

Terms and conditions governing the use of the Website and The Online Payments System

Pro Pay Ltd (“Supplier”) provides payment service provider services to business clients. These Terms and Conditions shall apply to the provision of such services by the Supplier to its Customers.

1. Definitions

In these Terms and Conditions, the following expressions have the following meanings:

“ Agreement ”	means the agreement entered into by the Supplier and the Customer incorporating these Terms and Conditions (or variation thereof agreed upon by both parties) which shall govern provision of the Services;
“ Supplier ”	Pro Pay Ltd, its subsidiaries or group businesses
“ Confidential Information ”	means, in relation to either party, information which is disclosed to that party by the other party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“ Customer ”	means the party procuring the Services from the Supplier who shall be identified in the Agreement;
“ Data Protection Legislation ”	means 1) unless and until EU Regulation 2016/679, the General Data Protection Regulation (“ GDPR ”) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK, and subsequently 2) any legislation which succeeds the GDPR;
“ Fees ”	means any and all sums due under the Agreement from the Customer to The Supplier, as specified in the Agreement;
“ Financial Institution ”	means a financial and/or banking organisation with which the Customer has contracted to manage its payments; and
“ Services ”	means the services to be provided from time to time by the Supplier to its Customers in accordance with clause 2 of these Terms and Conditions, subject to the terms and conditions of the Agreement.
“ Online Payments System ”	The online ProPay Plus system (or its variants or replacements) used to process adhoc and/or scheduled payments from the Customer’s customers on the Customer’s behalf.
“ Software ”	The Online Payments System and any other additions or software provided from time to time by the Supplier to the Customer.
“ Website ”	www.propay.co.uk

2. The Online Payments System Service

The Supplier will provide the Customer with access to The Online Payments System enabling the Customer to (a) send, receive and manage financial data and (b) to send said data to the Financial Institution(s) selected by the Customer for the purpose of payment processing, to the extent the selected Financial Institution(s) are compatible with the Online Payments System service. The Customer manage its Account, update its profile and consult or manage its payments via the Website.

3. The Account

- 3.1. The Customer’s Account is accessible via logging in on the Supplier’s Website. If the Website’s URL is to change for any reason, The Supplier will provide not less than 15 days’ prior written notice of such change to the Customer.
- 3.2. Upon applying to create the Account, the Customer must provide an email address for use as a unique PSPID. Upon acceptance of the application to create an Account, The Supplier will send the Customer a unique link by email to the email address provided by the Customer during the application process which will include instructions for first setting the Customer’s password. The Customer acknowledges and agrees that The Supplier is not liable for the interception or improper use of any such password or link by a third party. The Customer will be required to set an Account password at first log in. The PSPID and password enable the Customer to configure its Account and take it live.

4. Use by the Customer of The Online Payments System

The Customer acknowledges and agrees that the Supplier shall have no liability in respect of any problems relating to the failed use, improper use or misuse of The Online Payments System.

5. Security

- 5.1. The Customer must at all times abide by the security rules in the PCI DSS (Payment Card Industry Data Security Standards) standards, available via the websites of Visa and MasterCard or from Financial Institutions, including (without limitation):
 - (a) ensuring the prompt application of security patches and activation of secure configurations on all machines and devices;
 - (b) never storing sensitive information, such as credit card numbers or CVC/CVV information;
 - (c) protecting all passwords and changing them regularly;
 - (d) protecting access to all its technical infrastructure including with the aid of a firewall and antivirus; and
 - (e) implementing procedures for the development of secure applications.

- 5.2. The Customer acknowledges and agrees that it is its sole responsibility to establish and apply adequate fraud prevention and control procedures to ensure the successful execution of payments made using the Online Payments System.
- 5.3. The Supplier may restrict the financial limits of the Customer's Account if The Supplier has any concerns about the security and/or anti-fraud measures taken by the Customer when using the Online Payments System.
- 5.4. The Customer hereby indemnifies and holds The Supplier harmless for any and all losses, damages and costs incurred by The Supplier as a result of the Customer's breach of its obligations under this clause 5.

