
MYOB PayDirect Mobile
Terms of Use

October 2016

myob

1. ABOUT THESE TERMS

These are the terms and conditions for our supply of MYOB PayDirect Mobile to you, including our obligations to each other (**Terms**).

These Terms do not exclude, restrict or modify:

1. the application of any provision of the Australian Consumer Law (whether applied as a law of the Commonwealth or any State or Territory of Australia) (**ACL**);
2. the exercise of any right or remedy conferred by the ACL; or
3. the liability of MYOB for a failure to comply with any applicable consumer guarantees where to do so would:
 - a. contravene the ACL; or
 - b. cause any part of these Terms to be void.

Definitions

Some words used in these Terms have special meanings:

Bank means the financial institution that provides you with a merchant facility and charges you the Bank Fees for the use of PayDirect Mobile.

Bank Fees means the merchant service fees charged by the Bank for the use of their merchant facility.

Business means the business for which the application is made and accepted for PayDirect Mobile.

Business Day means a week day, except for:

- › a national public holiday in Australia;
- › a day on which banks in Victoria or New South Wales are generally closed; or
- › a public holiday in Victoria.

Fees means the fees you pay to us for the use of PayDirect Mobile, including the Reader Fees (where applicable) and excluding Bank Fees, as notified to you from time to time and published on our website at www.myob.com.au/paydirect.

Loss or Claim means any loss, liability, action, proceeding, damage, cost or expense (including all reasonable legal costs and expenses), including liability in tort and consequential and economic losses.

Mobile Device means any device which, in conjunction with the PayDirect Mobile Reader, may be used to access PayDirect Mobile electronically from a remote site or while mobile, including mobile phones and other small-screen and/or portable electronic devices.

PayDirect Mobile means any of the services, features and functionality which form part of PayDirect Mobile and which we make available to you from time to time. This includes:

- › the application that you use to access PayDirect Mobile on your Mobile Device;
- › any PayDirect Mobile merchant portal provided by MYOB or a Third Party that you use to administer your PayDirect Mobile account; and
- › the PayDirect Mobile Reader.

PayDirect Mobile Reader means the device which connects to your Mobile Device to enable you to take payments using PayDirect Mobile.

Personal Information has the meaning given to it in the Privacy Act. This is basically information about an identifiable individual.

Privacy Act means the *Privacy Act 1988 (Cth)*, as updated, replaced or amended from time to time.

Reader Fee means the fees you pay to us for the purchase of the PayDirect Mobile Reader, and any additional or replacement reader device.

Third Party means any person or entity that you or we have contracted with to help us provide PayDirect Mobile. This includes the Bank, any payment provider and all other service providers engaged for the delivery, maintenance and administration of PayDirect Mobile.

User means a person authorised by you to use PayDirect Mobile.

we, us, and our means MYOB Australia Pty Ltd ACN 086 760 198.

you means the Business, including each User.

2. GENERAL TERMS

2.1 Services

We agree to supply, and you agree to use, PayDirect Mobile on the terms and conditions set out in these Terms.

2.2 Protecting your username and password

- a. Unless you take adequate security precautions, it could be possible for an unauthorised person to gain access to your PayDirect Mobile service. You should reduce this risk by taken appropriate steps to protect your access codes, such as your username and password for PayDirect Mobile.
- b. In particular you must not:
 1. tell anyone your username or password, including any member of your family;
 2. let anyone else, whether acting as your agent or not, access PayDirect Mobile using your username and password; and
 3. use any Mobile Device in a way that increases the risk of PayDirect Mobile being accessed from that Mobile Device by any person other than you.
- c. If you think anyone else might know your password you should reset your password from within PayDirect Mobile, or contact us as soon as possible to arrange a new password.
- d. You agree to be liable if your login details are used by an unauthorised person.

2.3 Systems

PayDirect Mobile could be disrupted if systems failure occurs because of technology used by us or Third Parties involved in providing PayDirect Mobile. PayDirect Mobile may also be unavailable for short periods because of necessary system maintenance or upgrades. We will try to inform you beforehand if this is needed.

2.4 Other responsibilities you have as a User

- a. **General responsibilities** – You will not:
1. interfere with the operation of PayDirect Mobile;
 2. reverse-engineer, reverse-assemble, decompile, or otherwise attempt to discover source code, formulas or processes in respect of your PayDirect Mobile Reader or the software behind PayDirect Mobile;
 3. copy, reproduce, alter, modify, create derivative works, or publicly display, any part of any content from PayDirect Mobile, except where we have given you permission;
 4. use or permit the use of PayDirect Mobile in a way which contravenes any applicable laws or regulations; or
 5. use PayDirect Mobile (or allow it to be used) for any other purpose other than to take mobile credit card payments for your lawful business.
- You must:
6. follow reasonable security notifications that are given by us from time to time (including by posting on our website myob.com) about the appropriate processes and safeguards to follow when using PayDirect Mobile;
 7. take reasonable care to protect any Mobile Device that you use to access PayDirect Mobile, together with your PayDirect Mobile Reader, from damage, loss or theft; and
 8. tell us immediately if your PayDirect Mobile Reader is damaged, lost or stolen.
- b. **Cooperation and limited authority in relation to Third Parties** – You:
1. must do all things we consider reasonable and appropriate to enable us to fulfil our obligations to Third Parties, such as the Bank, in relation to PayDirect Mobile; and
 2. authorise us to give a Third Party, including the Bank, any authority, consent or instruction in respect of PayDirect Mobile, as reasonably required to enable us to provide PayDirect Mobile to you.
- c. **Change of details** – You must let us know of any changes to your details which you have provided to us in relation to PayDirect Mobile, and provide any proof of the change we require.

2.5 Use of PayDirect Mobile and our intellectual property

- a. **What you can do** – Until your use of PayDirect Mobile is terminated, you have a non-exclusive and non-transferable licence to use PayDirect Mobile in the way that we authorise from time to time.
- b. **We retain our intellectual property rights** – Except where specifically set out in these Terms, these Terms do not give you any intellectual property or other rights in any of our:
1. Reader, software, documents, templates, marketing material, trademarks, business names, logos, trading styles, get-up, processes or methodologies; or
 2. other intellectual property,
- and you (including your staff, agents or contractors) must not otherwise use, reproduce or modify these intellectual property rights.

3. THE BANK

The Bank provides the merchant facility to enable payments that you take using PayDirect Mobile to be transferred into your nominated bank account. Your use of the merchant facility is governed by the Bank's terms and conditions.

- 3.1 Credit check and merchant approval** – You must be approved as a merchant by the Bank before you can take payments using PayDirect Mobile. You will be required to complete a merchant application form, and any other documents required by the Bank, as part of your registration for PayDirect Mobile. Please allow at least 5 Business Days for the Bank to process your merchant application.
- 3.2 If you don't receive merchant approval from the Bank** – You will not be eligible to use PayDirect Mobile. The Bank will refund any Bank Fees that you have paid to your nominated bank account.
- 3.3 Transfer of funds** – By registering for PayDirect Mobile you are giving the Bank permission to transfer any payments that you take using PayDirect Mobile to your nominated bank account(s).
- 3.4 Bank Accounts** – You may only use PayDirect Mobile for bank accounts attached to your Business.
- 3.5 Our relationship with the Bank** – The Bank is not a party to any agency, partnership, joint venture or other type of similar relationship with us, and is not responsible for the actions of us or any other Third Party.

4. YOUR PAYDIRECT MOBILE READER

- 4.1 Responsibility** – Responsibility for your PayDirect Mobile Reader passes to you on delivery.
- 4.2 If you lose or damage your PayDirect Mobile Reader** – Please contact us as soon as possible. You will need to purchase a replacement PayDirect Mobile Reader, and in the case of damage, return your old device to us.
- 4.3 Warranty and returns** – Please refer to section 8.1 for important warranty information and details on how to return your PayDirect Mobile Reader.

5. PAYMENT OF FEES

5.1 Fees that you pay to us

- a. **Reader Fee** – Once we have received your application for PayDirect Mobile, we will invoice you for the Reader Fee. We will ship your PayDirect Mobile Reader to you following payment of your Reader Fee.
- b. **Payment of Fees** - You must pay all Fees due to us in relation to your use of PayDirect Mobile on the due date. Fees are published on the MYOB website (myob.com).
- c. **Changes to Fees** - By giving you at least 20 days' notice before the change takes effect, we may:
1. change the amount of any Fee and introduce a new Fee; and
 2. change the circumstances in which, or frequency with which, a Fee is payable.
- Section 10 tells you about the ways in which we can give you notice.
- d. **Termination rights** – If we make a change under section 5.1. above, then you have the option to terminate your PayDirect Mobile subscription under section 7.1.

