

Fundpay Application Terms of Use

These Terms of Use were last updated on 10/02/2022.

Welcome to Fundpay, a savvy financial platform that enables you to have the good things in life using the money you have, not debt. Fundpay allows you to register and make payments to a membership account, which can be used to purchase goods online or in store from participating retailers.

Fundpay is operated by **Myfund Limited** NZBN 9429047586444 (referred to in these Terms as **we, us** and **our**). These Terms of Use (**Terms**) form a legal agreement between the person that accesses and/or uses Fundpay or our Services (referred to in these terms as **you** or **your**) and us that sets out our, and your, rights and obligations in relation to your access to and use of Fundpay and our Services.

By registering for, downloading and/or using Fundpay, you agree that you, and anyone else that uses Fundpay or the Services through your Account (irrespective of whether such person does so with your permission or otherwise), will be bound by these Terms. If you do not agree to all of these Terms, you must not use Fundpay or the Services.

These Terms may be varied by us at any time. Unless otherwise stated, amendments to these Terms will be effective when we notify you of the changes via email, or post the changes on Fundpay. You must ensure that you have read, understood and agree to these Terms. You agree that your continued use of Fundpay and the Services represents your agreement to be bound by the most recent Terms. If you are not happy with a change that we make to these Terms, you can end your use of Fundpay and the Services in accordance with clauses 8.1 and/or 8.2.

We are not a provider of Financial Products (as defined in the Financial Markets Conduct Act 2013) or financial advice. If you need advice about financial products or services, you should contact a licensed financial adviser.

1. Definitions

1.1 In these Terms:

Account means the profile you have with us that is accessible via Fundpay;

Account Balance means the balance of funds in your Account at a given time;

Fundpay means the Fundpay mobile application software that we make available to you for the purpose of accessing and using the Services;

Our Policies means any policies or guidelines that we may publish from time to time in relation to the use of the Services;

Privacy Policy means our privacy policy;

Participating Retailer means any person or business that accepts payment via Fundpay for goods or services they supply to you;

Services means the services we provide to you via and in relation to Fundpay, including the ability to top up and use your Account Balance;

Site means www.Fundpay.co.nz and such other websites (at such other addresses) as are made available by us from time to time;

Virus means any virus, Trojan horse, worm, backdoor or other element that may disable, harm or otherwise prevent the operation of any computer software, hardware or network, or any telecommunications service, equipment or network;

Your Data means any data that you have inputted into Fundpay.

1.2 In these Terms, unless the context requires otherwise:

- (a) a reference to a statute includes all regulations under and amendments to that statute, and any statute passed in substitution for that statute or incorporating any of its terms;
- (b) the singular includes the plural and vice versa;
- (c) a reference to \$ or any monetary amount is to New Zealand dollars;
- (d) references to a "party" or "parties" are to the parties to the Agreement;
- (e) "person" includes a natural person and any entity whether or not incorporated; and
- (f) the words "includes" or "including" do not imply any limitation.

2. **Use of Fundpay and Services**

Registering an Account

- 2.1 In order to use Fundpay and the Services, you must register an Account via Fundpay.
- 2.2 To register an Account, you will be asked to provide us with certain information about you including your name, email address, proof of identity documents and bank details. Your Account will be activated once you have met our criteria, agreed to the Terms, confirmed your email address, and deposited at least \$1 into your Account.
- 2.3 You are responsible for providing accurate, current, and complete Account information. We may request further Account information from you, either during or after registration of your Account. If your information changes at any time, you need to inform us as soon as reasonably practicable.
- 2.4 We reserve the right to refuse to open an Account and do not need to provide reasons for doing so.

Topping Up Your Account

- 2.5 The Services allow you to use your Account Balance to purchase goods or services from any Participating Retailer, either online or in person. To make a purchase using the Services, you will need to have a positive Account Balance.
- 2.6 Your Account Balance can be topped up by using automatic payment or one-off bank transfer only. All payments must be made from a New Zealand bank account. We do not provide a facility to accept cash or cheque payments into your Account. Please

refer to the instructions in Fundpay for further details on topping up your Account, including our correct bank account details into which you will need to make payment.

- 2.7 When you top up your Account by one-off bank transfer or automatic payment you must include your unique membership number in the reference field. Your Account Balance will usually be updated to reflect the new balance within 2 working days of the top up, however this may take longer in some instances. You will only be able to use the updated Account Balance to pay for a purchase once it is visible in your Account in Fundpay.
- 2.8 The minimum amount by which you can top up your Account at one time is \$1.
- 2.9 You can check your Account Balance at any time, by logging in to your Account in Fundpay.
- 2.10 We will hold the funds making up your Account Balance separately from our corporate funds and will not use them for our operating expenses or for any other purposes not relating to Fundpay or our Services. We will not voluntarily make your Account Balance funds available to our creditors in the event of our insolvency. We will hold the funds making up your Account Balance in a New Zealand bank account in our name, where we hold the co-mingled funds associated with the Accounts of multiple Fundpay users. We will work with our bank and carefully keep records with a view to avoiding any shortfalls in funds held in the ordinary course of business.