6. The Software

- 6.1. The Software is proprietary to the Supplier and/or to third parties from whom the Supplier has obtained appropriate licences for use.
- 6.2. The Supplier warrants that it holds all rights, licences and permits necessary to allow the Customer to use both the Software including The Online Payments System.
- 6.3. The Supplier hereby indemnifies and holds the Customer harmless against any and all losses, damages and costs incurred by the Customer in respect of any claim or action that the normal use or lawful possession of the Software or The Online Payments System by the Customer infringes, in whole or in part, the intellectual property rights of a third party (an "**Intellectual Property Infringement**") **PROVIDED THAT** the Customer:
 - (a) promptly notifies The Supplier of any Intellectual Property Infringement upon becoming aware of the same;
 - (b) gives The Supplier sole conduct of the defence to any claim or action in respect of any Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise (or attempt to settle or compromise) the said claim or action other than on the express written instruction of The Supplier; and
 - (c) acts in accordance with the reasonable instructions of The Supplier and provides The Supplier with such assistance as it reasonably requires in respect of the conduct of the defence of said claim or action, including without limitation the transmission of all relevant documentation.
- 6.4. The Supplier shall have no liability to the Customer in respect of the infringement of a third party's intellectual property rights if the same results from any breach by the Customer of its obligations under this Agreement.
- 6.5. The Customer must not:
 - (a) reverse compile, copy or adapt, in whole or in part, the Software;
 - (b) assign, sell, transfer, lease, deal in or encumber the Software, make it available to any third party, or use the Software on behalf of any third party;
 - (c) make the Software available on any file sharing service;
 - (d) remove or alter any copyright or other proprietary notice on the Software;
 - (e) use the Software for purposes other than those set forth in this Agreement; or
 - (f) transmit, disclose or copy any documentation supporting the use of the Software, in whole or in part, or use or disclose its content, in whole or in part, without the prior written consent of The Supplier.

7. Software licence

- 7.1. Subject to the Customer's compliance with the terms of this Agreement, The Supplier grants to the Customer a non-exclusive licence to use, to the extent necessary for the Customer to create and manage its Account within the limits and conditions stated in this Agreement:
 - (a) the Software provided through the Website; and
 - (b) all other intellectual property rights relating to Software.
- 7.2. At any time, The Supplier may:
 - (a) change or amend the Software;
 - (b) provide the Customer with a new version of the Software; and/or
 - (c) change the functionality and/or characteristics of the Software.
- 7.3. The licence set out in this clause 7 is personal to the Customer and cannot be assigned or sub-licensed without the prior written consent of The Supplier. The license does not transfer any property whatsoever, and all rights shall remain owned entirely by The Supplier. The licence provides no right to the source code or decompiled Software. The Software may be used by the Customer only, to the exclusion of any other person and excluding the sale, rental, sub-contracting and/or leasing of the Software.

8. Hosting

- 8.1. Subject to the Customer's compliance with the terms of this Agreement, The Supplier shall host the Customer's Account for the duration of this Agreement. The Supplier may perform all operations necessary to host, backup and protect the Customer's Account.
- 8.2. The Customer must promptly and fully provide The Supplier with all information relating to the hosting which might give rise to any action or complaint by a third party against The Supplier.
- 8.3. The Supplier shall comply with restrictions imposed by the Financial Institution(s). For a limited period of time, and only when necessary to ensure the proper functioning of the Software, sensitive information such as credit card numbers and/or CVC/CVV information may be stored for initial tokenisation setup.

9. Warranties — general terms

- 9.1. Notwithstanding the other provisions of this Agreement, The Supplier's liability to the Customer may be excluded or limited in the following circumstances:
 - (a) The Supplier shall only be liable to the Customer for serious and/or repeated contractual breaches which can be directly attributed to The Supplier;
 - (b) due to complexity of online payment operations and the involvement of several parties, the Customer acknowledges and agrees that The Supplier shall only be liable for losses, damages or costs originating within the infrastructure managed by The Supplier and over

which The Supplier exercises control. The Supplier shall not be liable for losses, damages or costs originating upstream or downstream;

