

## Terms and Conditions for Australia Post and NAB to provide access to Card Acquiring Services and SecurePay Payment Services

These Terms and Conditions apply to all applicants for online payment services who have been approved to accept transactions online for cards issued by the Card Schemes and, once entered into, forms and agreement between (1) You, the Customer, (2) NAB and (3) Australia Post (collectively, the "parties").

### 1. Definitions

1.1. Unless the contrary intention appears, the following words have these meanings in these Terms and Conditions:

- a) **Australia Post** means the Australian Postal Corporation (ABN 28 864 970 579).
- b) **Banking Day** means a day on which banks are open for general banking business in Melbourne, Australia except for Saturdays, Sundays and national public holidays in Australia.
- c) **Card** means a card that has been designated by the issuer as a Visa or MasterCard card or a card issued by any other Card Scheme.
- d) **Card Acquiring Services** means the activities undertaken by NAB to authorise, process and settle Card transactions undertaken by Cardholders with You, including all other activities necessary for the provision of online Card acquiring services, but excluding the SecurePay Payment Services.
- e) **Card Schemes** means Visa, MasterCard and any other card scheme agreed by all parties for the purposes of the Card Acquiring Services, or by Australia Post and You for the purposes of the SecurePay Payment Services.
- f) **Card Scheme Rules** means the rules and regulations which regulate participants in the Card Schemes.
- g) **Cardholder** means the Person in whose name the Card has been issued.
- h) **Certificate of Compliance** has the meaning in the Data Security Standards.
- i) **Chargeback** is the reversal of a Transaction.
- j) **Chargeback Fee** means the fee for each Chargeback initiated by the Cardholder's financial institution, a Card Scheme or NAB.
- k) **Confidential Information** means that You have entered into these Terms and Conditions and any information of, or relating to, the businesses (including without limitation any Person with whom a party has entered into a joint venture, strategic alliance or other business arrangement), systems, operations, customers, properties, assets or affairs of a party or its Related Bodies Corporate which is or has been disclosed by the party to the other party ("the recipient") or learnt or acquired by the other party under or in connection with these Terms and Conditions, whether orally, electronically or in writing other than any such information which:
  - i) was in the public domain at the time of its disclosure or acquisition by the recipient;
  - ii) became part of the public domain after its disclosure or acquisition by the recipient, otherwise than through a disclosure in breach of an obligation of confidence of the recipient;
  - iii) is or came lawfully into the possession of the recipient wholly independently of and not related in any way to these Terms and Conditions and the transactions and activities contemplated by it otherwise than as a result of a disclosure in breach of an obligation of confidence; or
  - iv) was independently known by the recipient at the time of its disclosure or acquisition by the recipient.
- l) **Data Breach** means any occurrence which results in the unauthorised access by a third party to confidential data relating to Transactions stored by You or any entity engaged by You to provide storage or transmission services in respect of that data.
- m) **Data Security Standards** means the Payment Card Industry Data Security Standards mandated by the Card Schemes for the protection of Cardholder details and transaction information, and any additional or replacement standards of which You are advised from time to time.
- n) **Domestic Merchant Service Fee** means a percentage of the Transaction value for payments using a Card issued in Australia.
- o) **Fee** means any of the following:
  - i) Transaction Fee;
  - ii) Domestic Merchant Service Fee;
  - iii) International Merchant Service Fee; and
  - iv) Chargeback Fee.
- p) **International Merchant Service Fee** means a percentage of the Transaction value for payments using a Card issued outside of Australia.
- q) **NAB** means National Australia Bank Limited (ABN 12 004 044 937).
- r) **Online Portal** means the online application system hosted by Australia Post where you applied to access the Services.
- s) **Person** includes an individual, firm, body corporate, unincorporated body or association, partnership, joint venture and any government agency or authority.
- t) **Personal Information** refers to information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, which is received by You from any source as a consequence of the performance of the rights and obligations under these Terms and Conditions.
- u) **PIN** means the personal identification number allocated by NAB, a Card issuer or personally selected by the Cardholder.
- v) **Privacy Law** means the Privacy Act 1988 (Cth) all legislation and principles relating to the collection, use, disclosure, storage and granting of access rights to Personal Information.
- w) **Qualified Security Assessor** has the meaning in the Data Security Standards.
- x) **Related Body Corporate** has the meaning given to it in the Corporations Act 2001 (Cth).
- y) **Relevant Law** means any:
  - i) statute, ordinance, code or other law including regulations and other instruments under them that are relevant to the obligations and rights of these Terms and Conditions; and
  - ii) any code of practice, guidelines or standards issued by relevant regulators or industry bodies.
- z) **Remote Transaction** means a Transaction that is not processed by You physically at the location of purchase of the applicable goods or services.
- aa) **SecurePay Payment Services** means payment transaction processing services provided using the SecurePay Payment System, including the provision of access via the web to a merchant management facility and the distribution of emailed transaction reports as applicable.
- bb) **SecurePay Payment System** means the software and technology system known as SecurePay, eSec or Direct One Payments Gateway enabling a payment to be made using either a phone or web site.
- cc) **Services** has the meaning in clause 2.
- dd) **Surcharge** means any fee charged by You to a Cardholder that is added to a Transaction for the acceptance of a Card.
- ee) **Transaction** means a payment transaction by Card between a Cardholder and You using the Services.
- ff) **Transaction Fee** means the fee for each Transaction, including refund, pre-authorisations and card-issuer declined payments.
- gg) **Transaction Receipt** means a document used to evidence a Transaction.
- hh) **We, Us and Our** means each of NAB and Australia Post.

- ii) **You, Your and Customer** means the customer who has agreed to these terms through the Online Portal.

## 2. Services

Under these Terms and Conditions, Australia Post provides to You:

- a) access to the Card Acquiring Services (with NAB as acquiring bank and provider of those services); and
  - b) the SecurePay Payment Services (for processing Transactions),
- (collectively, the **Services**).

## 3. Approval to use Services

**3.1.** You acknowledge that:

- a) the operation of these Terms and Conditions is conditional on Australia Post and NAB approving an application to provide the Services to You;
- b) in relation to information provided by You to Australia Post in connection with Your application:
  - i) Australia Post may provide that information to NAB;
  - ii) We may rely on such information as being complete, accurate and not misleading or deceptive; and
  - iii) We are not obliged to verify the completeness or accuracy of the information;
- c) the decision whether to approve Your application is at the sole discretion of both NAB and Australia Post and the reason for any decision which is made may not be given to You;
- d) an approval by NAB is specific to Australia Post providing Services to You and does not in any way constitute a representation by NAB that You will be able to use the services of another payment services provider or of NAB directly should You cease using the SecurePay Payment Services for any reason;
- e) any information obtained by NAB or Australia Post during its assessment of an application under clause 3(a) is and remains confidential to NAB or Australia Post (as the case may be) and will not be shared with You; and
- f) In respect of the Card Acquiring Services, NAB is bound by Card Scheme Rules and all correspondence and discussions between Card Schemes and NAB are confidential as between NAB and the Card Schemes.

**3.2.** You represent and warrant that:

- a) any information You provide to Australia Post in connection with an application for Us to provide the Services is complete, accurate and not misleading or deceptive;
- b) if You have disclosed Personal Information to Australia Post in connection with the application under clause 3.1(a), You have obtained each relevant individual's prior consent to the disclosure and otherwise complied with Your obligations under Privacy Law, and You have specifically disclosed to the individual that

Personal Information may be processed by service providers overseas, including in India; and

- c) You are able to satisfy Your obligations and responsibilities under these Terms and Conditions.

**3.3.** You acknowledge and agree that:

- a) Australia Post and NAB are authorised to obtain from third parties financial and credit information relating to You in connection with Our decision to approve Your application and in respect of Our continuing evaluation of Your financial and credit worthiness; and
- b) any information collected by Australia Post in connection with these Terms and Conditions or the Services may be disclosed to NAB.

**3.4.** The parties agree that no party is or will be bound by these Terms and Conditions in respect of the Services unless and until NAB and Australia Post have each confirmed its approval for the Services to be provided to You.

## 4. Your obligations

**4.1.** You:

- a) must immediately notify Australia Post of any change to Your financial position which may affect Your ability to perform Your obligations under these Terms and Conditions;
- b) must provide Australia Post with prior written notice of any change in Your place of business, and must not carry on business in a place which has not been approved by Australia Post and must not move Your place of business without Australia Post's prior written consent;
- c) must not change Your business name or ownership of Your business without giving Australia Post prior written notice and must not substantially change the type of goods and services You sell without Australia Post's prior written consent;
- d) must immediately notify Australia Post of any other substantial change in Your business. This includes, without limitation, changes to your standard payment terms;
- e) must promptly on request provide Australia Post with copies of Your most recent annual, half yearly and quarterly financial reports;
- f) must not submit Transactions on behalf of a third party, including submitting Transactions for goods or services sold on another Person's website;
- g) must provide Australia Post and NAB with all information and assistance reasonably required to perform their obligations and to deal with any queries in relation to the Services;
- h) will observe and implement the fraud prevention procedures set out in the manuals, guides or directions provided to You, unless otherwise mutually agreed to by the parties; and
- i) In respect of the Card Acquiring

Services:

- i) must allow the employees, contractors or agents of NAB or those of any Card Scheme reasonable access to Your premises during normal business hours to check Your compliance with these Terms and Conditions, the Data Security Standards or for the purposes of the relevant Card Scheme Rules;
- ii) must comply with all applicable Card Scheme Rules and Relevant Laws and contractual requirements in accepting card payments, selling goods and services, and performing Your obligations under these Terms and Conditions;
- iii) must not process any Chargebacks, refunds or reversals in relation to Cards where the Cardholder is You or any of Your employees; and
- iv) acknowledge and confirm that You have read and understand the disclosure statement in clause 29.

## Data Security Standards

**4.2.** If You collect payment data directly from a Cardholder or store, process or transmit any Cardholder data:

a) You acknowledge and agree:

- i) You must protect stored Cardholder data, regardless of the method used to store such data. Data storage also includes physical storage and security of Cardholder data. Some examples of other data storage which must be secured include an access or excel database and hard copy files. Storage should be kept to the minimum required for business, legal and regulatory purposes;
- ii) You must not store the PIN or sensitive authentication data after authorization (even if encrypted);
- iii) In respect of the Card Acquiring Services:
  - (a) if a Card Scheme or NAB tell You that You must comply with the Data Security Standards, You must, at Your cost, successfully complete the protocols for the Data Security Standards within the time frame stipulated by NAB or the Card Scheme. You acknowledge and agree that if You fail to do so:
    - (A) NAB may terminate the Card Acquiring Services;
    - (B) You are liable for any fine imposed upon NAB by the Card Schemes as a result of Your failure to comply; and
    - (C) You are liable for any fines which the Card Schemes levy in the event that You suffer a card data compromise incident,

and have not complied with the accreditation program under the Data Security Standards; and

