

Fundpay Merchant Agreement

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

The following terms and conditions (**Agreement**) set out the agreement between Myfund Limited NZBN 9429047586444 (**we, our** or **us**), the provider of the Fundpay Services, and you, a retail business using or wishing to use the Fundpay Services as a means to accept payment for goods and services supplied to Customers (the **Merchant**).

This Agreement may be varied by us at any time. Unless otherwise stated, amendments to this Agreement will be effective 30 days after we notify you of the changes by email, or by posting the changes on the Merchant Site. You must ensure that you have read, understood and agree to the terms in this Agreement. You agree that your continued use of the Fundpay Services represents your agreement to be bound by the most recent terms of this Agreement. If you do not wish to accept the most recent terms of this Agreement, then you can terminate this Agreement and end your use of the Fundpay Services in accordance with clause 10.2.

Please indicate your acceptance of this Agreement but clicking "I ACCEPT". If you do not agree to all of the terms and conditions in this Agreement, you must not use the Fundpay Services.

1. Definitions

1.1 In this Agreement:

Customer means a user of the Fundpay Application who purchases good and services from a Verified Merchant using the Fundpay Application;

Customer Account means an account that a customer has with us that is accessible via the Customer Application;

Customer Application means the Fundpay mobile application that allows consumers to register an account, to make top ups of funds to their account balance, and to use these funds to purchase goods and services from Verified Merchants;

Fundpay Services means the services we provide to Customers and Merchants that allow Customers to pay for goods and services using the Customer Application, and that allow Verified Merchants to accept such payments, and includes the Merchant Site, any Fundpay Integrations, the Website, and the Customer Application;

Fundpay Integration means any software that we offer from time to time that allows Verified Merchants to integrate the Fundpay Services and/or their Merchant Account with a third-party point-of-sale or ecommerce platform;

Intellectual Property Rights means any patent, trade mark, service mark, copyright, moral rights, right in a design, know-how, confidential information and all or any other intellectual or industrial property rights, whether or not registered;

Merchant Account means the account the Merchant sets up via the Merchant Site in order to use the Fundpay Services;

Merchant Fees has the meaning given in clause 4.1;

Merchant Funds means the Purchase Price minus the Merchant Fees payable to the Verified Merchant in respect of a purchase by Customer of goods and services supplied by that Verified Merchant using the Fundpay Services;

Merchant Site means the webpage at merchant.fundpay.co.nz that allows Verified Merchants to access the Fundpay Services and their Merchant Account;

Purchase Details means the details of a particular purchase made at a Verified Merchant via the Fundpay Services by a Customer, and includes the Purchase Price, the name of the Customer, and the name of the Verified Merchant;

Purchase Price means the amount paid or payable by the Customer to the Verified Merchant in respect of any individual transaction for the purchase of goods and services supplied by that Verified Merchant;

Restricted Business means any business or activity in respect of which Fundpay determines from time to time that the Fundpay Services may not be used, and includes: gambling, illegal or prohibited goods, vaping, smoking and drug-related products and services, adult content and services, weapons and related products and services, financial services, and counterfeit goods or goods that are not authorised for sale or re-sale;

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; and

Verified Merchant means a Merchant who has been verified by us to use the Fundpay Services in accordance with clause 2;

Website means www.Fundpay.co.nz.

1.2 In this Agreement, 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. Eligibility, Registration and Verification of Merchant

Eligibility

- 2.1 To be eligible to use the Fundpay Services, you must be:
- (a) a business (including a sole trader) physically located in New Zealand that is not carrying on a Restricted Business; and
 - (b) over 18 years of age

Registration

- 2.2 To use the Fundpay Services, you must register for a Merchant Account via the Merchant Site and provide us with the following information about your business:
- (a) your business or trading name, the registered address of your business, your NZBN or company number, your email address and contact phone number, designated bank account details and information about your contact person such as their position, name, email and contact phone number;
 - (b) address of your physical retail store;
 - (c) the nature of your business or activities, including the categories of goods and services offered by your business; and
 - (d) any other information that we may require from you (either during or after your registration),
- (together, **Merchant Details**).

