

AU Terms and Conditions

17 March 2021

Please take a moment to read the Openpay Credit Contract as it explains the terms and conditions that govern your access to and use of Openpay Plans provided by us including your obligations and rights in respect of such plans.

Key Terms:

- Openpay allows you to pay for a purchase in the instalments and frequency set out in your Openpay Plan.
- To establish an Openpay Plan you must be 18 years or older and provide us with details of an eligible credit/debit card issued in your name.
- We may conduct a pre-authorisation on your credit/debit card for a portion of the total amount to be repaid under the Openpay Plan before we agree to fund your purchase.
- The amount of each Instalment will be charged to your credit/debit card on the date the Instalment is due. On occasion, charges may be processed the day after the due date. You may pay an Instalment before the due date or pay the outstanding balance of an Openpay Plan early without penalty.
- You may be charged a Plan Creation Fee depending on your Openpay Plan. You may also be charged a Plan Management Fee on Instalments you repay. Details of these fees will be provided to you at the time you select, and will be set out in, your Openpay Plan.
- If you fail to pay an Instalment under an Openpay Plan by the due date for payment, we will charge you a Late Payment Fee of \$9.50 if the payment is still unpaid 2 days after the due date (see clause 5.2).
- Fees payable under your Openpay Credit Contract (excluding Late Payment Fees) are capped (see clause 5.3).
- If you fail to rectify an unpaid instalment payment within 14 days following the due date we may terminate this credit contract and require you to pay us all future instalments (even if they are not otherwise due) and all other amounts payable including any applicable fees. You can contact us if you are facing hardship and may not be able to make any payments on time.
- You may make complaints about your Openpay Credit Contract using the channels set out in clause 18.

- We reserve the right to conduct credit checks on new applicants and to reject applications for an Openpay Credit Contract or to establish Openpay Plans under an Openpay Credit Contract.
1. **Your agreement with us**
 - 1.1. Your credit contract with Openpay Pty Ltd (ACN 159 699 126) of Level 9, 469 La Trobe Street, Melbourne VIC 3000 (**Openpay, we, our, us**) consists of:
 - 1.1.1. these terms and conditions; and
 - 1.1.2. each Openpay Plan emailed or otherwise communicated to you in writing by us as a confirmation of each purchase financed under this credit contract,collectively referred to as the **Openpay Credit Contract**.
 - 1.2. You will be taken to have accepted the terms of your Openpay Credit Contract when you pay the First Instalment of your first Openpay Plan in accordance with clause 4.1.
 - 1.3. These terms and conditions are periodically updated from time to time. You will be taken to have accepted the updated terms and conditions:
 - 1.3.1. where we notify you of any such changes and you do not terminate your Openpay Credit Contract (see clause 17); and
 - 1.3.2. each time you pay the first instalment of an Openpay Plan in accordance with clause 4.1.
 - 1.4. By entering into this Openpay Credit Contract, you declare that:
 - 1.4.1. all information you have given in connection with it is accurate and not misleading and you are aware that we are relying on it. This includes the identification information provided by you to us to process your application;
 - 1.4.2. you enter this Openpay Credit Contract in your personal capacity (that is, as an individual) and not in any other capacity (eg, as a sole trader); and
 - 1.4.3. you do not enter this Openpay Credit Contract (or any Openpay Plan under it) on behalf of any third-party beneficiary.
 - 1.5. For the avoidance of doubt, this Openpay Credit Contract is an agreement for credit between you and Openpay. To the extent permitted by law, Openpay:
 - 1.5.1. makes no warranty as to the merchantability, suitability or otherwise; and
 - 1.5.2. expressly disclaims any liability,

in respect of the goods or services you purchase in connection with an Openpay Plan under this Openpay Credit Contract. If you are in any way dissatisfied with any of the goods or services purchased under this Openpay Credit Contract, you should contact the Participating Merchant. However, you will still be obligated to repay all outstanding amounts under this Openpay Credit Contract.

- 1.6. The BNPL Code of Practice forms part of these terms and conditions. In addition to our obligations under these terms and conditions and otherwise at law, we agree to adhere to the requirements placed on us under the BNPL Code of Practice.

