

**08.05.09**

**INVAPAY PAYMENT SOLUTIONS LIMITED**

**SELLER WEBSITE USER TERMS AND CONDITIONS**

**1. Our contract**

By using or subscribing to our site you enter into a binding contract with us on the following terms and conditions. We provide a payment service to help you to accept payments from third parties. We are an independent contractor for all purposes, except that we act as your agent only to hold your funds as part of payment processing. We do not control or carry any liability for the Goods or Services that are paid for using our payment service. We do not guarantee the identity of any user or ensure that a Buyer will complete a transaction.

**2. A UK business service only**

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

2.2 As a Seller you represent to us and to all Buyers that all sales made by you through our site will be made for purposes integral to your business and will be within the scope of your authority to conclude contracts on behalf of your business and that all sales are sales to businesses and not consumers.

**3. Our promises**

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

3.2 We will:

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

**4. Exclusions and limitations**

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

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

4.3 If you sell Goods or Services using our service and do not supply the Goods or Services or what you do deliver is not satisfactory, you must remedy such failure and defects. We are a payments processor we do not warrant any Goods or Services you sell or supply using our service – we merely provide the means by which you can be paid.

4.4 Accordingly you warrant to us and to the Buyer that Goods sold by you will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the you or made known to you at the time an order is placed:

- (a) will be free from defects in design, material and workmanship;
- (b) will correspond with any relevant specification or sample; and
- (c) will comply with all statutory requirements and regulations relating to the sale of the Goods.

4.5 You warrant that any Services you supply will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the

Buyer to expect in all the circumstances. Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then we or the Buyer shall be entitled:

- (a) to require you to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days; or
- (b) at our sole option, and whether or not you have been previously required to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by your breach and require the repayment of any part of the Price which has been paid.

4.6 You shall indemnify us in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by us as a result of or in connection with:

- (a) breach of any warranty given by you in relation to the Goods or the Services;
- (b) any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specification supplied by the Buyer;
- (c) any liability under the Consumer Protection Act 1987 in respect of the Goods;
- (d) any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
- (e) any act or omission of any of the Seller's personnel in connection with the performance of the Services.

4.7 To the extent permitted by law, we exclude all liability (whether arising in contract, tort or otherwise and whether or not due to our negligence) which we may otherwise have to you as a result of:

- (a) any technical, factual, textual or typographical inaccuracies, errors or omissions on or relating to our site or any information on our site;
- (b) the unavailability of our site (or any part of it);
- (c) any delay in providing, or failure to provide or make available, goods or services or any negligent provision of goods or services;
- (d) any goods not being of satisfactory quality or fit for their intended purpose; or
- (e) any misrepresentation on or relating to our site, the goods or the services (other than a fraudulent misrepresentation made by us or on our behalf).

4.8 Our maximum liability to your business in respect of your use of our site or any services we provide or make available to you through or in relation to our site will be the amount of any subscription fees or charges paid on behalf of your business during the calendar year in which the liability arose. You agree that we shall have no liability for indirect or consequential losses, loss of data, income or profits or damages for loss of or damage to property.

4.9 We have no control over the Goods or Services that are paid for using our service and we cannot ensure that a Buyer you deal with will actually complete the transaction.

4.10 None of the exclusions or limitations in this clause 4 shall exclude or restrict our liability for death or personal injury caused by our negligence.

4.11 None of the above exclusions shall affect any statutory rights which are not capable of being

excluded. However, in such case our obligation, where permitted by law, will be limited to the re-supply of our site to you.

- 4.12 We give no warranty or assurance with respect to our online service and all implied warranties are excluded to the maximum extent permitted by law.
- 4.13 Although security measures have been implemented to protect the privacy of information transmitted via our service, we do not warrant that information will be fully protected from unauthorised access.
- 4.14 We will use reasonable efforts to enable access to the service on a 24/7 basis but do not warrant that the use of the service will be uninterrupted whether for scheduled maintenance or otherwise.
- 4.15 We may suspend, modify or discontinue the service at any time for any reason including maintenance, enhancement, breach of security or breach by a Seller or a Buyer of any of its obligations to us and whenever practicable we will notify the Seller and Buyer accordingly.
- 4.16 We may at our discretion delay or decline to update any transmitted information which we consider to be unacceptable for any reason, including suspected unauthorised access or fraud.
- 4.17 Unless terminated earlier by us, the rights of access to the service will cease on termination of your use of the service and you will ensure that our site and each part thereof is deleted from all electronic media, including intranet and electronic storage devices operated for and on your behalf.
- 4.18 You agree that each of these limitations is reasonable having regard to the nature of our site and in particular given that when you sell information, goods or services through our site you will enter into a separate contract with the Buyer in each case.
- 4.19 Each of the above exclusions or limitations shall be construed as a separate, and severable, provision of these terms and conditions.

## 5. **Charges**

- 5.1 As a Seller, by subscribing to our site, you agree to pay our charges at the rate applicable from time to time, and stipulated on the site.
- 5.2 If you fail at any time to pay any charges due in accordance with these terms and conditions we may, in our discretion and without prejudice to our other rights, deny you access to those areas of our site which are exclusively available to you as a Seller. We need not provide you with advance notice in such circumstances.
- 5.3 All payments are processed using our appointed payment service provider. When a payment is authorized the amount of the payment will be held in an account in our name jointly with our payment service provider. This is a trust account and is held for the benefit of the payee to whom those funds will be transferred after deduction of our charges.

## 6. **Links to other sites**

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

## 7. **Termination of use**

- 7.1 We may terminate your use of the site and the service immediately if you are in material breach of any of these terms and conditions and in particular upon any failure by you to pay your charges. You may terminate your use of the site at any time on notice to us. You will remain liable for all obligations after your account is closed.

- 7.2 Any rights that have accrued to either party at the date of termination will remain enforceable after termination.
8. **No commercial use**  
You agree that you will use our site only for your internal business purposes and that you shall not exploit our site or any of its contents for any commercial or other purpose of any kind.
9. **Unauthorised Use**  
Please advise us immediately if you think there has been an unauthorized use of your account or your password or if your account has been used in any way without your authority (**Suspicious Access**). To notify us of Suspicious Access please call +44 (0)207 868 1667. We will investigate the matter and report back to you as soon as practicable.
10. **Software**  
We and our licensors grant you a limited non-exclusive license to use our software in accordance with all documentation, updates, upgrades, new versions and replacement software, for your personal use only in using our service and not otherwise. You may not assign your rights to use the software to anyone. You agree not to alter, reproduce, adapt, distribute, display, publish, reverse engineer, translate, disassemble, decompile or otherwise attempt to create any source code which is derived from the software. You acknowledge that all rights to our software are owned by us.
11. **Your indemnity**  
You agree to defend, indemnify and hold us, our officers, directors and employees harmless from any claim or demand (including legal fees) made or incurred by any third party due to or arising out of your breach of these terms and conditions.
12. **Reversals and charge backs**
- 12.1 You are responsible for all reversals, Chargeback's, claims, fees, fines, penalties and other liabilities incurred by us or a third party caused by or arising out of your breach of these terms and conditions, and/or your use of the service. You agree to reimburse us or any third party for any and all such liability.
- 12.2 As a user of the service you agree:
- (a) to comply with these terms and conditions;
  - (b) to comply with all applicable laws, statutes, ordinances, or regulations;
  - (c) not to infringe our copyright, patent, trademarks, or other intellectual property rights;
  - (d) not to provide false, inaccurate or misleading information;
  - (e) to cooperate with any investigation;
  - (f) to confirm your identity and all information you provide to us;
  - (g) not to introduce to our system or website any viruses, Trojan horses, worms or other deleterious material that could harm, interfere with, intercept or expropriate any data or information;
  - (h) not to use any device or process to monitor or copy our site without our prior written permission;
  - (i) not to use any device, software or routine to bypass our robot exclusion headers, or interfere or attempt to interfere, with our site or the Services;

- (j) not to take any action that may cause us to lose any of the services from our internet service provider, payment processor or other suppliers.
- 13. **Bank account payments**

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

If you send a payment and the recipient does not accept it we are not liable to you for any loss or damage you suffer because the payee does not accept payment. We will return any unclaimed, refunded or denied payment to your applicable within 30 Days of refusal.
- 15. **Payment and Validation**