2.3 Subject to clause 7.1 of this Agreement, your Merchant Details will not be made available to any Customers except to the extent required to allow the purchase of goods and services from you by the relevant Customer.

2.4 When you create an account, you will be required to provide your email address and create a unique password combination (**Account Information**), which you will use to sign in to the Merchant Site and any Fundpay Integration that we may offer.

2.5 Until you have submitted, and we have reviewed and approved all required information, including your Merchant Details, your Merchant Account will be available to you on an interim basis only, and we may terminate it at any time and for any reason.

Verification

2.6 Once you have created a Merchant Account, we will review your Merchant Details and conduct due diligence in respect of these materials and your business. Following this review, we will notify you as to whether your Merchant Account has been verified.

2.7 Once your Merchant Account is verified, you will have access to the Fundpay Services and will be able to offer Fundpay as a payment method to Customers, subject to the terms of this Agreement. If you wish to cease or temporarily suspend your use of Fundpay Services for any reason, you must give us notice in accordance with clause 10.2.

2.8 We verify Merchant Accounts in our sole discretion. We do not represent or guarantee that your Merchant Account will be verified, and we reserve the right to refuse to verify your or any Merchant Account.

Changes to your business

2.9 Our verification of your Merchant Account and provision of the Fundpay Services is conditional on the accuracy and completeness of your Merchant Details. You agree to keep the information in your Merchant Account, including your Merchant Details, up to date. If these details are incorrect, have changed, or are due to change, you agree to notify us immediately by email. You further agree to notify us at least 30 days prior to:

- (a) introducing any material change to the goods and services you offer, or undertaking any Restricted Business; or
 - (b) any change in the control or ownership of your business, where “control” means, with respect to your business, any means by which that business is controlled whether by virtue of controlling the composition of the board of directors or other managing body, or owing a majority of the voting securities or interests of the business.
- 2.10 We may, in our sole discretion, suspend, terminate or revoke our verification of your Merchant Account and terminate this Agreement if you fail to keep this information current or as a result of any change to your Merchant Details or the ownership of your business.

General obligations

- 2.11 By registering a Merchant Account and/or using the Fundpay Services, you agree that:
- (a) you have read and understood the contents of this Agreement, including the [Privacy Policy](#);
 - (b) you are authorised to enter into this business on behalf of your business;
 - (c) you are over 18 years of age;
 - (d) you will comply with any third party terms applicable to your use of the Fundpay Services, including in relation to any Fundpay Integration;
 - (e) will not copy, reverse engineer, decompile, disassemble, modify, change, or otherwise distribute, license, sub-licence or transfer in any form the Fundpay Services or any part thereof;
 - (f) will not access the Fundpay Services to build a product or service which is the same as or similar to Fundpay Services or any part thereof, or which otherwise competes with us or the Fundpay Services;
 - (g) will not attempt to disable or undermine any security or technical measures used by us; or
 - (h) will not transmit any Viruses through the Fundpay Services.

3. Accepting payment via Fundpay Services

Accepting payment

- 3.1 Once you are a Verified Merchant and until your Merchant Account or this Agreement is cancelled or terminated in accordance with the terms of this Agreement, you will be able to accept payment via the Merchant Site and/or a Fundpay Integration for goods and services you supply to Customers. If you wish to cease or temporarily suspend your use of Fundpay Services for any reason, you must give us notice in accordance with clause 10.2.
- 3.2 To accept payment via the Fundpay Services instore, at the point of purchase:
- (a) the Customer will need to navigate to the purchase functionality within their Customer Account, generate a unique identification number (**Code**), and tell you what the Code is;
 - (b) you will then need to input the Code into the Merchant Site or your chosen Fundpay Integration, enter the Purchase Details, and confirm;
 - (c) the Customer will then receive a notification in their Customer Account about the pending purchase including the Purchase Details, and will be asked to confirm the purchase within their Customer Account; and

(d) subject to clause 3.3 below, once the Customer confirms the purchase, we will deduct the Purchase Price from the Customer Account of the relevant Customer, and the Customer will receive a confirmation notification in their Customer Application and you will be able to see the transaction status within the Merchant Site (**Transaction Confirmation**),

(together, **Fundpay Payment**).

