full.

8.7 If you fail to make a minimum payment by the due date (including because a direct debit is unsuccessful) or if you fail to pay the total amount due under a Credit and Repayment Schedule by the due date, Payright may issue you with a Late Payment Notice and charge you a Late Payment Fee.

8.8 If you are in default and in addition to any Late Payment Fees, you will be responsible for paying any Enforcement Fees to reimburse Payright any reasonable costs we incur in enforcing this Continuing Credit Contract and/or collecting any overdue payments including, but not limited to, the costs of any third party engaged by us to enforce this Continuing Credit Contract and recover outstanding monies.

## 9. Privacy

9.1 Payright complies with the Australian Privacy Principles and only collects the personal information that you provide to it in your Application or otherwise provided in connection with the operation and use of your Payright Account. You agree and consent to Payright collecting, using and sharing your personal information for the purposes and manner set out in its [Privacy Policy](#). Payright may also collect your personal information from others, for example, if Payright needs information from third parties to verify the information that you have provided in your Application. Payright will only use your personal information for the purposes set out in its Privacy Policy including assessing your application for a Payright Account, managing and operating your Payright Account, conducting reviews of your Payright Account and to comply with applicable laws in Australia or overseas (if relevant).

9.2 Payright will only retain your personal information for as long as it is necessary to satisfy the purpose for which it was provided. Payright does not generally share your personal information with others unless this is necessary for or ancillary to the purpose for which you provided the information. For example, Payright may share your personal information with Participating Merchants at which you intend to use your Payright Account, with credit reporting agencies or with others if required by law.

9.3 You may ask to see any personal information that Payright holds about you at any time and Payright will provide you with access. If there are any errors or omissions in the information held by Payright please ask for it to be corrected.

9.4 For further information regarding privacy please see Payright's Privacy Policy. You can access a copy of Payright's Privacy Policy by contacting Payright's Privacy Officer on 1300 338 496 or by emailing [care@payright.com.au](mailto:care@payright.com.au).

## 10. Direct Debt

10.1 By signing or submitting the Application you accept the direct debit terms and conditions contained in this clause. Once you complete the Application containing the direct debit particulars Payright will make arrangements with your nominated financial institution to debit your nominated account in accordance with the instructions contained in the Application. Other applicable fees and charges will be debited when due or otherwise with reasonable notice. Where a debit payment is due on a day that does not occur in a particular month then Payright will arrange for the payment to occur on the last Business Day of that month. If the payment is due on a day that is not a Business Day, Payright will arrange for the payment to be debited on the immediately following Business Day. If you wish to change any arrangements in relation to the direct debit, please contact Payright.

10.2 You must ensure that you have sufficient funds in your nominated account to allow a scheduled direct debit Regular Payment to be made. If there are insufficient funds then:

- (a) you may be charged a fee or interest or both by your financial institution;
- (b) Payright may charge you fees; and
- (c) you must arrange for the Regular Payment to be made by another method or arrange for sufficient clear funds to be in your account by an agreed time so that Payright can process the payment.

10.3 It is up to you to verify that the direct debit payments deducted from your account are correct. You must notify Payright immediately if you believe that there has been an error in debiting your account. Payright will investigate any such query and deal with it promptly and in good faith. If your query cannot be resolved to your satisfaction immediately, Payright will investigate further and notify you of when you can expect a further response. If Payright determines that it has incorrectly debited your account then it will adjust your account accordingly by crediting your account or otherwise providing you with a refund. If Payright determines that your account was not incorrectly debited, then Payright will inform you of the reasons why.

10.4 If Payright is required to pay GST on a supply made by it in connection with the direct debit arrangements, then you must pay to Payright an amount equal to the consideration payable or the supply multiplied by the prevailing GST rate on demand.

10.5 The information relating to your direct debit payments will be kept confidential by Payright and Payright will take all reasonable efforts to ensure that any such information is kept secure and to ensure that any employees or agents of Payright who have access to the information about you do not make any unauthorised use, modification, reproduction or disclosure of that information. Payright will only disclose the information it has about you to the extent specifically required or authorised by law, for the purpose of managing your direct debit In accordance with these terms and conditions or with your implied or express consent.

## **11. General matters**

### Variation

11.1 Payright may make changes as set out in clause 11.2 – 11.5 below.

11.2 Payright can make the following types of changes if it applies them to a class of customers or to a product type or feature:

- (a) changes to your payments (including changes to the amount, frequency or number of payments, the time of payment or how we calculate payments);
- (b) changes to fees and charges (including introducing new fees and charges, change the amount of them or the time of payment);
- (c) other changes which:
  - (i) reflect changes in law, an official directive, or the guidelines or requirements of a regulator;
  - (ii) impose, remove or adjust limits;
  - (iii) reflect changes to Payright's pricing;
  - (iv) reflect changes to Payright's business or technological systems;
  - (v) reflect current industry or market practice or conditions;
  - (vi) are administrative or correct a mistake or omission;
  - (vii) Payright reasonably thinks you will benefit from; or
  - (viii) are reasonably necessary to protect Payright's legitimate interests.