Cooling off period

- 2.11 If you register an Account and then decide that you do not want to use the Services, you will have 7 days from the date of registering your Account to cancel your Account by emailing us at hello@Fundpay.co.nz. If you cancel within this seven-day period, we will, within 5 working days of receiving your cancellation request, refund any funds in your Account Balance (and which have not been used for any purchases) to a bank account nominated by you. If you cancel your Account after this seven-day period, then clause 8.2 will apply.

Making purchases using your Account Balance

- 2.12 Your Account Balance can be used to purchase goods and services offered at any Participating Retailer, either in person or online, but cannot be used at any retailer that is not a Participating Retailer.
- 2.13 When you make a purchase at a Participating Retailer using the Services, the amount of that purchase will be deducted from your Account Balance and paid to the Participating Retailer (subject to clause 3.3).
- 2.14 To make a purchase at a Participating Retailer, follow the instructions provided in Fundpay. You need to have your mobile phone on your person to complete a purchase using Fundpay.
- 2.15 We do not provide a line of credit. Your Account Balance is the maximum amount you can pay for any purchase using Fundpay. If you attempt to use your Account to make a purchase of a higher value than your Account Balance, the transaction will be denied.
- 2.16 For instore transactions only, you may use your Account to make a part payment.
- 2.17 Fundpay cannot be used in conjunction with any buy now pay later schemes.

- 2.18 Subject to clause 2.27, all unused funds in your Account remain valid until such time as your Account is cancelled or this Agreement is terminated in accordance with these Terms, in which case clause 8 will apply.

Account Balance not redeemable for cash

- 2.19 Other than as permitted under clauses 2.11 and 8.4, your Account Balance cannot be withdrawn or exchanged for cash.
- 2.20 Your Account is not a bank account and is not connected to your own bank account in any way. You will not earn interest on the funds making up your Account Balance and those funds are not a deposit by you with us and are not insured.

Participating Retailers

- 2.21 A list of current Participating Retailers can be obtained at any time via Fundpay.
- 2.22 Participating Retailers may change from time to time and we do not warrant or represent that any particular retailer will remain a Participating Retailer at or for any particular period of time, or guarantee any minimum number of Participating Retailers.
- 2.23 You acknowledge and agree that:
- (a) the Participating Retailer is the seller of the goods and/services purchased by you using Fundpay and is solely responsible for providing those goods and/or services to you;
 - (b) when you use the Services to purchase goods from any Participating Retailer, this creates a separate and severable binding agreement directly between you and that Participating Retailer;
 - (c) your purchase may be subject to any additional terms and conditions imposed by or in connection with the purchase by the Participating Retailer;
 - (d) we are not a party to any agreement or transaction between you and the Participating Retailer. Accordingly, you agree not to involve, or attempt to involve, us in any dispute that may arise between you and the Participating Retailer or in respect of your purchase of goods and/or services using Fundpay. We do not provide refunds for purchases made using the Services. If for any reason you wish to return, exchange and/or request a refund for goods or services purchased using Fundpay, you must do this directly with the relevant Participating Retailer, subject to their policies; and
 - (e) we are not responsible for the business or conduct of any Participating Retailer, and we provide no guarantees in relation to their goods and/or services.

Security of your Account

- 2.24 You should monitor your Account Balance for any error relating to purchases made with your Account Balance or top ups made to your Account. If any error regarding purchases made with or contributions made to your Account has occurred, you must notify us within 21 days from the date on which the error or errors occurred by emailing us at hello@Fundpay.co.nz.
- 2.25 You are solely responsible for ensuring the security of your password and login details, and for any use (including unauthorised use) of your Account by a third party. If you believe that your login details (or other security features) have become, or may be,

known to anyone other than yourself, or that there has been unauthorised access to your Account, you must immediately:

- (a) change your password (or other security features); and
- (b) tell us immediately by emailing us at hello@Fundpay.co.nz.

Inactive Account

- 2.26 Your Account will be deemed inactive if you have either not accessed your Account, made a transaction in store or online, or added to your Account Balance for a period exceeding 24 months and your Account Balance is less than \$50. We will take all reasonable steps to contact you 30 days before this expiry date.
- 2.27 If your Account is deemed inactive with a total Account Balance being less than \$50, it will expire and the Account Balance will become the property of Myfund Limited.

3. Fees

Fees

- 3.1 We do not charge our users subscription fees, interest or penalties.
- 3.2 We make money by deducting a small percentage from the amount paid to the Participating Retailer in respect of each purchase you make at that Participating Retailer using your Account Balance.