3.3 If a Customer does not have sufficient funds to make a Fundpay Payment, or their Customer Account is otherwise invalid, the Fundpay Payment will be declined and you will not receive Transaction Confirmation.

3.4 You agree that receipt of Transaction Confirmation constitutes for the purposes of your transaction with any Customer, payment (or part payment as the case may be) by the Customer for the relevant goods and services.

Distribution of payment by Fundpay to Verified Merchants

3.5 We will pay the Merchant Funds to your designated bank account within 5 Business Days of the relevant Fundpay Payment.

Payment options

3.6 The Fundpay Services are not compatible with 'buy now, pay later' schemes (**BNPL**). You agree not to use the Fundpay Services in relation to or in conjunction with any BNPL payment methods.

3.7 You may use the Fundpay Services in relation to part payment for goods and services you supply, in conjunction with any other method of payment other than BNPL.

Verified Merchant's obligations

3.8 Where you accept payment via the Fundpay Services, you will:

(a) provide adequate training or instruction to your staff regarding the making of Fundpay Payments by Customers;

(b) be solely responsible for carrying out your obligations in respect of the relevant purchase by Customers;

(c) promptly and efficiently provide all necessary sales, service and support in respect of the relevant purchase by Customers;

(d) provide reasonable assistance to the Customer if there is a problem with the payment functionality of their Customer Account;

(e) comply with your obligations under all relevant consumer protection laws, including the Consumer Guarantees Act 1993 and the Fair Trading Act 1986;

(f) comply with your obligations under the Goods and Services Tax Act 1985 in relation to the purchase by the Customer, including issuing a tax invoice directly to the Customer; and

(g) ensure that you and your staff do not act in a way that could damage the reputation of Fundpay or the Fundpay Services.

3.9 When a Fundpay Payment is made by a Customer, that Customer will have the same rights as any other customer who pays for goods and services from your business using any other payment method. You acknowledge and agree that all consumer protection obligations in relation to the supply of goods and services paid for using the Fundpay Services are your sole responsibility and Fundpay will not be responsible for any claim made by a Customer under applicable consumer protection laws.

3.10 You will immediately notify us if at any time you believe that you will not be able to carry out your obligations in relation to a Fundpay Payment and the reason for

such non-performance. For the avoidance of doubt, any notice given under this clause will not relieve you of the performance of your obligations under this Agreement.

4. Merchant Fees

- 4.1 In consideration for the provision of the Fundpay Services and handling of Fundpay Payments, you will pay us a fee equal to 5% of the total amount paid by a Customer for the goods and services purchased using the Fundpay Services (the **Merchant Fees**) plus GST. The Merchant Fees will be deducted by us from the Purchase Price in accordance with clause 3.5.
- 4.2 The Merchant Fees are exclusive of all taxes, and you indemnify us against any claims by any tax authority for any underpayment of any goods and services or other tax or levy, and any penalties and interest.
- 4.3 We may change the Merchant Fees, in our sole discretion, on providing not less than 30 days prior written notice to the Merchant and in accordance with the terms of this Agreement. If you do not wish to continue to use the Fundpay Services following notification of a change in the Merchant Fees, then you can terminate this Agreement and end your use of the Fundpay Services in accordance with clause 10.2.

5. Security

- 5.1 We take reasonable measures to keep Merchant Details and Purchase Details secure against unauthorised use or access. However, you will be responsible for maintaining the security of your Merchant Account by keeping your Account Information confidential and secure, and not sharing any such information with any third party.
- 5.2 Fundpay will not be liable for any loss, cost or damage suffered as a result of any unauthorised use of the Fundpay Services by any third party caused by your failure to comply with these provisions. You must notify us immediately if you suspect or become aware of any unauthorised or fraudulent use of the Fundpay Services.

