

# Terms and Conditions (Client)

## STANDARD TERMS

### 1. Definitions

1.1 Terms defined in these Standard Terms have the same meaning when used in any part of this Agreement. In the Agreement, unless the context otherwise requires:

**“Account”** means the bank account in your name and detailed in Your Facility or such other account as notified by you to us provided such notice is given to us no less than 2 Business Days’ before any payment is due to you.

**“Agreement”** means collectively Your Facility and these Standard Terms;

**“Borrowers”** means those Customers that have entered into a Loan Agreement.

**“Business Day”** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**“Customers”** means the corporate entity, firm or person seeking to purchase the Goods or Services (as appropriate) from the Client.

**“Enhanced Risk Loans”** means Loans where:

(a) the Documentation Required to be Uploaded pursuant to Your Facility for such Loan is not received by us in form and substance satisfactory to us; or

(b) where a credit check fails for the Borrower in respect of such Loan.

**“Goods”** means the products, articles or things sold by the Supplier.

**“Insolvency Proceedings”** (a) the exercise of any distress, execution, injunction, sequestration, attachment or other legal process against assets (b) any proposal or convening of a meeting with a view to a composition, assignment or arrangement with or the granting of a trust deed for creditors (c) the convening of a meeting for the purpose of considering or passing any resolution for winding-up or administration (d) the service of notice of intention to appoint or the appointment of an administrator, receiver or manager over any assets (e) the service of a statutory demand (f) the presentation of a petition or application for administration, winding-up or bankruptcy (g) the making of an order for winding-up or administration or the appointment of a provisional liquidator or court appointed receiver or judicial factor, or (h) the taking of steps towards or the coming into force of a statutory moratorium; or anything analogous or having substantially similar effect to any of the above in any jurisdiction.

**“Insolvent”** (a) the inability to pay debts as they fall due (b) intending or actually ceasing to trade or (c) if there are any Insolvency Proceedings.

**“PayItMonthly”** means PayItMonthly Limited (company number 0971909) with registered address at 2.2 Montpellier House, Montpellier Drive, Cheltenham GL50 1TY and additionally **“we”, “us”, “our” and “ourselves”**.

**“Loans”** means the loans made or to be made under the Loan Agreements or the principal amount outstanding for the time being of those loans and each being a **“Loan”**.

**“Loan Agreements”** means the fixed sum loan agreements and corresponding terms and conditions as made between us and the Borrowers and each being a **“Loan Agreement”**.

**“Repayment”** has the meaning given to it in any Loan Agreement.

**“Repayment Date”** has the meaning given to it in any Loan Agreement.

**“Services”** means any services provided by you to the Customer.

**“Start Date”** the date on which the first Loan Agreement is entered into

**“Supplier”** means the provider of Goods and/or Services in respect of which Loans are granted to the Customer and additionally “you” and “your”

**“Supplier Agreement”** has the meaning given to it in the Loan Agreements.

**“Termination Date”** means the date on which the Agreement is validly terminated.

**“Termination Event”** means any event of circumstance set out in Clause 12.

**“Voluntary Notice”** means a notice to terminate the Agreement by you or us of not less than the Notice Period (unless we agree to a shorter period).

**“Website”** means [www.payitmonthly.uk](http://www.payitmonthly.uk)

“**Your Facility**” means the terms of your facility as set out in the section of the Website accessible through your login whereby your customer is granted a Loan which is used to pay for the Goods or Services supplied by you to your customer by way of a Supplier Agreement.

## **2. Interpretation**

2.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

- (a) all references to Clauses are, unless otherwise expressly stated, references to the Clauses of these General Terms; and
- (b) the headings in the General Terms are inserted for convenience only and shall be ignored in construing the General Terms; and
- (c) references to statutory provisions shall be construed as references to those provisions as amended, consolidated, extended or re-enacted from time to time.

2.2 In the event of any inconsistency between the provisions of the Product Terms and these Standard Terms, the Product Terms shall prevail.

## **3. TERM**

This Agreement begins on the Start Date and continues for the Minimum Term and thereafter until terminated pursuant to a valid Voluntary Notice or otherwise terminated in accordance with its terms. Either we or you may serve a Voluntary Notice prior to the end of the Minimum Term provided that the termination is effective on or after the end of the Minimum Term.

## **4. Provision of Loans**

4.1 On the terms of this Agreement and the Loan Agreements, we will offer Loans to your Customers for the purpose of purchasing Goods and/or Services.

4.2 You undertake to make available to your Customers such facilities as are necessary to permit the Customers to apply for a Loan and accept the terms of a Loan Agreement.