4. Your Obligations

- 4.1 By registering an Account and/or using the Services, you agree that you:
 - (a) are 18 years old or above;
 - (b) are living in New Zealand and hold a New Zealand bank account;
 - (c) have read and understood the contents of these Terms, including the Privacy Policy;
 - (d) are the sole user of your Account;
 - (e) are responsible for the access and security of your Account;
 - (f) will ensure that all information that you provide to us is true and correct and kept up to date for so long as you continue to use the Services;
 - (g) will comply with any third party terms that are applicable to your use of Fundpay and/or Services; and
 - (h) will comply with Our Policies and all applicable laws when using the Services.
- 4.2 You will not:

- (a) copy, reverse engineer, decompile, disassemble, modify, change, or otherwise distribute, license, sub-licence or transfer in any form the Services;
- (b) access Fundpay or the Services to build a product or service which is the same as or similar to Fundpay or the Services, or which otherwise competes with Fundpay or the Services;
- (c) attempt to disable or undermine any security or technical measures used by us; or
- (d) transmit any Viruses through Fundpay or the Services.

4.3 To gain access to Fundpay you must:

- (a) have a compatible mobile device (as described in the App Store (for Apple mobile devices) or the Google Play Store (for Android mobile devices)); and
- (b) download Fundpay from the App Store (for Apple mobile devices) or the Google Play Store (for Android mobile devices).

Without limiting any of your other obligations, you must comply with all third party service providers' terms of use (for example, software providers and network service providers) when accessing and using Fundpay.

5. **Intellectual Property**

- 5.1 Fundpay and the Services are our exclusive property (or are used by us with the express permission of the owner).
- 5.2 You may access and use Fundpay and the Services only as expressly permitted under these Terms.
- 5.3 You may not, without our prior express written consent:
 - (a) extract or re-use any part of Fundpay or the Services. In particular, you may not use any data mining, robots, scraping or similar tools to extract any materials from any part of Fundpay or the Services;
 - (b) develop, create or publish your own database, site or application that features substantial parts of Fundpay or the Services; or
 - (c) use any of our trade names, logos or other intellectual property.
- 5.4 You grant an irrevocable, transferrable, royalty free, perpetual license to use any review you post or share online including on the App Store or on Google Play, including for the purposes of marketing Fundpay and/or the Services, or on the Site. You agree that you have the right and authority to grant this licence.

6. **Your Data**

- 6.1 If you provide us with personal information, then our Privacy Policy applies. Please read the Privacy Policy carefully as it forms a part of these Terms. By using the Services you are permitting us to collect, hold, use, store and share your personal information in accordance with our Privacy Policy.

- 6.2 Your Data is your exclusive property and you will have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data. You agree that we may use Your Data for:
- (a) any of the purposes set out in the Privacy Policy;
 - (b) performing our obligations under these Terms; and
 - (c) ensuring that you are complying with these Terms.

7. **Our responsibilities and liability**

- 7.1 You have various rights under the Consumer Guarantees Act 1993 which we cannot exclude in these Terms. Nothing in the following paragraphs is intended to limit those rights, but we exclude all other implied terms to the fullest extent permitted by law.
- 7.2 In particular (and without limiting clause 7.1) we do not promise that:
- (a) Fundpay or the Services will be available at all times;
 - (b) your use of Fundpay or the Services will be uninterrupted or error-free;
 - (c) information on the Services is accurate, reliable, up-to-date or adequate;
 - (d) the Services will meet your requirements or be fit for a particular purpose;
 - (e) Fundpay will operate on all types of devices; or
 - (f) Fundpay will be secure or free from Viruses.
- 7.3 To the fullest extent permitted by law, we exclude any and all liability we may have to you or any other person under or in connection with:
- (a) your failure to comply with these Terms;
 - (b) any delay or loss of access to, or use of, Fundpay or the Services at any time;
 - (c) any fault or error in Fundpay or the Services that is beyond our control;
 - (d) any Virus that affects or is introduced into Fundpay other than as a result of our negligence;
 - (e) malfunction of any equipment or system, or an telecommunications link failure;
 - (f) any unauthorised access or loss of Your Data that is beyond our control; or
 - (g) any other cause or event beyond our control.

This exclusion applies regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty or otherwise.

- 7.4 Subject to clause 7.3, we are only responsible to you for foreseeable loss and damage caused directly by us. If we fail to comply with these Terms, we are responsible for

loss or damage you suffer that is a direct and foreseeable result of that failure, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us.

- 7.5 In any event, to the extent we are permitted by law to limit our liability, our total liability to you will be limited to \$1500.
- 7.6 You acknowledge that:
- (a) we are not providing you with any financial advice, recommendation or opinion via Fundpay;
 - (b) you assume all of the risks associated with entering into an agreement with a Participating Retailer;
 - (c) we are not responsible or liable for any issues, loss or damage caused by your network connections, telecommunications links or the internet, or for any unauthorised access or loss of Your Data that is beyond our control.
- 7.7 You will reimburse us for any costs we reasonably incur in relation to any claims against us resulting from your breach of these Terms.