5.2 Bank Fees

In addition to any Fees that you pay to us for the use of PayDirect Mobile, the Bank will charge the Bank Fees for use of their merchant facility. Please refer to your agreement with the Bank for details of when and how you will be charged.

6. GOODS AND SERVICES TAX (GST) AND DUTIES

- a. All payments due to us (eg. Fees, reimbursement by you to us of any amounts or payments under indemnities), unless already stated to be GST inclusive, are to be increased by the amount of any GST liability we have in relation to supplies we make to which those payments relate.
- b. You must pay all duties (eg. stamp duty, other government charges or financial institution account fees, where applicable) payable in relation to your participation in PayDirect Mobile. If we have paid them, they must be reimbursed by you on our request.

7. SUSPENSION AND TERMINATION

7.1 How can you end your PayDirect Mobile subscription?

- a. You can terminate your PayDirect Mobile subscription by providing us with 10 days' notice. You can action your termination by calling us on 1300 555 123. The Bank will final bill you for any outstanding Bank Fees at the beginning of the following month. Please note that The Bank won't be able to refund you once your Bank Fees have been processed.
- b. You must return your PayDirect Mobile Reader(s) to us once your termination takes effect. We will contact you after you terminate to facilitate the returns process.
- c. You may also terminate your PayDirect Mobile subscription if we fail to remedy a material breach of these Terms within 5 days of you giving us notice of the breach in writing.

7.2 When your PayDirect Mobile subscription can be terminated without prior notice

a. Circumstances

These are the situations in which we or the Bank can terminate your PayDirect Mobile subscription without prior notice. We (or, in the case of termination of your merchant facility, the Bank) will notify you of your termination as soon as possible, and arrange with you return your PayDirect Mobile Reader to us immediately following termination.

The situations are:

1. **Your merchant authority is cancelled** –
 - the Bank terminates your merchant facility; or
 - you cancel your merchant facility with the Bank, so that your payments can no longer be transferred into your nominated account through PayDirect Mobile.
2. **A breach occurs** –
 - you fail to remedy a material breach of these terms and conditions within 7 days after we give you notice of the breach.
3. **Something threatens PayDirect Mobile** –
 - in our opinion, a change to any Third Party arrangement necessary for PayDirect Mobile renders the ongoing operation of PayDirect Mobile substantially unworkable or non-functional;
 - in our opinion, the actions of a regulator or a change in law or regulation makes the ongoing operation of Service substantially unworkable or non-functional; or
 - we believe this is necessary either to protect the security, integrity or reputation of PayDirect Mobile, or to otherwise protect our interests.

4. We have concerns about your Business –

- you don't respond to repeated attempts by us to contact you with important instructions relating to your use of PayDirect Mobile;
- we receive notification of a dispute from one or more of the directors or principals of your Business;
- you go into liquidation, administration, insolvency, bankruptcy or such other similar arrangement with creditors, or in our opinion, it is reasonably likely you will do so; or
- there is a change in who owns or controls your Business.

b. Notification

1. We will notify you in writing (which includes by email) of the termination.
2. We can reinstate a termination at our absolute discretion by written notice to you, and this takes effect on receipt or any later time specified in the notice, subject to you meeting any conditions set out in the notice.
3. If you become aware that a circumstance which would permit us to terminate your PayDirect Mobile subscription under section 7.2.a.4. has arisen or may arise, you must let us know as soon as possible.

7.3 What happens on the effective date of termination?

- a. If you or we cancel your participation in PayDirect Mobile, or if the Bank cancels your merchant facility, you will have no further access to PayDirect Mobile after the effective date of termination.
- b. Any limitations on liability that you have given under these Terms will continue after termination in relation to your use of PayDirect Mobile.

8. LIABILITY, WARRANTIES, REPRESENTATIONS AND INDEMNITIES

8.1 Your PayDirect Mobile Reader

This section 8.1 applies only to your PayDirect Mobile Reader. Please see section 8.2 for information on general warranties for PayDirect Mobile.