When you receive a payment, you are liable to us for the full amount of the payment plus our charges if the payment is later invalidated for any reason. This means that you will be responsible for the amount of the payment, plus the applicable charges payable to us. You agree to pay all sums which become due to us immediately.
- 16. **Chargeback's**
  - 16.1 If there is a Chargeback we cannot be liable in any circumstances to re-imburse you.
  - 16.2 If a Chargeback is made by the Buyer's bank then any Chargeback which is disputed by you or the Buyer will be the subject of a dispute between you and the Buyer and/or the bank. We cannot take any responsibility of any kind to you or to the Buyer or the bank if a Chargeback occurs. We provide an authorization service and rely fully on the authority given to us by the Buyer's bank to authorize card payments to you as Seller.
  - 16.3 In complying fully with the terms and conditions of your user's agreement with the bank who issues you with your credit or debit card payment facility, you will also comply fully with card not present guidelines in the relevant agreement to ensure that best practice is at all times adopted.
- 17. **Assignment of your rights**

You cannot transfer or assign any rights or obligations you have under these terms and conditions without our written consent. We may transfer or assign our rights under these terms and conditions at any time.
- 18. **Notification**

We can provide any notification to you by posting it on our site, emailing it to the email address supplied to us by you, or mailing it to the postal address supplied to us by you.
- 19. **Credit or debit cards**
  - 19.1 You authorize us to make any inquiries necessary to verify your identity. This includes requesting further information from you, requiring you to provide evidence of ownership of your email address or financial accounts, ordering a credit report and verifying your information against third party

databases or other sources.

- 19.2 You must comply fully with the terms and conditions of the your agreement with the bank who issues you with your credit or debit card payment facility. If your bank or credit/debit card issuer refuses authorization of any card transaction, we are not liable to you or to your Seller for any payment which the paying bank does not authorize. All payments we authorize are subject to your issuing bank giving us authorization that the card transaction will be paid by your bank.
- 19.3 You agree to indemnify us against all losses, costs, claims, damages and expenses which may be sustained or incurred by us as a result of incorrect information or instructions received from you or the unauthorised use of the service or any failure on your part to comply with any reasonable instructions issued by us from time to time.
- 19.4 A Buyer will always be liable for payment to a Seller. If we are authorized to make a payment by your bank we are not liable to you the Buyer or the Seller if that payment is procured by any third party fraudulently or without your authority.
- 19.5 You must always check your statements regularly to ensure that all entries are correct. If there is any entry which may be wrong then you should advise your bank immediately in order that the bank can deal with it. You must fully co-operate with your bank if any entries are made which are suspicious.

## 20. **General**

### 20.1 **Third party rights**

You acknowledge and agree that all representations and warranties are intended to grant rights to, and operate for the benefit of, you only and no other person by virtue of the Contracts (Rights of Third Parties) Act 1999.

### 20.2 **Variations**

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

### 20.3 **Credit card security and registration**

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

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

### 20.4 **The use of your information**

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

### 20.5 **Copyright**

All rights in the design, text, graphics and other material on our site and the selection or arrangement thereof are the copyright of us or other third parties. Permission is granted to copy electronically and print in hard copy portions of our site solely in connection with the acquisition of goods or services through our site. Any other use of materials on our site (including reproduction for purposes other than those noted above and alteration, modification, distribution, or republication) without our prior written permission is strictly prohibited.

20.6 **Trade marks**

We are the proprietor of the “Invapay” trade mark in the UK and other countries. All other trade marks, product names and company names or logos used in our site are our property or that of their respective owners. No permission is given by us in respect of the use of any such trade marks, get-up, product names, company names, logos or titles and such use may constitute an infringement of the holder’s rights.

20.7 **Access**

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

20.8 **Events beyond our control**

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

20.9 **Applicable law and jurisdiction**

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

20.10 **Unenforceability**

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

20.11 **Whole Agreement**

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

21. **Definitions**

In these terms and conditions:

21.1 ‘Buyer’ means a commercial buyer buying goods or services;

21.2 ‘Chargeback’ means when a Buyer requests his or her credit card company or credit card issuing

bank to invalidate a payment.

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

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

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

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

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

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

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