6. Intellectual Property Rights

- 6.1 You acknowledge that:
 - (a) all Intellectual Property Rights in the Fundpay Services including the Merchant Site, any Fundpay Integrations, the Customer Application and the Website, and in any enhancements or modifications to the same, including the design, layout, look and feel of Fundpay belong to us and/or our licensors; and
 - (b) all information generated by us about you, Customers and your or their use of the Fundpay Services will be owned by us,and you will not contest or dispute such ownership rights.
- 6.2 You will not:
 - (a) remove or alter any copyright or other proprietary notices contained within the Fundpay Services;
 - (b) extract or re-use any part of the Fundpay 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; or

- (c) develop, create or publish your own database, site or application that features substantial parts of Fundpay Services.

7. Use of Branding

- 7.1 You grant us a non-exclusive, royalty-free licence to use:
 - (a) your brand name and logos; and
 - (b) any other Intellectual Property Right associated with your brand, and your goods and services, that you provide to us (via your Merchant Account or otherwise),for the purposes of advertising and promoting your use of the Fundpay Services (including via the Customer Application, the Website and our social media platforms).
- 7.2 If you are a Verified Merchant, we grant you a non-exclusive, revocable license to use the "Fundpay" brand and logo for the sole purpose of advertising the fact that you accept payment via the Fundpay Services at your business. Your use of the "Fundpay" brand is subject to any brand-use guidelines that we may issue from time to time. You will not publish or use the "Fundpay" brand, trade marks, branding or logos except with our prior written consent or in accordance with this Agreement.
- 7.3 Each party warrants and represents to the other party that it has the rights to grant the licences at clause 7.1 and clause 7.2, and that the granting of such licence does not breach any other agreement with, or any rights of, a third party.
- 7.4 Upon termination of your Merchant Account or this Agreement, both you and we will remove any public references to our relationship and will cease using the other's brands.

8. Your data

- 8.1 If you provide us with personal information, then our Privacy Policy applies. Please read the Privacy Policy carefully as it forms a part of this Agreement. By using the Fundpay Services you are permitting us to collect, hold, use, store and share your personal information in accordance with our Privacy Policy.
- 8.2 Any data that you have inputted into the Fundpay Services (**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 this Agreement; and
 - (c) ensuring that you are complying with this Agreement.

9. Warranties and Liability

- 9.1 We agree to:
 - (a) use reasonable efforts to ensure that the Fundpay Services perform and operate substantially in accordance with any guidelines provided to the Merchant or generally published by us from time to time; and
 - (b) comply with applicable laws in providing the Fundpay Services.

- 9.2 You acknowledge that the sole and exclusive remedy for a failure by us to comply with clause 9.1 will be the resupply of the Fundpay Services or a modified version of the Fundpay Services in a manner that is compliant with that clause.
- 9.3 You acknowledge that, except for those warranties or representations expressly provided by us under this Agreement and that cannot be excluded by law (including under the Consumer Guarantees Act 1993 and Fair Trading Act 1986), the Fundpay Services are provided on an "as is" basis and all representations, conditions or warranties in respect of the Fundpay Services (whether express or implied, statutory or otherwise, and including warranties of merchantability and fitness for a particular purpose) are expressly excluded.
- 9.4 In particular and without limiting clause 9.3, we do not warrant that:
- (a) your use of, or access to, the Fundpay Services will be uninterrupted or error-free;
 - (b) the Fundpay Services will meet your requirements;
 - (c) the Fundpay Services will operate on all types of devices;
 - (d) the Fundpay Services will be free from harmful code, including malware or Viruses; or
 - (e) you will sell any minimum value of goods and services via the Fundpay Services.
- 9.5 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 this Agreement;
 - (b) any delay or loss of access to, or use of, the Fundpay Services at any time;
 - (c) any fault or error in the Fundpay Services that is beyond our control;
 - (d) any Virus that affects or is introduced into the Fundpay Services 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 data (including Merchant Details and Purchase Details) 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.
- 9.6 Subject to clause 9.5, each party is only responsible to the other party for foreseeable loss and damage caused directly by the first party. If a party fails to comply with this Agreement, that party is only responsible for loss or damage the other party suffers that is a direct and foreseeable result of that failure, but is 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 parties knew it might happen, for example, if you discussed it with us.
- 9.7 In any event, to the extent each party is permitted by law to limit its liability, each party's total liability to the other party under or in connection with this Agreement will be limited to the amount of Merchant Fees that you have paid to us in the twelve months prior to the date on which liability first arises. This limitation will not apply to any obligation to pay the Merchant Funds owed to you in respect of purchases made by Customers via the Fundpay Services.