11.3 Payright can make some changes that will only apply to you. These are:

- (a) other changes which:
  - (i) reflect Payright's risk associated with you;
  - (ii) are administrative or correct a mistake or omission; or
  - (iii) reflect changes to Payright's business or technological systems; or
- (b) any other change which reduces your obligations or gives you more time to pay.

11.4 Payright will notify you in writing of a changes and when it commences. If Payright changes the amount or frequency of payment of any fee or charge or imposes a new fee or charge or changes the amount or method of calculation, number, frequency or time for payment of any repayments then it will tell you in writing at least 30 days before the change takes effect, unless the change reduces your obligations under this Continuing Credit Contract in which case you will be notified in due course. Any amendment or variation of the Continuing Credit Contract does not give rise to a new contract.

11.5 It is important that the contact details you have given are up to date. If they are not, Payright may not be able to notify you of changes.

### Waiver

11.6 Payright does not waive a right, power or remedy if it fails to exercise or delays in exercising any right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver by Payright of a right, power or remedy must be in writing and signed by Payright.

### Assignment

11.7 Payright may assign, novate, transfer or otherwise deal with its rights under this Continuing Credit Contract in any way it considers appropriate and without notice to you. You must execute all documents which Payright considers are reasonably necessary for these purposes

11.8 You must not assign, novate, transfer or otherwise deal with your rights or obligations under this contract.

#### Governing law

11.9 This Continuing Credit Contract is governed by the laws of Victoria, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia.

#### Notices

11.10 Any notice provided by you or PayRight under the Continuing Credit Contract must be in writing.

#### Liability for goods and services

11.11 Payright limits any responsibility or liability in connection with or in relation to the goods or services purchased by you in respect of which you utilise your Payright Account to the extent permitted under the Australian Consumer Law. Any problems, issues or claims in relation to the goods or services acquired should be raised in the first instance with the relevant Participating Merchant. If you are unable to resolve it with the Participating Merchant, you should contact us and we will consider all of the circumstances and consider what assistance, if any, we can provide.

#### Severability

11.12 If any of the Terms and Conditions are held to be invalid, illegal or unenforceable for any reason then the affected Terms and Conditions will be severed from the Continuing Credit Contract and the remaining Terms and Conditions will remain valid and enforceable.

#### **Defined terms**

In this Continuing Credit Contract:

- "Amount of Credit" means the amount of credit available in connection with your Payright Account.
- "Application" means an application to Payright for a Payright Account and includes any completed application form(s) that you complete, or a Participating Merchant completes on your behalf (either in paper or electronic form), and submitted to Payright to apply for a Payright Account or a subsequent advance of credit.
- "Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as updated from time to time.
- "Business Day" means a day (not being a Saturday, Sunday or public holiday in that place) on which Payright are open for business in Victoria.
- "Continuing Credit Contract" means the contract between you and Payright in relation to your Payright Account the terms of which are contained in these Terms and Conditions, each Application and each
- "Credit and Repayment Schedule" means the schedule prepared in connection with an Application in accordance with the Terms and Conditions in relation to a purchase from a Participating Merchant.
- "Credit and Repayment Schedule" entered into by you in respect of your PayRight Account.
- "Credit Limit" is the Initial Credit Amount plus any fees and charges debited to your Payright Account with the Initial Credit Amount or such other amount as we agree is your Credit Limit.
- "Default Notice" means the written notice provided to you by Payright notifying you that you are in default of your Continuing Credit Contract, setting out the particulars of the default and advising you on the means to rectify the default (if available).
- "Enforcement Fee" means each enforcement fee payable under clause 8, in the amount set out in the Credit and Repayment Schedule.
- "Payright" means Payright Limited (ABN 24 605 753 535) and any wholly owned subsidiary of Payright Limited and their successors and assigns.
- "Payright Account" means your continuing credit facility provided by Payright.
- "Initial Credit Amount" has the meaning given in clause 1.1.
- "Late Payment Fee" means the amount described and set out in the Credit and Repayment Schedule, or any part thereof, and as updated from time to time. For the avoidance of doubt, Payright may apply this fee in full or in part at its sole discretion.
- "Late Payment Notice" means a notice provided to you by Payright if you fail to make a payment by the due date for that payment.
- "Participating Merchant" means an entity that will accept payment for goods and services by applying your Payright Account.
- "Regular Payment" means a scheduled regular payment due under a Credit and Repayment Schedule.
- "Terms and Conditions" means these terms and conditions.

October 2019.

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