4.3 Before any Loan can be offered to a Customer, you shall:

- (a) if a Credit Check is mandatory (as stated in Your Facility), have received confirmation from us that the relevant Customer has passed a Credit Check; and
- (b) provide us with an affordability questionnaire as detailed in Your Facility duly completed by the Customer such questionnaire to evidence the Customer’s ability to service the Loan by having sufficient cash available to cover twice the amount of the Repayments.

4.4 You undertake to obtain, before any Loan Agreement is entered into, the following information:

- (a) a copy of one form of photographic identification of the Customer; and
- (b) a copy of one form of identification showing their correct and up-to-date address; and
- (c) all other information required by us to enable us to comply with all “know your customer” or similar identification procedures under all applicable laws and regulations; and
- (d) a copy of the Customer’s order form for the relevant Goods and/or Services and any associated documentation.

## **5. Facilities**

5.1 Facility details

The detail of Your Facility and any additional requirements in respect thereof are included in the Your Facility section of the Website accessed via your login details.

5.2 Fees and charges

(a) The Initial Fee will be payable when Your Facility is made available to you and will be collected by direct debit;

(b) The Monthly Fee will be payable on the last Business Day of each month following the Start Date until the date on which all Loans and other amounts have been repaid in full or the date on which Your Facility has been cancelled, whichever is the later and will be collected by direct debit;

(c) The aggregate of all Agreement Set Up Fees will be payable at the end of each month following the Start Date and will be collected by direct debit;

(d) The Credit Charge will be payable in accordance with Clause 5.3(a).

(e) Each fee payable pursuant to this Clause 5.2 shall be non-refundable.

### 5.3 Payment Terms

(a) On the sixth Business Day in each month, we will pay to you an amount equal to the Credit Amount as defined in Your Facility less:

- (i) any chargebacks or refunds accrued during the preceding month; or
- (ii) any other charges incurred or raised by us during the preceding month.

(b) If the aggregate of all deductions made pursuant to Clause 5.3(a)(i) to (a)(ii) exceeds the amount of Repayments received by us from Borrowers in the relevant month (the 'shortfall'), you shall pay to us the shortfall within 14 days of the date on which we notify you of such shortfall.

### 5.4 Loan Limits

(a) No single Loan to a Borrower may exceed the Maximum Loan Size.

(b) The aggregate of all Loans made in any calendar month shall not exceed the Monthly Limit.

### 5.5 Maximum Number of Repayments

The number of Repayments for any Loan shall not exceed the Maximum Number of Repayments.

### 5.6 Credit Checks

Prior to making any Loan, you may procure that the Customer undergoes and passes a credit check.

### 5.7 Default Risk

Should the Borrower fail to make any payment due under the Loan Agreement, we are under no obligation to make a corresponding payment to you other than as indicated in Your Facility.

### 5.8 Refunds

(a) If any Goods or Services purchased by a Borrower using the proceeds of a Loan are:

(i) if it is Goods, validly returned to the Client in accordance with the terms of the Supplier Agreement; or

(ii) if it is Services, validly disputed by that Borrower that such Services were not properly supplied by the Client in accordance with the Supplier Agreement, and, in each case, a full refund of all amounts paid by that Borrower in respect of those Goods or Services is due back to that Borrower, then you will promptly inform us of such an event and pay to us:

(A) all amounts received by you pursuant to Your Facility in respect of that Borrower for the relevant Goods or Services; and

(B) an amount equal to the Credit Charge deducted by us on the original payments made to you,

so that the total amount received from you will be sufficient to refund the Borrower any amounts paid by it to us in respect of the Loan and to ensure the Loan is repaid in full.

(b) If any Goods or Services purchased by a Borrower using the proceeds of a Loan is subject to a dispute that the Goods or Services were not properly supplied, and where a full refund to the Borrower is disputed by you or you agree with the Borrower to pay a partial refund, then you will promptly inform us of such an event. Following such notification, we will at our discretion determine how to treat the dispute and act accordingly.

(c) We will calculate any amount due from you to us pursuant to Clause 5.8(a) and 5.8(b) and shall notify you of such amount. Any such amount shall be paid by you promptly and, in any event, within 3 Business Days of receipt of such notice.

## 6. Special Conditions

The Special Conditions as set out in Your Facility shall apply to this Agreement.

## 7. REPAYMENTS

7.1 Once a Loan is set up we will process the direct debit instruction.

7.2 You must ensure that the date of the first Repayment of the Loan must be at least four business days after and less than two months after the date of the Loan.

7.3 You are not entitled to any interest on monies which we hold and which are due or may or may not become due to you.

7.4 Payments to you will be made to your Account.

7.5 Borrowers who want to amend their payment date or method must advise us five business days before the payment is due to be taken.

7.6 Payments are made under the UK Direct Debit Scheme. In the event that Customers cancel their payment mandate we will be unable to process any payments that Customers may have committed to pay us and which may still be due.