2. Definitions

In this Openpay Credit Contract capitalised words have the meaning given in the Openpay Plan or as follows:

<i>Available Credit</i>	means, at any time, the difference between the Credit Limit and the Outstanding Balance at that time.
<i>BNPL Code of Practice</i>	means the Australian Finance Industry Association Code of Practice for Buy Now Pay Later Providers, as amended from time to time and available at https://afia.asn.au/AFIA-Buy-Now-Pay-Later-Code-of-Practice
<i>Credit Limit</i>	means the credit limit specified in your most recent Openpay Plan forming part of this credit contract
<i>Fee</i>	means any fee specified in clause 5.2 and in any Openpay Plan that forms a part of this Openpay Credit Contract.
<i>Instalment</i>	means any instalment specified in any Openpay Plan that forms a part of this Openpay Credit Contract.
<i>Nominated Card</i>	means the credit or debit card specified in the "Nominated Card" section of an Openpay Plan that forms a part of this Openpay Credit Contract including any card you later notify us in substitution for that card. This card must be issued in your name.
<i>Openpay Checkout Process</i>	means the process undertaken by a Participating Merchant to arrange finance for the purchase of goods or services supplied by the Participating Merchant including by the use of the checkout function using the Openpay app or Openpay website and by a manual sales process.
<i>Openpay Plan</i>	means the plan that outlines details of the credit provided by us and your repayment obligations in respect of a purchase from a Participating Merchant.
<i>Outstanding Balance</i>	means, at any time, the aggregate of all amounts owing under all the Openpay Plans you have under this Openpay Credit Contract at that time.

<i>Participating Merchant</i>	means a merchant that allows you to finance a purchase of goods or services under an Openpay Plan. A current list of Participating Merchants is available on the website at www.openpay.com.au .
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3. Your Openpay Plan

3.1. Customer registration with Openpay

To establish your first Openpay Plan you must first register with us. To register you must be 18 years of age or older and provide the following personal information:

- 3.1.1. your full legal name, residential address and date of birth;
- 3.1.2. a valid email address and one contact phone number;
- 3.1.3. a Valid Australian Visa or MasterCard credit or debit card information held by you in your name (e.g. card number and name on card);
- 3.1.4. details of a prescribed identification document such as a valid passport, current Australian driver licence and/or current Medicare card; and

3.2. To validate the above information, you may be asked to provide copies of, or otherwise evidence of:

- 3.2.1. a valid Visa or MasterCard credit or debit card issued by an Australian financial institution in your name. We do not accept payment via any other debit or credit cards;
- 3.2.2. a valid Australian Driver's Licence;
- 3.2.3. a valid Passport and/or a valid Medicare Card; and
- 3.2.4. other valid government issued identification.

You may register through our app or at the point of sale in-store or online at a Participating Merchant.

Once you have registered successfully with us and wish to make a purchase from a Participating Merchant under an Openpay Credit Contract, you must provide your customer number to the sales assistant. You will be asked to select your Openpay Plan payment preferences for the purchase. Once you have selected your preferences and confirmed that you want to proceed with that Openpay Plan, you will receive an email to your nominated primary email account (or other form of written communication) confirming the details of your Openpay Plan.

3.3. Credit checks

We may conduct a credit check on you, which may include obtaining your credit report from a credit reporting body. Any information we collect about you will be handled in accordance with our privacy statement (see clause 16). We may also seek further information to verify your identity, which you must provide to us on request. We reserve the right to reject for any reason your application for an Openpay Credit Contract and/or an application for an Openpay Plan.

4. **Your payment obligations**

4.1. First Instalment

4.1.1. At the time you make a purchase which is, or is to be, financed under this Openpay Credit Contract, you must pay us an initial payment (**First Instalment**) inclusive of any Plan Creation Fee and/or a Plan Management Fee for the First Instalment.

4.1.2. The First Instalment must be paid using your Nominated Card and is payable within the Participating Merchant's store at the time of purchase or, where you make a purchase from a Participating Merchant's website, at the time of your online purchase.

4.2. Pre-Authorisation

When you make a purchase the credit for which is to be provided under this Openpay Credit Contract, we an amount will to be charged to your Nominated Card as a pre-authorisation for the total amount you will have to pay under the Openpay Plan before the purchase is made.

4.2.1. Once the pre-authorisation is processed and approved, we will then instruct your financial institution to cancel the pre-authorisation. No funds are taken from your account at pre-authorisation but a temporary 'hold' is placed on the funds. Once we have cancelled the pre-authorisation, it may take up to seven days for your financial institution to release the funds and before you are able to access them.

4.3. Paying the Participating Merchant

4.3.1. Subject to you paying the First Instalment, Openpay will pay the Participating Merchant on your behalf and will debit an amount to your account with us in accordance with your Openpay Plan.

4.4. Your Repayments

4.4.1. You must repay the amount of credit we provide you in relation to a purchase we finance under your Openpay Plan by making the Instalments specified in the Openpay Plan without set-off or deduction and on or prior to the payment date for each Instalment. You must reimburse us any government stamp duty or tax that we may be required to pay in connection with your purchase and any payment you make to us.

- 4.4.2. If for any reason the Outstanding Balance exceeds the Credit Limit, you must immediately make such payment as is necessary to reduce the Outstanding Balance to or below the Credit Limit.
- 4.4.3. Unless you make an Instalment payment before its due date, you direct and authorise us to charge the amount of any Instalment (together with any Plan Management Fee) to your Nominated Card on the date on which the Instalment is due without any set-off or deduction. In authorising us to charge your Nominated Card you understand and agree that, on occasion, the amount to be charged may not be debited from your Nominated Card until the day after the day on which the instalment is due.
- 4.4.4. You may make any Instalment payment sooner than its due date without any additional cost (other than the applicable Plan Management Fee).
- 4.4.5. Openpay will send to your nominated primary email address payment reminders before each scheduled instalment payment date. Openpay accepts no liability for payment reminders sent to you that fail to arrive due to system failures, power outages, hardware or software defects or natural events.

4.5. Redrawing

- 4.5.1. You may draw down any Available Credit under this Openpay Credit Contract to finance future purchases with any Participating Merchants. A Plan Creation Fee may be payable when you draw down any of the Available Credit under a second (and any subsequent) Openpay Plan forming part of this Openpay Credit Contract.

4.6. Methods of payment

- 4.6.1. You will make the Instalment payments under each Openpay Plan with your Nominated Card. You may also contact us for electronic funds transfer details if you wish to make full payment of the Outstanding Balance.
- 4.6.2. You must ensure there are sufficient funds available to allow each instalment to be charged to the Nominated Card when it is due. You agree to notify us promptly in writing if the Nominated Card specified in any Openpay Plan that forms a part of this Openpay Credit Contract is cancelled, suspended, expires or is due to expire or otherwise ceases to be a means by which we may collect payments while payments remain owing. In this case, you must immediately nominate another credit or debit card in your name issued by an Australian financial institution or pay the outstanding balance and all other amounts payable under this Openpay Credit Contract.

5. **Fees and interest**

5.1. Interest

Openpay Plans are interest free. You will not be charged interest on your Openpay Plan.

5.2. Fees

The fees payable under this Openpay Credit Contract are those fees set out in this clause and disclosed to you before you enter into an Openpay Plan during the Openpay Checkout Process:

5.2.1. A **Plan Creation Fee** may be applicable on all approved Openpay Plans. Where applicable, the Plan Creation Fee is charged at the establishment of an Openpay Plan and varies at each Participating Merchant. For purchases made via the Openpay app, visit the “Your plan summary” section to see the applicable Plan Creation Fee (if any). For in store purchases at a Participating Merchant, view the onscreen information generated by the sales assistant to confirm the Plan Creation Fee (if any).

5.2.2. A **Plan Management Fee** as described at the time of purchase is charged on each Instalment you make under your Openpay Plan. For purchases made via the Openpay app, visit the “Your plan summary” section to see the Plan Management Fee applicable to each Instalment made under that particular Openpay Plan. For in store purchases made at a Participating Merchant's premises, view the onscreen information generated by the sales assistant to confirm the Plan Management Fee amount.

5.2.3. We will charge you a **Late Payment Fee** of \$9.50 if you fail to pay an Instalment due under an Openpay Plan by the payment due date and the payment is still unpaid 2 days after the Instalment is due.

5.2.4. All fees applied under this clause 5.2 are payable immediately. Openpay may, at its discretion, reasonably delay the charging of, or waive wholly or partly, any fee. No such delay or waiver will be taken to restrict us in charging the fee in the future. If fees are or may be incurred as a result of Openpay's error, please let us know, and we will waive or refund such fees.

5.3. Maximum Fees Payable

Notwithstanding any other provision of your Openpay Credit Contract, the aggregate of all the fees you must pay in connection with your Openpay Credit Contract (excluding Late Payment Fees) is capped as follows:

5.3.1. in the first 12 months after commencement of this Openpay Credit Contract, \$200; and

5.3.2. in each subsequent 12-month period, \$125.

6. **Default and its consequences**

6.1. Events of default

You default under this Openpay Credit Contract if:

6.1.1. subject to clause 5.2.4, you fail to pay any amount when due;

6.1.2. you fail to comply in a material way with any of your obligations under this Openpay Credit Contract;

6.1.3. you become bankrupt, or have a guardian or administrator appointed; or

6.1.4. we discover you deliberately gave us misleading or untrue information about a material matter in connection with this Openpay Credit Contract or an Openpay Plan.

6.2. Consequences of default

If you default under this Openpay Credit Contract:

6.2.1. in respect of a default under clause 6.1.1, a Late Payment Fee may be applied in accordance with clause 5.2.3 and, if applied, must be paid immediately; and

6.2.2. if the default is of a kind which can be fixed, we may send you a notice requiring you to fix the default within 14 days, failing which, we may terminate this Openpay Credit Contract and the Outstanding Balance will become immediately payable together with all other amounts payable under this Openpay Credit Contract; and

6.2.3. if the default is of a kind which cannot be fixed, we may send you a notice terminating the credit contact and requiring payment of the Outstanding Balance within 14 days together with all other amounts payable under this Openpay Credit Contract.

6.2.4. On termination of this Openpay Credit Contract due to your default, you authorise us to charge the Outstanding Balance to your Nominated Card and you acknowledge that it may be necessary for us to charge your Nominated Card with such instalments and applicable fees individually. This may mean the statement for your Nominated Card will list multiple debits charged by us that is equal to the Outstanding Balance and any other amounts you owe us.

6.3. Nominated Cards

6.3.1. If you change your Nominated Card without telling us or if your Nominated Card is dishonoured, we may charge to any previous Nominated Card any outstanding amounts you owe us under your Openpay Credit Contract unless you have instructed us otherwise. The Plan Management Fee will apply for each scheduled Instalment regardless of when it is paid.

6.3.2. Where your payment of an Instalment is dishonoured, we may reattempt to debit the amount from your Nominated Card at a later date. You will be liable to your card issuer or financial institution for any dishonour fees incurred on your Nominated Card.

6.4. External debt collection services

If you are in default and we are unable to collect any outstanding amounts you owe to us, we may engage a debt collector to recover amounts owing under this Openpay Credit Contract. You must pay for any reasonable enforcement expenses we incur in exercising our rights to recover any outstanding amounts due under the Openpay Credit Contract.

6.5. Withholding goods or services

You acknowledge that where goods or services you purchase using an Openpay Plan are to be delivered after the time of your purchase, the Participating Merchant may, under instructions from

us, withhold delivery of those goods and services if you are in default under these terms and conditions and we believe it is reasonably necessary to protect our legitimate interests. You authorise us to act as your agent to suspend, terminate or cancel your agreement with the Participating Merchant for delivery of the relevant goods or services in accordance with that agreement's terms and conditions.

7. Refunds

If a Participating Merchant approves and pays to us a refund of the purchase price for any purchase you made from that Participating Merchant that was financed under this Openpay Credit Contract, we will refund the amount of any Instalment payments you have made by crediting those amounts to your Nominated Card account and you will not need to make any further instalment payments in respect of that purchase. We do not charge you a fee in connection with this; however, we will not refund any Plan Management Fees, Plan Creation Fee or Late Payment Fees you have already paid in respect of that purchase.

8. Relationship between Openpay and Participating Merchants

You acknowledge that a Participating Merchant may pay us a fee in respect of each Openpay Plan used by you to finance the purchase of goods or services from the Participating Merchant.

9. Special terms and conditions where a warranty product has been purchased

9.1. You acknowledge that if you default under these terms and conditions and remain in default for a period of more than 14 days, we may provide written notification to the warranty provider of this default. You acknowledge that in this circumstance, your ability to use the warranty product purchased may be prevented from the date on which this written notification is provided until you are no longer in default of the Openpay Plan to which the warranty product applies.

9.2. You acknowledge that the warranty provider may not transfer any warranty financed by us where there is an Outstanding Balance under the relevant Openpay Plan.

10. Locking your account

When you register with Openpay, you create a customer profile which contains the details of any Openpay Plans you create and other information, and may be accessed through the Openpay app. You acknowledge and agree that we may, at any time and for any amount of time, lock your profile which may prevent you from accessing your profile, where we consider it is reasonably necessary to do so. If this occurs, you should contact our Customer Service team for further information (see contact details at clause 18.1 below). You acknowledge that if your profile is locked (for any reason), you will not be able to apply for any further Openpay Plans until your profile is unlocked by us.

11. Dealing with our rights and obligations

We may assign or novate to any person or entity or otherwise deal in any manner with any of our rights, obligations or interests under this Openpay Credit Contract and you consent to us assigning or novating this Openpay Credit Contract.

12. Notices

- 12.1. You agree that we may give you any notice or document regarding this Openpay Credit Contract and otherwise communicate with you by email, post or personal delivery to any addresses you notify to us.
- 12.2. You may give us any notice or document regarding this Openpay Credit Contract by email to info@openpay.com.au, by post or by delivery to our office at Level 9, 469 La Trobe St, Melbourne, VIC 3000.
- 12.3. You agree to notify us promptly in writing if you change your name, residential address, email address or other contact details and to provide us with the relevant updated information.