- 9.8 Nothing in clause 9.6 or 9.7 limits a party's liability in relation to:
- (a) the indemnity in clause 9.10;
 - (b) a breach by either party of the other party's Intellectual Property Rights; and
 - (c) a party's gross negligence, wilful misconduct or fraud.
- 9.9 Despite any other provision of this Agreement, you acknowledge that:
- (a) any loss or damage incurred by a Customer in relation to good and services purchased by a Customer using a Fundpay Payment will not be recoverable from us but will be dealt with in accordance with the agreement between the Customer and you;
 - (b) you assume all of the risks associated with entering into an agreement with the Customer for the supply of good and services;
 - (c) you are directly and solely responsible for the nature and quality of the goods and services you provide, and for any refunds, returns or other disputes claimed by a Customer;
 - (d) the Merchant Site or Fundpay Integration may contain links to other applications, websites and resources provided by third parties, and that these links are provided for your information only. We have no control over the content on those applications, websites or resources, and accept no responsibility for any loss or damage that may arise from your use of them; and
 - (e) we are not responsible for any and all problems, conditions, delays, delivery failures and all other loss or damage arising from, or relating to, your network connections or telecommunications links or caused by the internet.
- 9.10 You agree to hold Fundpay, our affiliates, their employees and agents (**Fundpay Entity**) harmless, and indemnify each Fundpay Entity, against any claim, costs, expense, loss, damages, liability, or proceeding (**Claim**) brought by a Customer or other third party against a Fundpay Entity arising out of or in connection with:
- (a) your use of the Fundpay Services in breach of this Agreement;
 - (b) goods or services provided by you to a Customer and which have been paid for using the Fundpay Services;
 - (c) the nature and quality of the goods and services you provide, and for any refunds, returns or other disputes claimed by a Customer; or
 - (d) your, or your employees or agents, negligence, wilful misconduct, or fraud.

10. Account closure and Termination

- 10.1 We may suspend or terminate your Merchant Account and this Agreement by giving notice to you if you breach any provision of this Agreement. Where appropriate, we will give you notice of any suspension or termination by notifying you via the email address that is linked with your Merchant Account.
- 10.2 You may temporarily suspend your use of the Fundpay Services, and either party may terminate this Agreement, at any time by giving 30 days' prior written notice to the other party.
- 10.3 On termination of this Agreement:
- (a) each party will continue to perform its obligations in respect of any Customers who have purchased good and services using the Fundpay Services as at the date of termination;

- (b) except as provided in paragraph (a) above, you will cease to offer or use the Fundpay Services as a method of payment for your customers;
- (c) you will pay us all Merchant Fees owed to us;
- (d) we will pay out the Merchant Funds owed to you; and
- (e) you will cease to have any further rights under this Agreement.

11. General

- 11.1 We may, in our sole discretion, modify the Fundpay Services from time to time without notifying you. Where any modification has an adverse impact on you or your use of the Fundpay Services, you may cease using the Fundpay Services and terminate this Agreement in accordance with clause 10.
- 11.2 This Agreement is the entire agreement between you and us in relation to the Fundpay Services.
- 11.3 Nothing in this Agreement will be deemed to constitute either party as the agent, partner or joint venturer of the other.
- 11.4 No term or condition of this Agreement 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.
- 11.5 If any part of this Agreement is judged invalid or unenforceable it will be excluded, and the remainder of this Agreement will continue to operate.
- 11.6 You will not assign, transfer or otherwise deal with this Agreement or any of your rights or obligations under this Agreement, whether in whole or in part, without our prior written consent.
- 11.7 This Agreement is governed by the laws of New Zealand. Should you wish to take any action against us relating to the Fundpay Services or this Agreement, you agree that any such action must be taken in the New Zealand courts.