7.7 All Repayments must be made to us. Any Repayments or other payments incorrectly made to you in respect of a Loan must be sent to us immediately. Until such payments are made to us, you shall hold those amounts on trust for us. If there is any delay in making such payments, we reserve the right to charge a fee of up to 15% + VAT of such amount.

## **8. Representations**

### **8.1 General**

You make the representations and warranties set out in this Clause 8 to us on each day from the Start Date until the Termination Date.

### **8.2 Restricted Activity**

You do not carry out any of the restricted activities listed on the following website: [www.payitmonthly.uk/legals/restricted-activities](http://www.payitmonthly.uk/legals/restricted-activities)

### **8.3 Status**

You:

(a) if you are a body corporate, are duly incorporated and validly existing under the laws of your jurisdiction of incorporation.

(b) if you are a partnership, duly constituted and validly existing under the laws of your jurisdiction of constitution.

(c) have the power to own your assets and carry on your business as it is being conducted.

(d) have the power to enter into, deliver and perform, and have taken all necessary action to authorise your entry into, delivery and performance of, this Agreement and the transactions contemplated by it.

### **8.4 Non-conflict**

The entry into and performance by you of, and the transactions contemplated by, this Agreement, do not and will not contravene or conflict with:

(a) your constitutional documents; or

(b) any agreement or instrument binding on you or your assets or constitute a default or termination event (however described) under any such agreement or instrument; or

(c) any law or regulation or judicial or official order, applicable to you.

### **8.5 Authorisations**

You have obtained all required or desirable authorisations to enable you to enter into, exercise your rights and comply with your obligations in this Agreement and to make it admissible in evidence in its jurisdiction of incorporation. All such authorisations are in full force and effect.

### **8.6 Binding obligations**

Your obligations under this Agreement are legal, valid, binding and enforceable in accordance with its terms.

### **8.7 No default**

No Termination Event has occurred or is continuing, or is reasonably likely to result from making any Loan or the entry into, the performance of, or any transaction contemplated by this Agreement.

### **8.8 No proceedings**

No litigation, arbitration or administrative proceedings are taking place, pending or to your knowledge, threatened against you, any of your directors or any of your assets, which, if adversely determined, might reasonably be expected to have a material adverse effect on

your business, assets or condition, or your ability to perform your obligations under this Agreement.

#### 8.9 No misleading information

The information, in written or electronic format, supplied by, or on your behalf, to us in connection with this Agreement was, at the time it was supplied or at the date it was stated to be given (as the case may be) complete, true and accurate in all material respects except to the extent that it was amended, superseded or updated by more recent information supplied by, or on behalf of, the Borrower to the Lender.

### **9. Undertakings**

#### 9.1 Compliance with laws

You will comply, in all respect, with all laws, if failure to do so has or is reasonably likely to have a material adverse effect on your business, assets or condition, or its ability to perform your obligations under this Agreement.

#### 9.2 Change of business

You will carry on and conduct your business in a proper and efficient manner and will not make any substantial change to the general nature or scope of your business as carried on at the date of this Agreement.

#### 9.3 Goods and Services

(a) It is your responsibility to be fully conversant with the nature and performance of any Goods, including any harmful or hazardous effects their use may have.

(b) You shall be responsible to us for ensuring the accuracy of the terms of any order including any applicable design drawing or specification provided to us by you and for giving us any necessary information relating to the Goods and/or Services within a sufficient time to enable us to perform the Loan Agreement.

#### 9.4 Information undertakings

You shall immediately inform us of:

(a) any change in management, ownership or control of the Client; and

(b) any change in the way your business operates (as this could adversely impact the recovery of Loans); and

(c) your becoming aware of any Borrower becoming Insolvent; and

(d) any information you know which might adversely impact the recovery of a Loan; and

(e) any unauthorised, fraudulent, suspicious or incorrect use of our systems.

### **10. Assignment of Loans**

10.1 On the Termination Date, we will assign to you all our rights under the Loan Agreements on a without recourse basis provided that:

(a) all amounts due to us under this Agreement have been paid in full;

(b) any amount paid to you by us pursuant to any Loan made in connection with Your Facility, is repaid to us in full (less amounts received by us from the Borrower in respect of such Loans).

10.2 Notwithstanding the above:

(a) the Credit Charge shall apply in respect of any Loans made on or before the Termination Date and assigned to you pursuant to this Clause; and

(b) we reserve the right to retain such amounts of any funds we have received from Borrowers as we believe (in our sole opinion) is necessary to fund any anticipated chargebacks of refunds.