8. **Account closure, suspension and termination**

Closing your Account

- 8.1 You can pause, cancel and resume topping up your Account Balance at any time by contacting your bank or amending your payment schedule through your bank's online banking portal.
- 8.2 You can also close your account by emailing us at hello@Fundpay.co.nz, or following the instructions on Fundpay. Simply removing Fundpay from your mobile device will not have the effect of closing your Account. If your Account Balance is showing a balance greater than \$0, then subject to clause 2.27, we are unable to close your Account until the Account Balance has been used up and your Account Balance is \$0.

Termination

- 8.3 We may suspend or terminate your access to Fundpay or the Services:
- (a) if you fail to comply with these Terms, in which case you must cease using Fundpay and the Services; and
 - (b) at any time at our sole discretion.
- 8.4 Where appropriate, we will give you notice of any suspension or termination by notifying you via the email address that is linked with your Account. Where we suspend or terminate your access to Fundpay or the Services under:
- (a) clause 8.3(a), we will refund your Account Balance to you as at the time of suspension or termination and you will have no further entitlements; or

(b) clause 8.3(b), all Account Balances are non-refundable and non-transferable, but may be used within 12 months of such suspension or termination or such other period as may be notified to you by Fundpay (**wind down period**). No Rewards will apply or be credited to your Account Balance during the wind down period. Any amount not used and remaining in the Account at the end of the wind down period will become the property of Myfund Limited.

8.5 We will not be responsible for any loss you may incur as a result of any suspension or ending of your access to Fundpay or the Services.

9. **General**

9.1 We may, in our sole discretion, modify Fundpay and our Services from time to time without notifying you. Where any modification has an adverse impact on you or your use of Fundpay and the Services, you may cease using Fundpay and the Services in accordance with clause 8.

9.2 These Terms are the entire agreement between you and us in relation to Fundpay and the Services.

9.3 Nothing in these Terms will be deemed to constitute either party as the agent, partner or joint venturer of the other.

9.4 No term or condition of these Terms will be deemed to have been waived by us and no delay, breach or default by you will be deemed to have been excused by us unless the waiver or excuse is in writing and signed by our authorised representative.

9.5 If any part of these Terms is judged invalid or unenforceable it will be excluded, and the remainder of these Terms will continue to operate.

9.6 We may licence, sub-contract, or assign all or any part of our rights and obligations under these Terms without your consent.

9.7 These Terms are governed by the laws of New Zealand. Should you wish to take any action against us relating to the Services or these Terms, you agree that any such action must be taken in the New Zealand courts.

10. **Apple App Store Terms**

10.1 Schedule 1 applies if you access the Services via an app downloaded from the Apple App Store on an Apple mobile device (e.g. iPhone, iPad).

Schedule 1 – Apple App Store Terms

This Schedule only applies to you if you access the Services via an app downloaded from the Apple App Store on an Apple device (e.g. iPhone, iPad). Where this Schedule applies, you acknowledge and agree that:

- (a) the license granted to you for Fundpay is limited to a non-transferable license to use Fundpay on any Apple-branded Services that you own or control and as permitted by the Usage Rules set forth in the App Store Terms of Service, except that Fundpay may be accessed and used by other accounts associated with your Apple account via Family Sharing or volume purchasing.
- (b) this agreement is concluded solely between you and us, and not with Apple, and Apple is not responsible for Fundpay and the content thereof;
- (c) any maintenance or support that may be offered by us in connection with Fundpay is solely our responsibility and Apple has no obligation whatsoever to furnish any maintenance and support services with respect to Fundpay;
- (d) in the event of any failure of Fundpay to conform to any applicable warranty, you may notify Apple, and request a refund of the purchase price (if any) you paid for Fundpay through Apple's App Store. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to Fundpay, and any other claims, losses, damages, costs or expenses attributable to any failure to conform to any warranty will not be Apple's responsibility;
- (e) Apple is not responsible for addressing any claims by you or any third party relating to Fundpay or your possession and/or use of Fundpay, including but not limited to: (i) product liability claims; (ii) any claim that Fundpay fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation. In the event of any third party claim that Fundpay or your possession and use of it infringes that third party's intellectual property rights you should contact us as Apple will have no responsibility for the investigation, defence, settlement and discharge of any such intellectual property infringement claim;
- (f) Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms, and that, upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary;
- (g) except as provided in clause (d), any questions, complaints or claims with respect to Fundpay should be directed to us at hello@Fundpay.co.nz; and
- (h) you represent and warrant that: (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties.