

## Aston Club Terms of Use

Aston Club Pty Ltd ACN 163 875 590 (**Aston Club**) collects personal information from you in the course of providing you with access to the Aston Club mobile phone point of sale payment system. Our privacy policy [TBA] provides further information about the purposes for which information is collected and you can gain access to the information we hold about you.

Our terms are otherwise as follows:

### 1. Definitions and Interpretations

1.1 Unless otherwise provided, in these terms and conditions:

1.1.1 **Aston Club mobile phone point of sale payment system** means the executor application developed by Aston Club available for download in paragraph 2.2.

1.1.2 **Intellectual Property Rights** or **IPR** means all intellectual property rights, including but not limited to, the following rights:

(a) patents, copyright, rights in circuit layouts, designs, moral rights, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have confidential information kept confidential;

(b) any application or right to apply for registration of any of the rights referred to in paragraph 1.1.3(a); and

(c) all rights of a similar nature to any of the rights in paragraphs 1.1.3(a) and 1.1.3(b) which may subsist anywhere in the world (including Australia),

whether or not such rights are registered or capable of being registered.

1.1.3 **Merchant** means any entity that advertises, promotes and offers its goods and services via the Aston Club mobile phone point of sale payment system.

1.1.4 **Personal Information** has the meaning given by the Privacy Act 1988.

1.1.5 **Personnel** means the officers, employees, contractors (including subcontractors and their employees) and agents of Aston Club.

1.1.6 **Third Party Service** means any third party software, application or website which the Aston Club mobile phone point of sale payment system directly or indirectly interacts with.

1.1.7 **User** means the person who accesses the Aston Club mobile phone point of sale payment system.

### 2. Aston Club

2.1 Aston Club owns and operates the Aston Club mobile phone point of sale payment system.

2.2 By accessing and/or using the Aston Club mobile phone point of sale payment system (whichever is first), the User will be bound by these terms and conditions as they appear as part of the Aston Club mobile phone point of sale payment system from time to time.

- 2.3 Aston Club reserves the right to amend the Aston Club mobile phone point of sale payment system (including any of its functionality) and these terms and conditions at any time (including as a result of amendments made by a relevant Third Party Service to its functionality or terms and conditions of use). Any amendments made to these terms and conditions will be effective immediately on them being made available on a website [TBA] and/or via the Aston Club mobile phone point of sale payment system.
- 2.4 The Aston Club mobile phone point of sale payment system is only available to Users located in Australia.

### 3. Registration and Operation

- 3.1 The User acknowledges and agrees that:
  - 3.1.1 it can use some aspects of the Aston Club mobile phone point of sale payment system without registration with Aston Club; but
  - 3.1.2 to use all functionality of the Aston Club mobile phone point of sale payment system it must register and provide all information required by Aston Club during the registration process (**User Information**) to Aston Club via the Aston Club mobile phone point of sale payment system or a nominated website.
- 3.2 The User must and warrants that it will only have one registration with Aston Club. The User acknowledges that it will not have more than one registration with Aston Club at any time and that to the extent that the User obtains any benefits which could not have been obtained otherwise than in accordance with these terms and conditions, (and without limiting any other rights Aston Club has):
  - 3.2.1 the User will pay the value of such benefits to Aston Club via electronic debit transaction immediately on demand; and
  - 3.2.2 the User authorises Aston Club to satisfy such obligation by debiting the bank account of the User without notice or any formal demand (other than by these terms and conditions) for any amounts referred to in paragraph 3.2.1 in one or more transactions.
- 3.3 By registering and providing the User Information, the User warrants that:
  - 3.3.1 it will provide up-to-date, current and accurate information and will continually update all User Information as required;
  - 3.3.2 it will keep the registration details, including username(s) and password(s), secure and confidential; and
  - 3.3.3 the User Information is not misleading, false, fraudulent or defamatory and does not infringe the Intellectual Property Rights of any third party.
- 3.4 The User will not permit the Merchant to debit any funds from the User in connection with the Merchant's supply of goods or services unless such goods or services have been supplied to the User. The User acknowledges that if payment is processed not in accordance with this clause then fees and charges may apply.