- (c) The Supplier shall not be liable to the Customer in contract, tort, for breach of any statutory or other duty arising and shall therefore not pay any compensation for any loss of profits, business, revenue or anticipated savings; or for any loss of goodwill or injury to reputation; or for any type of indirect or consequential or special loss or damage; or for loss or damage as a result of any recourse where the occurrence and/or evolution of such loss or damage was beyond The Supplier's control. The Supplier's liability for such losses or damages shall be excluded regardless of whether or not the principle of the damage and its extent were foreseeable at the conclusion of this Agreement, even if The Supplier was advised of the possibility that such damage could occur;
- (d) any liability of The Supplier not expressly excluded or limited by other provisions of this Agreement shall be limited to the amount of the Customer's monthly invoice for the period immediately preceding the event giving rise to liability. This limitation of liability is necessary to maintain the proportionality between the claimed damages on the one hand and the charges set by The Supplier on the other hand; and
- (e) unless otherwise agreed in writing, The Supplier's liability is exclusively governed by the provisions set out in this Agreement. The Supplier cannot be held liable for any breach of service levels unless the Customer has subscribed to a written service level agreement with The Supplier.

9.2. Nothing in this Agreement seeks to or shall limit The Supplier's liability to the Customer for death or personal injury caused by The Supplier's negligence, for its fraud or fraudulent misrepresentation, or for any other liability that may not be lawfully excluded or limited.

10. Warranties — hosting of the Account and functionality of The Software

- 10.1. The Supplier shall use its reasonable endeavours to host the Account and maintain and secure the functionality of The Software.
- 10.2. The Customer is solely responsible for managing its Account and remains exclusively liable for the selection, security and management of the PSPID, the connection data (credentials) of the Customer's users and related passwords.
- 10.3. The Customer acknowledges and agrees that it is technically impossible to warrant the security of data exchanged on the open network of the internet. The Supplier shall take all reasonable measures to maintain a secure payments system. However, the Customer remains solely responsible for the security of any and all data it transmits via the internet. The Supplier shall not be liable for any losses, damages or costs arising out of any defect or infringement of the security or integrity of data required to make payment, regardless of who is responsible for said defect or infringement (except in instances of fraud by The Supplier or one of its employees). The Customer hereby indemnifies and holds The Supplier and its suppliers harmless against any legal remedy instituted by a third party (including without limitation any customer of the Customer) relating to or arising out of any defect or infringement of the security or integrity of the data required to make payment.
- 10.4. The Customer is solely responsible for the management, administration and security and proper use of all user IDs and passwords used in connection with the Software (including changing passwords on a regular basis) and must take all necessary steps to ensure that they are kept confidential, secure, and not disclosed to unauthorised people. The Supplier shall not be liable for any losses, damages or costs incurred by the Customer (including without limitation operating losses or data loss) caused by the improper functioning of The Software as a result of any change made to the same, voluntarily or otherwise, by the Customer or any person other than The Supplier and its employees, unless such change is carried out in accordance with the explicit written instructions of The Supplier.
- 10.5. The Customer shall bear sole liability for any losses, damages or costs incurred or suffered by other customers of The Supplier caused by the fraudulent or negligent use of the Account or any of the components thereof (including without limitation the Customer's PSPID or password). The Customer hereby indemnifies and holds The Supplier harmless against any action brought by a third party for any losses, damages or costs incurred or suffered by such third party because of interruptions in, or access problems relating to, that third party's account with The Supplier resulting from the fraudulent or negligent use of the Account or any of the components thereof (including without limitation the Customer's username and password).
- 10.6. The Customer shall not permit any third party to use the Customer's Account, in whole or in part, without the prior written consent of The Supplier.
- 10.7. The Supplier shall not be liable for losses, damages or costs incurred or suffered by the Customer or any third party resulting from an event of force majeure or any event beyond the control of The Supplier.