### **11. TERMINATION EVENTS**

11.1 We may immediately terminate the Agreement after any of the following:

(a) a breach of this Agreement or any other agreement between us;

(b) a breach of any agreement, representation or undertaking (including any Loan Agreement) given by a third party, in reliance upon which we have entered into this Agreement or made any payment under it;

(c) a material deterioration, in our opinion, in the your financial condition or operating performance;

- (d) a change, whether direct or indirect, in the your ownership, control or constitution without our prior written consent and which we consider significant;
- (e) you become Insolvent;
- (f) the termination of any waiver or consent given in our favour;
- (g) a change of your country of domicile and/or incorporation;
- (h) any criminal conviction (other than motoring offences) of your senior management.

## **12. RIGHTS FOLLOWING A TERMINATION EVENT**

12.1 Following a Termination Event or our reasonable belief that a Termination Event has occurred or will occur, we may:

- (a) withdraw all or any of Your Facility;
- (b) reduce any Monthly Limit or any Maximum Loan Size (including to zero);
- (c) increase the Credit Charge by 10 basis points; and
- (d) terminate the Agreement.

12.2 At any time after a breach of the Agreement which we consider material, you will indemnify us for all additional costs we incur in consequence of the breach, including the additional costs of collecting Loans.

## **13. TERMINATION RIGHTS**

Termination of the Agreement will not affect rights and obligations in respect of any Loans created before the Termination Date, including the application of the Credit Charge and our rights to set off monies or consolidate accounts.

## **14. PAYMENTS**

14.1 On each date on which you are required to make a payment under this Agreement to us you shall make the same available to us for value on the due date at the time and in such funds specified by this Agreement.

14.2 If any payment becomes due on a day that is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day, or, if that Business Day falls in the following calendar month, such due date shall be the immediately preceding Business Day.

14.3 All payments made by the you under this Agreement shall be made in full, without set-off, counterclaim or condition, and free and clear of, and without any deduction or withholding, provided that, if you are required by law or regulation to make such deduction or withholding, you shall pay to us such additional amount as is necessary to ensure that the net full amount received by us after the required deduction or withholding is equal to the amount that we would have received had no such deduction or withholding been made.

14.4 We will make all payments due to you from us to the Account.

14.5 All payments due from you to us shall be made into such account as we may direct in writing to you.

14.6 Any interest accrued on any amounts received by us from the Borrowers shall be for our account.

14.7 If you fail to make any payment due to us under this Agreement on the due date for payment, we reserve the right to charge a fee of 15% plus VAT on that unpaid amount.

14.8 Any certification or determination by us of a rate or an amount under this Agreement or any Loan Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **15. Costs, Expenses and Indemnities**

### **15.1 Amendment Costs**

In you request an amendment, waiver or consent, you shall, within three Business Days of demand, reimburse us for the amount of all costs and expenses (including legal fees) reasonably incurred by us in responding to, evaluating, negotiating or complying with that request or requirement.

### **15.2 Borrower claims**

You shall, on demand, pay to us the amount of all costs and expenses (including legal fees) incurred by us in connection with and claims made by a Borrower against us after any Loan Agreement between us and that Borrower has been assigned to you.

#### **15.3 Enforcement, and Termination Costs**

You shall, within three Business Days of demand, pay to us the amount of all costs and expenses (including legal fees) incurred by us in connection with:

- (a) Any cost, loss or liability incurred by us as a result of any Termination Event; or
- (b) The enforcement of or the preservation of any rights under this Agreement and any proceedings instituted by or against us as a consequence of enforcing these rights.

#### **16. Set-off**

We may at any time set off any liability of yours to us against any liability of ours to you, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, we may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by us of our rights under this Clause 16 shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

#### **17. Changes to the Agreement**

17.1 We may change the terms of this Agreement from time to time (the 'amendments') with one month's prior written notice to you.

17.2 You may decide not to accept the amendments in which case you are permitted to terminate this Agreement by delivering a Voluntary Notice.

17.3 If we do not receive a Voluntary Notice from you, you will be bound by the amendments.

#### **18. Notices**

18.1 All notices shall be made in writing and sent by prepaid first class post, by facsimile, e-mail or delivered by hand to, in the case of payitmonthly, the address set out at the beginning of the Standard Terms and, in the case of the Client, to the address notified to payitmonthly by the Client (or to such other address as each party may from time to time notify in writing to the other party).

18.2 Any notice served by facsimile or e-mail shall be deemed served at the time of transmission provided the sender can show satisfactory transmission provided that if any such notice would otherwise be deemed to be served outside working hours, such notice shall be deemed to be served at the start of working hours on the next business day. Any notice served by post shall be deemed served two business days after the date of posting and any notice delivered by hand, upon delivery.

#### **19. Applicable law**

The General Terms shall be governed by and construed in accordance with English law and the parties hereby agree to submit to the exclusive jurisdiction of the English courts.