### 4. Intellectual Property Rights

- 4.1 Except to the extent that such curtailment of reproduction, distribution, adaptation or publication is not permitted under the *Copyright Act 1968 (Cth)*, or any other applicable law in the location from which the User has access to the Aston Club mobile phone point of sale payment system, the User may not reproduce, distribute, adapt or publish copies

of any information or material found on the Aston Club mobile phone point of sale payment system (or the Aston Club mobile phone point of sale payment system itself) in any form (including by e-mail or other electronic means), without Aston Club's prior written consent.

- 4.2 All trade marks, copyright and other Intellectual Property Rights in the Aston Club mobile phone point of sale payment system and the information material contained on the Aston Club mobile phone point of sale payment system is owned by or licensed to Aston Club.

## 5. Privacy

- 5.1 Aston Club will store and handle all Personal Information provided by the User in accordance with the requirements of the Privacy Act 1988 (Cth) and the terms of Aston Club's Privacy Policy.
- 5.2 The User consents to the collection of personal information by Aston Club, its related third parties and its authorized third party contractors.
- 5.3 Aston Club (including its authorised third party contractors) may use any data and information (including Personal Information) that has been submitted by the User for the purpose of registering with or otherwise using the Aston Club mobile phone point of sale payment system to provide the User with the Aston Club mobile phone point of sale payment system, and for other purposes including to:
  - 5.3.1 customise any promotional or advertising material made available via the Aston Club mobile phone point of sale payment system;
  - 5.3.2 contact the User with information regarding the Aston Club mobile phone point of sale payment system;
  - 5.3.3 monitor the User's use of the Aston Club mobile phone point of sale payment system; and.

The User consents to Aston Club's use of its personal information for such uses and the User consents to the use of any personal information collected by a third party contractor or related third party as if it had been collected by Aston Club.

- 5.4 The Aston Club mobile phone point of sale payment system may log (and Aston Club may have access to) information about any mobile device or computer used to access the Aston Club mobile phone point of sale payment system (including the User's IP address, operating system and browser type) and the date and time of access. The User consents to the collection and use of this information in accordance with Aston Club's Privacy Policy.
- 5.5 Aston Club cannot guarantee the security of any data transmitted via the Aston Club mobile phone point of sale payment system. Any information submitted by the User using the Aston Club mobile phone point of sale payment system is done so at the User's own risk.

## 6. Disclaimer

- 6.1 Aston Club is not the supplier of any of the goods and services offered through the Aston Club mobile phone point of sale payment system. Aston Club does not participate in or moderate interaction between Merchants and Users.
- 6.2 The Merchant(s) is entirely responsible for all goods and services offered via the Aston Club mobile phone point of sale payment system. All disputes relating to any offered

goods and services must be directed to the Merchant and the User hereby releases Aston Club from any liability or loss the User suffers in respect of the same.

- 6.3 Representations about goods and services are based on information and material provided to Aston Club by the relevant Merchant. For the avoidance of doubt, the User acknowledges that Aston Club takes no responsibility whatsoever nor makes any representations, either express or implied, as to quality, accuracy, reliability or credibility of information or material supplied or made available by third parties, including Merchants, on the Aston Club mobile phone point of sale payment system.
- 6.4 Any dispute between the User and the Merchant must be resolved by the User and the Merchant. Aston Club is under no obligation to resolve or assist the User in resolving a dispute with a Merchant.
- 6.5 For the avoidance of doubt:
  - 6.5.1 Aston Club does not provide or sell foods or beverages, and is not a seller of food or beverages (including liquor). It is up to each Merchant the User is paying through the Aston Club mobile phone point of sale payment system and the representatives of such Merchant to offer food and beverages for sale which may be purchased through use of the Aston Club mobile phone point of sale payment system;
  - 6.5.2 is not an agent, partner or joint venturer of a Merchant; and
  - 6.5.3 Aston Club may offer information and a method to obtain the details of the products or services for sale from a Merchant, and will not and does not intend to provide or make a representation in respect of the quality or availability of such products or services or act in any way as a seller of food or beverages, and has no responsibility or liability for any products or services provided to a User by such Merchants or any other third parties.