11. Warranties — the Account and data

- 11.1. Except for those elements supplied by The Supplier, the Customer is and remains fully liable for the content of its Account (including without limitation the configuration parameters of the Account) and all related financial transactions (the "Content"). The Customer undertakes at all times to keep the Content up-to-date, accurate and complete.
- 11.2. The Customer undertakes and warrants that at all times:
 - (a) the Content does not violate the intellectual property rights of any third party, or the privacy or other rights of any third party;
 - (b) the Content does not contravene any morality, public order or any applicable codes of conduct;
 - (c) all software and files supplied by the Customer are free of viruses;
 - (d) the Content does not violate any applicable laws or regulations; and
 - (e) the Customer shall comply with all applicable Data Protection Legislation.
- 11.3. All personal data communicated by the Customer to The Supplier will be processed by The Supplier within accordance with all applicable Data Protection Legislation.
- 11.4. The Customer acknowledges and agrees that The Supplier must communicate personal and payment data to those third parties (including without limitation the Financial Institution(s)) necessary for the execution of the payments process. The Customer undertakes to inform its own customers of the same and hereby indemnifies and holds The Supplier harmless of all liabilities in this respect.
- 11.5. The Customer agrees to allow the Supplier to include the Customer's data in aggregated non identifiable reports relating to volume, value and other useful statistics. Further the Supplier is allowed to use said data for legitimate business purposes including but not limited to marketing.

12. Warranties — the Customer's obligations

- 12.1. The Customer warrants that it possesses the legal capacity, and has all permits, consents and licences necessary, to enter into the Agreement and to sell or otherwise supply its products and/or services for which it will take payments via The Online Payments System.
- 12.2. The Customer undertakes and warrants that it shall use The Software solely in accordance with any documentation or advice supplied by The Supplier and that it shall not disrupt the operations of The Software.
- 12.3. The Customer undertakes to use its Account solely for professional purposes, and only for payments due and payable to said Customer. The Customer is the counterparty in all membership contracts with the Financial Institution(s) and is the sole contracting party with regards to the same. The Customer hereby warrants and undertakes that it is not acting as an intermediary.
- 12.4. Prior to using the Account, the Customer undertakes to inform the Financial Institution(s) with whom it has concluded such membership contracts in order to process all payments adequately, and to comply with the user instructions of said Financial Institution(s). The Customer also undertakes to provide The Supplier (via the Account or by email) with all useful information received from the Financial Institution(s) to ensure the proper processing of all transactions (including without limitation the Merchant Account number). The Financial Institution(s) and the Customer shall be solely responsible for ensuring the proper flow of all financial payments. Prior to using the Account, the Customer shall obtain Payment Card Industry (PCI) certification if it is instructed or advised to do so by the Financial Institution(s).
- 12.5. The Customer acknowledges that The Supplier acts as a technical intermediary between the Customer, the Customer's own customers and the Financial Institution(s) for the purpose of payments processing. The payments themselves, however, shall be made directly to the Customer by the Financial Institution(s) without The Supplier's involvement and The Supplier shall not be liable for any incorrect, incomplete or withheld payments.

13. Fees and payment

- 13.1. The Customer shall pay the Fees for the use of The Software throughout the duration of this Agreement.
- 13.2. The Online Payments System subscription fee shall be payable monthly in advance. Any Online Payments System transactions fees or usage related fees shall be payable monthly in arrears. In each case, the Fees shall be levied in accordance with The Online Payments System's then-current fees schedule.
- 13.3. The Supplier will invoice the Customer each month. (The Supplier may change the frequency of its invoices by giving not less than one month's written notice to the Customer.) The Customer must pay The Supplier's invoices in full and without setoff within 10 days of the invoice date. Where any payment pursuant to the Agreement is required to be made on a day that is not a business day, it may be made on the following business day.
- 13.4. If an invoice is not paid in full and on time, The Supplier may
 - (a) charge interest on the outstanding sum at the rate of 5% per annum above the Barclays Bank plc base rate from time to time, from the date on which the debt falls due until the date full payment is received. Further, the Customer indemnifies and holds The Supplier harmless against all damages, losses or charges (including without limitation debt collection expenses and legal costs) incurred by The Supplier as a result of any failed, rejected or incomplete payments made by the Customer.
 - (b) at its sole discretion place temporary restrictions on the Customer's access and/or use of the Online Payments System or the Software until full payment is received. Such action shall not affect or prejudice the Suppliers rights to damages or other remedy outlined in this agreement.
- 13.5. The Supplier may revise the Fees by giving not less than 30 days' written notice to the Customer. During that notice period, the Customer may terminate this Agreement by giving not less than 15 days' written notice to The Supplier and in such case any increase in the Fees will not be applied prior to the termination of this Agreement.