- (b) NAB is obliged to report all Data Breach events to Card Schemes, law enforcement agencies and Australian regulators. You grant irrevocable and enduring consent for NAB to release details of any such Data Breach to these entities; and
- iv) if You have suffered a Data Breach:
- (a) You must give NAB and its agents full access to Your systems and databases to facilitate a forensic analysis to ascertain:
- (A) what card data has been compromised;
- (B) what weaknesses in the system permitted the unauthorised access to the database; and
- (C) whether card data was created, deleted, altered, copied or manipulated in any manner;
- (b) all costs of the forensic analysis must be paid by You; and
- (c) in order to continue processing Transactions, You must undergo a full accreditation under the Data Security Standards. All costs of this accreditation must be paid by You; and
- b) whenever You store, process or transmit Cardholder data, You:
- i) represent and warrant to Australia Post and NAB that You are aware of Your obligations under, and will at all times comply with the Data Security Standards;
- ii) on request by Australia Post or NAB, must promptly provide a current Certificate of Compliance with the Data Security Standards from a Qualified Security Assessor; and
- iii) must not allow any Cardholder data to be accessed, hosted or processed by any third party unless:
- (a) You have the prior written consent of Australian Post and NAB; and
- (b) the third party has provided a current Certificate of Compliance with the Data Security Standards from a Qualified Security Assessor.
- Your duties to Cardholders**
- 4.3.** Subject to the other provisions of these Terms and Conditions, in relation to Services, You:
- a) must accept any valid and acceptable Card in a Transaction;
- b) must only send Australia Post a sales Transaction when You have committed to provide the goods and services to the cardholder;
- c) must not accept a Card in a credit card Transaction for the purpose of giving a Cardholder cash;
- d) must perform all obligations (including supplying all goods and/or services) to the Cardholder in connection with the sale of services;
- e) must not sell, purchase, provide or exchange any information or document relating to a Cardholder's account number, or Card number, or a Transaction, to any Person other than:
- i) Australia Post;
- ii) NAB;
- iii) the card issuer; or
- iv) as required by law;
- f) must destroy any document that is no longer required to be retained by Relevant Law or the Card Scheme Rules, in a manner which makes the information unreadable;
- g) must take reasonable steps to ensure that the information and documents mentioned in clause 4.3(e) are protected from misuse and loss and from unauthorised access, modification or disclosure;
- h) must not make any representation in connection with any goods or services which may bind Australia Post, NAB or any Card Scheme;
- i) must not indicate or imply that Australia Post, NAB or any Card Scheme endorse any goods or services or refer to a nominated Card in stating eligibility for goods, services, or any membership;
- j) must not accept a Card or a Transaction which is of a type You have been previously advised is not acceptable;
- k) must prominently and unequivocally inform the Cardholder of Your identity at all points of Cardholder interaction (including on any relevant web site, promotional material and invoice) so that the Cardholder can readily distinguish You from Australia Post, any supplier of goods or services to You or any other third party;
- l) must provide notice to any Cardholder with whom You enter into a Transaction that You are responsible for that Transaction, including for any goods or services provided, any payment, related service enquiries, dispute resolution, and performance of the terms and conditions of the Transaction;
- m) must not unfairly distinguish between issuers of a Card when accepting a Transaction;
- n) must not refuse to complete a Transaction solely because a Cardholder refuses to provide additional identification information in circumstances where We or a Relevant Law do not require You to obtain it;

- o) if You collect or store Cardholder information, You must comply with any Data Security Standards notified to You; and
- p) You must not transfer or attempt to transfer financial liability under these Terms and Conditions by asking or requiring a Cardholder to waive their dispute rights.

#### Recurring Transactions

- 4.4.** In relation to Services made available under these Terms and Conditions, You may only process a Transaction on a recurring basis if:
- a) You have obtained Cardholder permission (either electronically or in hardcopy) to periodically charge for a recurring Service;
- b) You retain this permission for the duration of the recurring Services and make it available to each of Australia Post and NAB on request; and
- c) You provide a simple and accessible online cancellation procedure, if the Cardholder request for the goods or services was initially accepted online.

#### Indemnity

In respect of the Card Acquiring Services, You agree to indemnify and hold Australia Post and NAB harmless from and against any fines imposed on NAB by a Card Scheme, because of Your conduct in relation to the Services, including any fines imposed as a result of an unacceptable rate of Chargebacks.

#### 5. Website requirements

- 5.1.** Unless You are otherwise notified in writing, You must, before You accept any electronic commerce transaction over the Internet in relation to Card Acquiring Services under these Terms and Conditions, establish and maintain at Your own expense a web site that complies with the requirements of clause 5.2.
- 5.2.** The web site must clearly display the following information:
- a) the address of Your approved place of business;
- b) a complete description of the goods and services available for purchase on Your web site with the price advertised in Australian dollars or, if We have agreed that You can process Transactions in another currency, that currency;
- c) details of any Australian export restrictions (if applicable);
- d) details of Your privacy policy and how You intend to deal with, or share, Personal Information obtained from and about the Cardholder;
- e) a description of the measures You have to maintain the security of:
- i) Cardholders' account data; and
- ii) any other information which, by notice, We require You to display from time to time; and
- f) any other information required for the purpose of complying with Card Scheme rules.

- 5.3.** You must provide Us reasonable access to view, monitor and audit the pages of Your web site.
- 5.4.** Your web site payments page must be protected by "Secure Sockets Layer" or any other form of security method approved in writing by Us.
- 5.5.** You must:
- comply with all reasonable directions of Australia Post relating to the SecurePay Payment Services;
  - comply with all reasonable directions of NAB (which may be given to You through Australia Post) relation to the Card Acquiring Services;
  - implement an interface that is approved by Australia Post and exactly to the specifications set out in the integration guide on the Australia Post SecurePay website from time to time;
  - ensure that any third party interface application provider is approved by, and meets the security standards set out by, NAB and the Card Schemes; and
  - comply with all technical, security and privacy standards set out by the any Card Scheme, bank, financial institution or payment services provider in relation to any payment process used by You with the SecurePay Payment System and provide evidence of compliance to Australia Post upon request.