13. Termination of your Openpay Plan

- 13.1. Without limiting our rights under clause 6.2 to terminate this Openpay Credit Contract if you default, we may also terminate this Openpay Credit Contract by notice to you after the expiry of all Openpay Plans forming part of this Openpay Credit Contract.
- 13.2. If 12 months has elapsed following the ending of all Openpay Plans (whether by being paid off or otherwise), this Openpay Credit Contract shall be deemed to have terminated.
- 13.3. You can terminate this Openpay Credit Contract at any time by contacting us, provided the Outstanding Balance (if any) has been paid in full to us and no disputes or refunds are in progress.
- 13.4. On termination of this Openpay Credit Contract for any reason, you must immediately pay all amounts owing under this Openpay Credit Contract including applicable fees without set-off or deduction.

14. Indemnity

You agree to indemnify us in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (including legal expenses on a full indemnity basis) arising from or relating to a breach by you of the terms of this Openpay Credit Contract or any applicable law or regulation in connection with this Openpay Credit Contract.

15. Governing law

These terms and conditions will be governed by the law for the time being in force in the State of Victoria, and you agree to submit to the non-exclusive jurisdiction of the courts in that State.

16. Privacy statement and consent

You agree that we may collect your personal information to identify you, process any applications you make, provide our services to you, comply with our legal and regulatory obligations and for our own internal business development purposes. Unless you tell us not to, we may also use your information to let you know about products or services that may interest you. We may also share your information with the Participating Merchant at which your Openpay Plan purchase was made. Your personal information may also be disclosed to a debt collector if you are in default

under this Openpay Credit Contract. We may obtain a credit report about you in connection with your Openpay Plan and you consent to us doing this. A credit reporting body (**CRB**) may include information about you in credit reports to credit providers (such as us) to assist them in assessing your creditworthiness. If you fail to meet your payment obligations or if you commit a serious credit infringement, we may be entitled to disclose this to a CRB. The CRB we use is Equifax whose policy on the handling of personal information related to credit can be found at <http://www.equifax.com/privacy/>. You have a right to request a CRB not to use your information for the purposes of pre-screening direct marketing and you can also request a CRB not to use your information if you believe on reasonable grounds that you have been or are likely to be the victim of fraud.

You acknowledge that from time to time we may be required to collect and verify your personal information, including under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, and you consent to such collection and verification. If you do not provide us with your personal information we may not be able to provide our services to you.

We may disclose your personal information to our related entities, service providers and agents located overseas, including in the UK, Ireland, USA, Israel, the Philippines and Hong Kong.

Our Privacy Policy, available at <https://www.openpay.com.au/au-privacy>, sets out how we manage the personal information we hold (including information about your credit) and how you can seek access to, or the correction of, the information we hold about you. It also sets out how you may complain about our information handling practices and how we deal with such complaints.

17. Varying these terms and conditions

These terms and conditions may be varied by us from time to time, provided any changes which materially affect your rights or obligations are made by giving you no less than 15 days' written notice prior to the change. If you do not wish to agree to any such variation, you may terminate this Openpay Credit Contract in accordance with clause 13.3 and no fee will be applied to such termination in these circumstances. Unless and until you terminate this Openpay Credit Contract, you will be taken to have agreed to any changes to these terms and conditions from the day such changes become effective.

18. Customer Complaints

18.1. Complaints to us

If you have any questions, concerns or complaints about your Openpay Credit Contract, please contact our Customer Service team on:

Telephone:	1300 168 359
Email:	info@openpay.com.au

We take all complaints seriously and will respond to your complaint within a reasonable period.

18.2. Complaints to the Australian Financial Complaints Authority

If you are dissatisfied with our handling of your complaint, you can lodge a complaint with the Australian Financial Complaints Authority, or AFCA. AFCA provides fair and independent financial services complaint resolution that is free to consumers.

Website:	www.afca.org.au
Email:	info@afca.org.au
Telephone:	1800 931 678 (free call)
In writing to:	Australian Financial Complaints Authority: GPO Box 3, Melbourne VIC 3001

18.3. Complaints to the Code Compliance Committee

If you are dissatisfied with AFCA's handling of your complaint, you can lodge a complaint with the BNPL Code of Practice Code Compliance Committee. The Code Compliance Committee may consider your complaint. To lodge a complaint with the Code Compliance Committee, contact them at CCC-BNPL@afia.asn.au.

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