14. Term and termination

- 14.1. This Agreement comes into force on the date The Supplier accepts the Customer's application for an Account for an initial term of one month. At the end of the initial term, unless terminated in accordance with its terms, this Agreement will automatically renew for successive periods of one month.
- 14.2. This Agreement may be terminated by either party serving not less than one month written notice, such notice to end at the end of the then-current term.
- 14.3. This Agreement may be terminated forthwith on written notice by either party if the other party:
 - (a) commits a material breach of the terms of this Agreement and fails to remedy such breach within 14 days of receipt of a written notice requiring it to do so; or
 - (b) becomes unable or seems likely to become unable to pay its debts.
- 14.4. Upon the termination of the Agreement for any reason:
 - (a) any sum owing by either party to the other under any of the provisions of the Agreement shall become immediately due and payable;
 - (b) all clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
 - (c) termination shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of the Agreement which existed at or before the date of termination;
 - (d) subject as provided in this clause and except in respect of any accrued rights neither party shall be under any further obligation to the other; and
 - (e) each party shall (except to the extent referred to in clause 15) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other party any documents in its possession or control which contain or record any Confidential Information.

15. Confidentiality

- 15.1. Each party undertakes that, except as provided by clause 15.2 or as authorised in writing by the other party, it shall, at all times throughout the duration of the Agreement and after its termination:

- (a) keep confidential all Confidential Information;
- (b) not disclose any Confidential Information to any other party;
- (c) not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
- (d) not make any copies of, record in any way or part with possession of any Confidential Information; and
- (e) ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that party, would be a breach of the provisions of clauses 15.1(a) to 15.1(e).

15.2. Either party may:

- (a) disclose any Confidential Information to:
 - (i) any sub-contractor or supplier of that party;
 - (ii) any governmental or other authority or regulatory body; or
 - (iii) any employee or officer of that party or of any of the aforementioned persons, parties or bodies,

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Software services), or as required by law. In each case, that party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under clause 15.2(a)(ii) or any employee or officer of any such body) obtaining and submitting to the other party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this clause 15, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

(b) use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that party. In making such use or disclosure, that party must not disclose any part of the Confidential Information that is not public knowledge.

15.3. The provisions of this clause shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

16. Other important terms

16.1. Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include without limitation power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

16.2. No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

16.3. Each party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

16.4. Unless expressly stated otherwise, each party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

16.5. The Supplier shall have the right to assign, transfer, delegate, or otherwise dispose of its rights and obligations under this Agreement, in whole or in part, to any third party, including but not limited to affiliates, successors, or assigns, without requiring the prior consent of the Customer. The Customer hereby acknowledges and agrees that such assignment or transfer shall not constitute a breach of this Agreement and shall not affect the validity or enforceability of the Supplier's obligations hereunder. The Supplier shall provide written notice to the Customer of any such assignment or transfer.

16.6. Subject to the other provisions of this clause, the Agreement shall be personal to the Customer and the Customer may not assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the Supplier, such consent not to be unreasonably withheld or delayed. The Supplier may perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of The Supplier.

16.7. Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the parties other than the contractual relationship expressly provided for in the Agreement.

16.8. No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

16.9. All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the party giving the notice.

16.10. Notices shall be deemed to have been duly given:

- (b) (a) when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient;
- (c) (b) when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
- (d) (c) on the third business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- (e) (d) on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case, notices shall be addressed to the most recent address, email address or fax number notified to the other party.

16.11. The Agreement contains the entire agreement between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.

16.12. Each party acknowledges and agrees that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

- 16.13. If one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable either in whole or in part, that/those provision(s) or part-provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.
- 16.14. The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales. Any dispute, controversy, proceedings or claim between the parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the exclusive jurisdiction of the courts of England and Wales.