## **6. Card acceptance requirements**

- 6.1.** You must:
- use reasonable measures to detect forged or unauthorised signatures or the unauthorised use or forgery of a Card;
  - notify Australia Post if You become aware of or suspect fraud on the part of a Cardholder;
  - not deliberately reduce the value of any Transaction by:
    - splitting a Transaction into two or more Transactions; or
    - allowing a Cardholder to purchase items separately;
  - establish a fair policy for dealing with refunds and disputes about Transactions and include information about that policy on Transaction Receipts as required by Australia Post;
  - In respect of the Card Acquiring Services:
    - only submit a Transaction as a refund to a Cardholder if it is a genuine refund of a previous Transaction. The refund must be processed to the same Card that was used in the original Transaction and be for the same amount as the original Transaction; and
    - not process a refund Transaction as a way of transferring funds between Your accounts;
  - give refunds for Transactions by means

- of credit and not in cash or cheque;
- if a Transaction does not cover the full amount of the sale:
    - where the Card is used to make a deposit or pay an instalment You may accept the Card in payment of all or part of the outstanding balance; and
    - in any other circumstance You must obtain the balance due at the time the sale is completed in cash;
  - not state or set a minimum or maximum amount for purchases by Cardholders from You using the Services without Our prior written consent;
  - not ask a Cardholder to reveal their PIN or any other secret identifier;
  - contact Australia Post for instructions if the identification of a Cardholder or the validity of the Card is uncertain; and
  - not knowingly submit for processing any Transaction that is illegal or that You should have known is illegal.

### **6.2.** For Remote Transactions, You must:

- take reasonable steps to verify the identity of the Person You are dealing with, in order to confirm that they are the genuine Cardholder; and
- record reasonable identification details of the Person You are dealing with, as well as the commencement and expiry dates of the Card.

## **7. Surcharging**

### **Amount of Surcharge**

- 7.1.** Where You elect to charge a Cardholder a Surcharge in respect of a Transaction, You must not impose a Surcharge in excess of the reasonable cost of Card acceptance.
- 7.2.** Upon request by Us or any Card Schemes, You must produce supporting information to substantiate Your costs of Card acceptance. Where the Card Scheme dictates the format of the required substantiation, for example through use of a "reasonable cost of acceptance calculator", You must provide details of Your costs in the required format of that Card Scheme.
- 7.3.** Where required by a Card Scheme, You must submit, at Your cost, to an audit of Your costs of Card acceptance by an independent auditor approved by the Card Scheme requiring the audit. The audit must be completed and results reported back to the relevant Card Scheme within the timeframe specified by the Card Scheme.
- 7.4.** Where, following an investigation into Your surcharging and cost of Card acceptance, We or a Card Scheme determine that the amount that You are surcharging exceeds the reasonable costs of card acceptance, We may by notice to You immediately require You to

reduce Your Surcharge level to an amount that does not exceed the reasonable costs of card acceptance.

- 7.5.** Without limiting any other rights that We may have under these Terms and Conditions, We may, by notice to You, terminate the agreement between the parties in respect of these Terms and Conditions if, following receipt of notice under clause 7, You fail to reduce Your Surcharge level to an amount that does not exceed the reasonable costs of Card acceptance.
- 7.6.** You acknowledge that excessive surcharging by You could expose NAB to fines from Card Schemes. You agree to indemnify NAB against any fines imposed by Card Schemes in relation to Your surcharging practices.
- 7.7.** You acknowledge that Card issuers may from time to time change the classification of a credit Card (standard or premium) and, as a result, when applying a Surcharge rate to a Cardholder, it cannot be guaranteed that the classification of the Card (standard or premium) on which You have based the Surcharge will be same as the classification on which You are charged Your merchant service fee in relation to the same Transaction.

### **Disclosure of Surcharge**

- 7.8.** You must clearly disclose to the Cardholder before the Transaction is completed any Surcharge that You will charge for completing the Transaction, and do it in such a way that allows the Transaction to be cancelled without the Cardholder incurring any cost.
- 7.9.** You must display on the payment page on Your website a notice stating:
- that You charge a Surcharge; and
  - the exact amount or percentage of the Surcharge.
- 7.10.** You must not represent or otherwise imply that the Surcharge is levied by a Card Scheme or by Us or any other financial institution.
- 7.11.** For the purposes of this clause 7, costs that form Your "reasonable costs of card acceptance" will be determined having regard to Part IVC of the Competition and Consumer Act 2010 (Cth) and the Reserve Bank of Australia's Guidance Note: Interpretation of Surcharging Standards, as amended or replaced from time to time.

## **8. Transition receipt**

- 8.1.** Unless We have agreed that We will provide the Transaction Receipt to the Cardholder, You must give the Cardholder a copy of the Transaction Receipt for each Transaction, but You must not charge a fee for doing so.

- 8.2.** If You are notified that You must prepare the Transaction Receipt, You must ensure the information contained in the Transaction Receipt:
- a) is identical with the information on any other copy; and
  - b) legibly includes the information notified to You.
- 8.3.** You must provide Australia Post with the Transaction Receipt and any other required evidence of the Transaction within 7 days if You are asked by Australia Post to provide it.
- 8.4.** If You wish to change Your Internet or email address or telephone number appearing on the Transaction Receipt, You must notify Australia Post in writing at least 15 Banking Days prior to the change taking effect.

## 9. Invalid or unacceptable Transactions

- 9.1.** A Transaction is not valid if:
- a) the Transaction is illegal;
  - b) if applicable, the signature on the voucher, Transaction Receipt or authority is forged or unauthorised;
  - c) the Transaction is before or after any validity period indicated on the relevant Card;
  - d) You have been told not to accept the Card;
  - e) the Transaction is not authorised by the Cardholder;
  - f) the particulars on the copy of the voucher or Transaction Receipt given to the Cardholder are not identical with the particulars on any other copy;
  - g) the price charged for the goods or services is inflated to include an undisclosed or illegal Surcharge for card payments;
  - h) another person has provided or is to provide the goods or services the subject of the Transaction to a Cardholder;
  - i) You did not actually supply the goods or services to a genuine Cardholder as required by the terms of the transaction between You and the Cardholder, or have indicated Your intention not to do so;
  - j) the Transaction did not relate to the actual sale of goods or services to a genuine Cardholder;
  - k) the Transaction is offered, recorded or billed in a currency We have not authorised You to accept;
  - l) the agreement between the parties in respect of these Terms and Conditions was terminated before the date of the Transaction;
  - m) You have not complied with Your obligations in clause 4;
  - n) if applicable, the details are keyed into equipment and You did not legibly record on a Transaction Receipt the information required by clause 7;

- o) it is a credit transaction in which:
  - i) the amount of the Transaction or Transactions on the same occasion is more than any applicable limit notified to You;
  - ii) You collected or refinanced an existing debt including, without limitation, the collection of a dishonoured cheque or payment for previous card charges; or
  - iii) You provide a Cardholder with cash;
- p) it occurs during a period in which Your rights under these Terms and Conditions were suspended under clause 17.3;
- q) You cannot give a Transaction Receipt as required by clause 8; or
- r) for any other reason, the Cardholder is entitled under the Card Scheme Rules to a Chargeback of the Transaction.