## 7. Liability and indemnities

- 7.1 To the extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from these terms and conditions to the extent permissible by law. If a supply by Aston Club under these terms and conditions is a supply of goods or services to a consumer within the meaning of the *Australian Consumer Law*, nothing contained in these terms and conditions excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent that the *Australian Consumer Law* permits Aston Club to limit its liability, then Aston Club's liability shall be limited to:
  - 7.1.1 in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired; and
  - 7.1.2 in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again.

For the avoidance of doubt, the cost of replacement of goods or resupply of services does not extend to goods or services supplied by a Merchant.

- 7.2 The User acknowledges, that to the extent permitted by law, Aston Club does not accept liability for any errors, omissions, expenses, losses or damages caused by:

- 7.2.1 the User's access to and/or use of the Aston Club mobile phone point of sale payment system;
  - 7.2.2 representations made by a Merchant(s) via the Aston Club mobile phone point of sale payment system (including where inaccurate information or material has been provided);
  - 7.2.3 the User's dealings with a Merchant(s) arising from use of the Aston Club mobile phone point of sale payment system; and/or
  - 7.2.4 any failure in the networks or servers used to provide the Aston Club mobile phone point of sale payment system (including a breach of security or integrity in connection with the Aston Club mobile phone point of sale payment system).
- 7.3 As a condition of the User's use of the Aston Club mobile phone point of sale payment system, the User agrees to indemnify and keep indemnified Aston Club and all of its Personnel against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against Aston Club or its Personnel) that Aston Club or its Personnel may sustain or incur as a result, whether directly or indirectly, of:
- 7.3.1 any breach of these terms and conditions by the User;
  - 7.3.2 the User's access to and/or use of the Aston Club mobile phone point of sale payment system; and
  - 7.3.3 any loss of, or damage to, any property, or injury to, or death of, any person caused by the User's access to and/or use of the Aston Club mobile phone point of sale payment system.

## 8. Termination

Aston Club may terminate the User's access to the Aston Club mobile phone point of sale payment system and any license or Voucher associated with it at any time and for any reason including, but not limited to, a breach of these terms and conditions.

## 9. AC Program

- 9.1 Aston Club may allocate and withdraw AC Points to and from the User at Aston Club's absolute and unfettered discretion. AC Points bear a value that Aston Club assigns to them from time to time.
- 9.2 Aston Club may allow the User to use AC Points in connection with a loyalty program. Aston Club may, at its sole and unfettered discretion, withdraw from any and all loyalty programs it offers to the User in connection with the Aston Club mobile phone point of sale payment system without notice to the User, and without the User being able to use the AC Points from the point of such withdrawal.
- 9.3 Aston Club makes no representation that AC Points can be used to acquire particular goods or services at the User's discretion. Aston Club, may at the request of the User convert the User's AC Points to acquire goods and/or services.
- 9.4 The User will not (whether directly or indirectly) hold Aston Club liable for any loss caused to the User in reliance on any representation (oral written or by conduct) Aston Club or its employees or subcontractors cause in respect of the value of Aston Club Points, or any goods and/or services that can be acquired by converting or otherwise using them.

10. General

- 10.1 By accessing this site, the User acknowledges and agrees that any disputes in relation to the Aston Club mobile phone point of sale payment system are to be determined by the courts of South Australia, in accordance with the laws of South Australia.
- 10.2 Aston Club accepts no liability for any failure or delay in complying with these terms and conditions where such failure or delay is due to circumstances beyond Aston Club's reasonable control.
- 10.3 If Aston Club waives any rights available to it under these terms and conditions on one occasion, this does not mean that those rights will be automatically waived on any other occasion. Waivers must be in written form and signed by Aston Club or its authorised representative.
- 10.4 If any of these terms and conditions are held to be invalid, unenforceable or illegal for any reason, the remaining terms and conditions will continue in force.
- 10.5 A provision of these terms and conditions must not be construed to the disadvantage of a party because that party was responsible for including that provision and/or that provision benefits that party.