**9.2.** A Transaction for a sale or refund is not acceptable if:

- a) the Cardholder disputes liability for the Transaction for any reason or makes a claim for set-off or a counterclaim; or
- b) it is of a class which NAB or Australia Post decide, in their discretion, is not acceptable.

**9.3.** You acknowledge and agree that NAB or Australia Post may:

- a) refuse to accept a Transaction if it is invalid or unacceptable or may charge it back to You if it has already been processed, even if We have given You an authorisation;
- b) provided that NAB or Australia Post has requested further details of a Transaction within 7 Banking Days, if You do not fully provide the requested details within 7 Banking Days, reverse that Transaction as a Chargeback, and debit Your account for the amount of the Chargeback, for any of the reasons in clauses 9.1 and 9.2 and any other reason We notify You of from time to time; and
- c) without limiting this clause 9.3, delay, block, freeze or refuse to accept any Transaction where NAB or Australia Post has reasonable grounds to believe that the Transaction breaches the laws of, or sanctions imposed by, Australia or any other country.

## 10. Secure payment services

**10.1.** Australia Post will attempt to process via the SecurePay Payment System any payment, pre-authorisation of payment, refund or reversal transaction submitted by You or Your customer to the SecurePay Payment System via any payment process which has been approved by Australia Post for the purposes of the SecurePay Payment System.

**10.2.** You authorise Australia Post to discuss any matter that relates to the establishment of an Internet merchant account, the provision of the SecurePay Payment Services, and Your obligations in connection

with those services, with any Card Scheme, bank, financial institution or payment services provider for the purposes of providing the SecurePay Payment Services.

**10.3.** Australia Post provides a licence to You on a non-exclusive and non-transferable basis to use on Your payment web site during the term, such software as is necessary to link Your payment web site to the SecurePay Payment System.

## 11. Settlement of Transactions

### Settlement by NAB in respect of Card Acquiring Services

**11.1.** In respect of Card Acquiring Services, NAB will provide settlement on each Banking Day for the gross amount of all funds received from the card schemes in respect of Transactions processed by NAB under these Terms and Conditions, less any Chargebacks or refunds.

**11.2.** You authorise and direct NAB to pay all amounts due to You by NAB under these Terms and Conditions to Australia Post, who You appoint as Your agent only for the purpose of receiving all settlement funds payable by NAB to You under these Terms and Conditions.

**11.3.** You acknowledge and agree that:

- a) payment of the settlement funds by NAB to Australia Post in accordance with Your direction under clause 11.2 will satisfy NAB's obligation to settle to You; and
- b) NAB will not be liable for any failure by Australia Post to account to You for any funds received from NAB.

### Settlement by Australia Post in respect of Services

**11.4.** Australia Post's duty in respect of the money collected is to remit to You an equivalent sum less any Fees, deductions or adjustments made in accordance with these Terms and Conditions. Responsibility for the money collected by Australia Post pursuant to these Terms and Conditions will remain with Australia Post up until and including the time of successful completion of the electronic funds transfer from Australia Post to You.

**11.5.** Australia Post will provide settlement to You within 7 Banking Days. Australia Post may change this settlement period at its discretion by notice to You at any time, and without notice where permitted by clause 17.5.

**11.6.** Australia Post may deduct any Fees or other amounts owing by You to Australia Post or NAB (including without limitation any amounts paid or required to be paid by NAB or Australia Post for Transactions that are reversed as Chargebacks or otherwise refunded) from any settlement funds to be remitted to You by Australia Post.

11.7. Subject to clause 11.4, You agree that Australia Post's obligation is to settle and remit to You a sum of money equivalent to the sums or amounts received as agent, and not the precise funds received.

#### Settlement funds not sufficient

11.8. If at any time the total of amounts owing by You to Australia Post or NAB under these Terms and Conditions (including without limitation amounts paid or required to be paid by NAB or Australia Post for Transactions that are reversed as Chargebacks or otherwise refunded) exceed the settlement amounts held by Australia Post, You will pay the amount of that excess to Australia Post promptly on demand.

### 12. Australia Post security

- 12.1. Australia Post may retain any amount it sees fit from any settlement funds held by it under clause 11 as security for the performance of Your obligations under these Terms and Conditions. Australia Post may retain those amounts in a dedicated security account or otherwise as it sees fit. Australia Post may deduct any amount owing by You to Australia Post or NAB (including without limitation any amounts paid or required to be paid by NAB or Australia Post for Transactions that are reversed as Chargebacks or otherwise refunded) from this retention amount.
- 12.2. If Australia Post requires, You will provide any other form of security interest required by Australia Post as security for Your obligations under these Terms and Conditions and will sign any document required by Australia Post for this purpose.
- 12.3. Australia Post may, at Your expense, apply for any registration, or give any notification, in connection with any security interest under clause 12.1 or 12.2. This includes registration under the Personal Property Securities Act 2009 (Cth) for whatever collateral class Australia Post thinks fit. You consent to any such registration or notification and agree not to make an amendment demand. To the extent the law permits, You waive Your rights to receive any notice that is required by any provision of the Personal Property Securities Act 2009 (Cth) (including a notice of a verification statement).

### 13. Use of Card Scheme Marks

You acknowledge and agree that:

- the Card Scheme logos, names and holograms ("the Marks") are owned solely and exclusively by the relevant Card Scheme;
- You will not contest the ownership of the Marks for any reason;
- the Card Schemes may at any time, immediately and without notice, prohibit You from using any of the Marks for

any reason; and

- You may only use advertising and promotional material for the Cards or which show a Mark in the manner NAB approves, unless You have received authorization from the Card Schemes through other means.

### 14. Representations and warranties by you

14.1. You represent and warrant that:

- by entering into these Terms and Conditions You are not currently and will not be in breach of any Relevant Law or any obligation owed to any Person;
- where applicable, You are duly authorised to enter into these Terms and Conditions and the obligations under these Terms and Conditions are valid, binding and enforceable in accordance with its terms;
- if You are an incorporated body, You validly exist under the laws of Your place of incorporation and have the power and authority to carry on Your business as that business is now being conducted and using any name under which that business is being conducted; and
- if You, a Related Body Corporate or any officer, employee or agent of You or a Related Body Corporate has at any time been listed on a database of terminated merchants maintained by any Card Scheme or have otherwise had merchant services terminated by another acquiring bank, You have disclosed that fact to Australia Post.

14.2. The representations and warranties set out in clause 14.1 will be deemed to be repeated each day after the date You enter into these Terms and Conditions.

### 15. No warranties by Us

Neither Australia Post nor NAB make any warranties in respect of any of the Services. To the maximum extent permitted by law, any and all implied warranties and consumer guarantees are excluded. In respect of any warranty or consumer guarantee which is unable to be excluded under any relevant law, Our liability in respect of a breach of that warranty or guarantee is limited to the re-supply of the Services or the payment of the cost of having the Services supplied again at Your discretion.

### 16. Exclusion of liability

To the maximum extent permitted by applicable law Australia Post and NAB are not liable to You or to any person for any act or omission (including negligence) that results in any direct or indirect loss (including loss of profits), damage, injury or inconvenience You suffer because of any service failure, including any unavailability of the Services, any delays or any errors. Under no circumstances will Australia Post or NAB be liable to You for any lost sales, revenue or profit or loss of custom due to any service failure which results in You being unable to promptly accept payments from Your customers.

### 17. Term, termination and suspension

#### Term and automatic extension of term

17.1. The agreement between the parties in respect of these Terms and Conditions commences on the date Australia Post provides written confirmation to you and continues until terminated by a party in accordance with its terms.

#### Termination without cause

17.2. The agreement between the parties in respect of these Terms and Conditions may be terminated by You or Australia Post without cause upon 30 days' prior written notice to the other parties.

#### Australia Post and NAB suspension and termination rights

17.3. Australia Post or NAB may suspend or terminate the agreement between the parties in respect of these Terms and Conditions or suspend then terminate any part of it at any time if any of the following events occur:

- You are in breach of Your obligations under or arising out of these Terms and Conditions;
- either Australia Post or NAB has any suspicion of fraud in connection with You, Your customers or any Transaction;
- if in Australia Post's or NAB's reasonable opinion, the processing of Transactions exposes Australia Post or NAB to an unacceptable level of risk;
- You are or have engaged in conduct which exposes Australia Post or NAB to potential fines or penalties imposed under Relevant Law;
- Your business or equipment is or has been targeted by a person engaged in fraudulent or dishonest activity whether with or without Your knowledge;
- You or any service provider (other than Australia Post or NAB) that You use in connection with the services You provide to Your customers has suffered a Data Breach;
- a direction is made under Relevant Law that the Services be suspended or terminated;
- either Australia Post or NAB is advised or instructed to do so by any Card Scheme provider from whom You obtain payment services;
- either Australia Post or NAB has any suspicion that You do not meet the security standards required for compliance with the Data Security Standards or otherwise required by any Card Scheme;
- in the case of the SecurePay Payment Services only, a service upon which the SecurePay Payment System relies is unavailable;
- if You fail to comply with the Data Security Standards after a request under clause 4.2(c) within the time frame stipulated by Australia Post or the Card Schemes;

- l) You have experienced an adverse change in financial circumstances;
- m) We have concerns about Your solvency or if You come insolvent or are subject to any form of insolvency administration or a resolution is passed or an order is made for Your winding up;
- n) You have a significant adverse credit event recorded against You; or
- o) Australia Post is unable to obtain sufficient security interest as security for Your obligations under clause 12.2.

- 17.4.** A suspension or termination under this clause 17 may be made immediately and without notice. Australia Post will endeavour to notify You reasonably promptly after any suspension or termination with no prior notice.
- 17.5.** If any event described in clause 17.3 occurs Australia Post may, in addition to its rights to suspend or terminate, change the settlement period applicable to You (initially, up to 7 Banking Days) without notice to You. Australia Post will endeavour to notify You reasonably promptly after it does this.

#### Other termination events

- 17.6.** The agreement between the parties in respect of these Terms and Conditions will terminate automatically and immediately if:
- a) Australia Post's registration as a member service provider or independent sales organisation with any relevant Card Scheme is cancelled; or
  - b) Australia Post's agreement with NAB for the provision of card acquiring services is terminated for any reason.

Australia Post will endeavour to notify You reasonably promptly after any termination under this clause.

#### After termination

- 17.7.** You authorise NAB to disclose to any Card Scheme advice of termination of the agreement between the parties in respect of these Terms and Conditions or the provision of Card Acquiring Services under it and the reasons for the termination. You acknowledge that the information concerning termination of the agreement between the parties in respect of these Terms and Conditions then becomes available to any member of the Card Schemes. This information, available to any member of the Card Schemes, may be used in assessing subsequent applications for merchant facilities.
- 17.8.** Clauses 16, 17, 22, 23, 25 survive the termination or expiry of the agreement between the parties in respect of these Terms and Conditions.

## 18. Fees

- 18.1.** You must pay Australia Post the Fees for the Services initially in the

amounts set out in the Online Portal.

- 18.2.** Australia Post may deduct Fees from any settlement payments under clause 11.6. Otherwise, You must pay any Fees within 30 days of being invoiced by Australia Post.
- 18.3.** Subject to clauses 18.4 to 18.7, Australia Post may increase any Fee for the Services at any time.
- 18.4.** Australia Post must give You a written notice specifying the amount of the increase in Fees and the date on which it will take effect ("Adjustment Notice").
- 18.5.** Australia Post must provide the Adjustment Notice to You at least 30 days before the date on which the increase in Fees is intended to take effect.
- 18.6.** If You do not agree to the increase in Fees in the Adjustment Notice, You may terminate the agreement between the parties in respect of these Terms and Conditions by giving no less than 7 days' notice (before the date on which the increase in Fees is intended to take effect) to Australia Post in writing.
- 18.7.** If Australia Post does not receive a notice from You under clause 18.6 or You continues to use the Services, You are deemed to have accepted the increase in Fees in the Adjustment Notice.

- 18.8.** Notwithstanding clauses 18.3 to 18.7, Australia Post may increase the Fees at any time to take into account a change to, or introduction of, any government charges by providing written notice to You.

## 19. GST

- 19.1.** Unless the contrary intention appears, words or expressions used in this clause 19 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning.
- 19.2.** Unless specified otherwise, all amounts payable under these Terms and Conditions are inclusive of GST. Australia Post agrees that, to the extent it makes a taxable supply under these Terms and Conditions, it will issue a tax invoice to You.
- 19.3.** If, after the start of the agreement between the parties in respect of these Terms and Conditions, the GST rate changes and results in an increased GST liability for Australia Post in respect of any taxable supply made under these Terms and Conditions, Australia Post may request You to immediately pay Australia Post an amount equivalent to the increased GST liability. If Australia Post makes a request under this clause, You must immediately Australia Post an amount equivalent to the increased GST liability.
- 19.4.** If a supply made under these Terms and Conditions is treated by the

parties as not subject to GST but the supply is, or becomes, a taxable supply, Australia Post may charge and recover from You, in addition to any other consideration paid or payable, an amount equivalent to the GST payable on that taxable supply.

- 19.5.** If, in relation to a supply made under these Terms and Conditions, an adjustment event occurs that gives rise to an adjustment, the price of that supply (including any applicable GST) will be adjusted accordingly and, where necessary a payment will be made to reflect that adjustment. As a precondition to Australia Post paying any amount to You in respect of an adjustment, You must issue a compliant adjustment note.
- 19.6.** If Australia Post is required to pay, reimburse or contribute to an amount paid or payable by another party in respect of an acquisition from a third party by You, the amount for payment, reimbursement or contribution will be the acquisition price paid by You, less any input tax credit You are entitled to claim, plus any GST payable by the other party.
- 19.7.** Any non-monetary consideration given under these Terms and Conditions is GST-inclusive, unless otherwise specified. If non-monetary consideration is given for a taxable supply under these Terms and Conditions, and the GST-inclusive market value of that consideration is not clearly identifiable, Australia Post and You must discuss and mutually agree on the GST-inclusive market value of that non-monetary consideration using Goods and Services Tax Ruling GSTR 2001/6 as a guide.

## 20. Assignment

- 20.1.** You may not assign or charge Your rights under these Terms and Conditions without Our prior written consent.
- 20.2.** Australia Post and NAB may assign or charge their rights under these Terms and Conditions without Your consent.

## 21. Australian domicile requirements

- a) You acknowledge that We may only provide services to You under these Terms and Conditions where You:
- i) have a permanent establishment in Australia through which Transactions are completed;
  - ii) are registered to do business in Australia;
  - iii) have a local address in Australia for correspondence and acceptance of judicial process, other than a post-office box or mail-forwarding address;
  - iv) pay taxes in Australia (where required) in relation to the sales

- activity; and
- v) satisfy any other domesticity requirements imposed by Card Schemes from time to time.
- b) In addition to any other right to terminate or suspend the services, We may immediately cease to accept Transactions under these Terms and Conditions where You fail to satisfy the above requirements.

## 22. Confidentiality

You must keep secret and confidential all Confidential Information of Australia Post and NAB and must not use such Confidential Information for any unauthorised purpose nor disclose it to any person except:

- a) to any employee, service provider or Related Body Corporate who needs to know such information for the performance of their respective duties, who is aware the information is confidential and who is bound to treat it as such;
- b) to the extent that the information is required to be disclosed by Relevant Law or order of any court or requirement of any government agency including where such obligation arises by a voluntary act of either party, in which case the parties agree that prior to any such disclosure, the recipient must, unless such action would violate or conflict with applicable Law, provide the discloser with prompt notice of such requirement and the Confidential Information so required to be disclosed, so that the discloser may seek an appropriate protective order;
- c) to the extent that the information is required to be given by a party to a commonwealth or state taxation authority for the purposes of assessing any liability for taxation or for the purposes of the party obtaining a tax ruling in respect of these Terms and Conditions;
- d) to the extent necessary to exercise rights or perform obligations under these Terms and Conditions; or
- e) as permitted by these Terms and Conditions.

## 23. Privacy

**23.1.** Australia Post's obligations relating to the handling of Personal Information are contained in the Australian Postal Corporation Act 1989 (Cth) ("APC Act"), the Privacy Act 1988 (Cth) ("Privacy Act") and in the Australia Post Privacy Policy (which can be located at <http://auspost.com.au>). If Australia Post's obligations under these Terms and Conditions are inconsistent with those under the APC Act, the Privacy Act, or the Australia Post Privacy Policy in respect of the same subject matter, the obligations under the APC Act, the Privacy Act, or the Australia Post Privacy Policy (as the case may be) will prevail.

**23.2.** We may obtain from any Card

Scheme or a person who is involved in any Card Scheme, any credit reporting agency or any other person, information about Your merchant history or Personal Information about You, a Related Body Corporate, Your officers, employees or agents for any purpose relating to the operation of those Card Schemes and We can use any such information to assess an application to Us under clause 3.1(a).

**23.3.** We can disclose information about Your merchant history, a Data Breach and relevant Personal Information in the following circumstances:

- a) to any Card Scheme or to any person who is involved in any Card Scheme, information about You for any purpose related to the operation of those Card Schemes, card fraud detection agencies (including information about termination of merchant solutions and reasons for termination of NAB acquiring services);
- b) where the law requires or permits Us to do so; and
- c) where We have reasonable grounds to believe that either You are involved in dishonest or criminal activity, are a victim of such activity, may have information relevant to an inquiry into such activity or have experienced a Data Breach, to any state or commonwealth law enforcement or regulatory agency whether or not We have been requested by that agency to provide such information.

**23.4.** We can disclose Your Personal Information to any related entities of Ours and to any outsourced service providers engaged by Us (for example, mail houses, debt collection agencies (where necessary) or data analytics providers), including service providers in India.

**23.5.** You agree that either Australia Post or NAB may use Your Personal Information to contact you to let you know about other products or services that Australia Post or NAB think you might be interested in.

## 24. Relationship

a) In providing the Services, Australia Post and NAB act as independent contractors to You and to each other. Nothing in these Terms and Conditions will be construed as:

- i) creating an agency, joint venture, partnership or employment relationship between any of the parties;
- ii) imposing any fiduciary duties on Australia Post or NAB in relation to You; or
- iii) creating any contractual or binding relationship between Australia Post or NAB and the third party purchasing goods or services from You.

b) You must not make any representation

which expresses or implies that any such relationship exists.

## 25. Governing law

These Terms and Conditions is governed by the laws of the State of Victoria. Each party submits to the jurisdiction of the courts of that State of Victoria and any courts of appeal from them.

## 26. Amendment

**26.1.** Subject to clauses 26.2 to 26.5, NAB and Australia Post may jointly vary these Terms and Conditions.

**26.2.** Australia Post must give you a written notice specifying the variations to these Terms and Conditions and the date that they will take effect ("Variation Notice").

**26.3.** Australia Post must provide the Variation Notice to You at least 30 days before the date on which the variations are intended to take effect.

**26.4.** If You do not agree to the variations in the Variation Notice, You may terminate the agreement between the parties in respect of these Terms and Conditions by giving no less than 7 days' notice (before the date on which the variations are intended to take effect) to Australia Post in writing.

**26.5.** If Australia Post does not receive a notice from You under clause 26.4 or You continue to use the Services, You are deemed to have accepted the variations in the Variation Notice.

## 27. Notices

**27.1.** You acknowledge that NAB or Australia Post may deliver notices to You in any of the ways listed in clause 27.2.

**27.2.** A notice must be in writing and is taken to be received:

- a) if delivered personally, at the time of delivery;
- b) if sent by pre-paid post, on the third day after the posting; and
- c) when the party sending the notice is the NAB or Australia Post, if sent by email, at the time when the email enters Your information system.

**27.3.** The address or, in the case of Australia Post, email address to be used for You is as specified by You in the Online Portal and for Australia Post and NAB is:

### Australia Post

Attention: Australian Postal Corporation

Address: 111 Bourke Street  
Melbourne VIC 3000

Email:  
[onlinepayments@securepay.com.au](mailto:onlinepayments@securepay.com.au)

### NAB

Attention: National Australia Bank Limited

Address: 800 Bourke Street

**27.4.** If the intended recipient has notified a changed address, or email address then notices must be to that address or email address.

## **28. Set-off**

Australia Post and NAB may at any time without notice to You set off any Liability owed by Australia Post or and NAB (as the case may be), to You on any account against any Liability owed by You to Australia Post or NAB (as the case may be) under or in connection with these Terms and Conditions. For the purpose of this clause, "Liability" means any debt or monetary liability, irrespective of whether the debt or monetary liability is future or present, actual or contingent.

## **29. Disclosure statement**

### **29.1. Member Bank (Acquirer) Information**

Acquirer Name: National Australia Bank Limited

Acquirer Address: 800 Bourke St, Docklands, Victoria, 3008

Acquirer Phone: 13 22 65

### **29.2. Important Member Bank (Acquirer) Responsibilities**

- a) Member is the only entity approved to extend acceptance of Card Scheme products directly to a merchant.
- b) Member must be a party to the merchant agreement
- c) Member is responsible for and must provide settlement funds to the merchant (or merchant's agent).
- d) Member is responsible for all settlement funds prior to funding the merchant (or merchant's agent).
- e) Member is responsible for educating merchants on pertinent Card Scheme rules with which merchants must comply, but this information may be provided to You by Your payment service provider.

### **29.3. Your Important Merchant Responsibilities**

- a) Ensure compliance with cardholder data security and storage requirements.
- b) Maintain fraud and chargebacks below thresholds.
- c) Review and understand the terms of the merchant agreements.
- d) Comply with Visa and Mastercard rules.

The responsibilities listed above do not supersede these Terms and Conditions and are provided to ensure the merchant understands some important obligations of each party and that the Member (acquirer) is the ultimate authority should the merchant have any problems.

## **30. Electronic contracting**

**30.1.** You agree that We may communicate with You electronically in relation to these Terms and

Conditions, and may administer these Terms and Conditions with You using an electronic contract system. Where electronic communication or an electronic contracting system is used in relation to these Terms and Conditions:

- a) a document or information provided electronically has the same status and effect as a document or information provided in traditional paper form and is considered to be 'in writing';
- b) You consent to these Terms and Conditions being in electronic form;
- c) You may enter into these Terms and Conditions electronically using an electronic execution method We nominate from time to time; and
- d) You must not dispute the authenticity, receipt or binding nature of a document or information provided electronically on the grounds that the document or information was provided or entered into electronically.

## **31. Contracting parties**

You acknowledge that when you enter these Terms and Conditions, either in electronic form or otherwise, you are entering into these Terms and Conditions with both Australia Post and NAB. Each party may enforce these Terms and Conditions directly against each other party.