- a. **Australian Consumer Law** - The benefits given to you in this section are in addition to other rights and remedies that you have under law in relation to your PayDirect Mobile Reader. Your PayDirect Mobile Reader comes with guarantees that cannot be excluded under the ACL. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss arising out of your use of, or damage to, your PayDirect Mobile Reader. You are also entitled to have your PayDirect Mobile Reader repaired or replaced if it is not of acceptable quality and the failure does not amount to a major failure.
- b. **If your PayDirect Mobile Reader is faulty** – you can make a claim under our 12 month limited warranty. You also have the option to make a claim under the ACL if it is applicable.
- c. **12 month limited warranty** – we agree to replace your PayDirect Mobile Reader at our cost, when it does

not perform in accordance with the manufacturer's specifications, for a period of 12 months from the date that it is shipped to you.

d. Making a claim under your warranty – If your PayDirect Mobile Reader fails:

1. please call our support team on 1300 555 123 to register your claim and provide details to enable us to assess your claim;
2. if your claim is approved, we will ship you a new PayDirect Mobile Reader to your chosen address; and
3. please note that you will need to return your faulty PayDirect Mobile Reader to us. We will provide you with a reply paid address for this purpose.

e. Exclusions and Limitations – Subject to section 8.1.a above, and to the extent permitted by law, the warranty for your PayDirect Mobile Reader will not apply:

1. if it has not been operated, maintained or used in accordance with the manufacturer's instructions or specifications provided with it;
2. if the factory-applied serial number has been altered or removed;
3. to damage, malfunction, or failure resulting from alterations, accident, misuse, abuse, fire, liquid spillage, acts of God, tampering or unauthorised repairs by any person, use of defective or incompatible Mobile Devices, or exposure of your PayDirect Mobile Reader to abnormally corrosive conditions;
4. to any failure, to the extent that the failure is not a failure by the PayDirect Mobile Reader to perform in accordance with its specifications; or
5. to any normal wear and tear.

If, when we assess your warranty claim, any of the above exclusions are found to apply to your PayDirect Mobile Reader, you will be charged for your replacement device. We may also seek reimbursement of any costs we have incurred if your PayDirect Mobile Reader is found to be in good working order once it is returned to us.

8.2 General warranties, liability, representations and indemnities

a. No warranty that PayDirect Mobile is suitable for your needs –

1. PayDirect Mobile is a generic service and its capabilities are likely to change over time. This means that PayDirect Mobile may not be, or may not remain, suitable for your needs.
2. You must assess the ongoing suitability of PayDirect Mobile for you and your Business. We are not aware of your individual business needs and cannot provide any specific recommendations regarding your use of PayDirect Mobile.

b. Liability for other guarantees, conditions or warranties –

1. To the extent permitted by law and subject to section 1, we provide no warranty and make no claim in relation to our performance, the performance of PayDirect Mobile, or any service associated with PayDirect Mobile.
2. Our liability to you for any non-compliance with a statutory guarantee, or Loss or Claim arising out of or in connection with the supply of goods or services under these Terms, or any breach by us of these Terms however arising (whether for breach of these Terms, tort (including negligence) statute, custom, law or on any other basis), is limited to:
 - A. the resupply of PayDirect Mobile or your PayDirect Mobile Reader (as applicable); or
 - B. the payment of the cost of resupply of PayDirect Mobile, or your PayDirect Mobile Reader (as applicable),
3. All representations, conditions, warranties and terms that would otherwise be expressed or implied in these Terms by general law, statute or custom are expressly excluded (to the extent that such representations, conditions, warranties and terms can be excluded at law).
4. If you accept these Terms in Australia, sections 8.2.b.2 and 8.2.b.3 above are not intended to have the effect of excluding, restricting or modifying:
 - A. the application of all or any of the provisions of the ACL; or
 - B. the exercise of a right conferred by such a provision; or
 - C. any liability of us in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.

c. When we and Third Parties will not be liable to you –

- We and Third Parties (including the Bank) are not responsible or liable to you or the Business for:
1. delays, regardless of how they are caused, in the processing of payments made or received or to be made or received, or in other data information exchange, relating to your use of PayDirect Mobile;
 2. any Loss or Claim relating to your use of, or reliance upon, the payment information provided to you or transaction effected through PayDirect Mobile. This includes any fraudulent, unauthorised or mistaken transaction, payment instruction, reversal or error correction;
 3. the actions or inaction of Third Parties or other persons (including those which may be negligent or unauthorised) relating to PayDirect Mobile; or
 4. any Loss or Claim arising from a failure by us to comply with the Terms for any cause which could not reasonably be controlled or prevented by us.

d. Indemnity to us and Third Parties

1. You indemnify us, our staff and Third Parties (including the Bank) (**Indemnified Parties**) against any Loss or Claim suffered or incurred by the Indemnified Parties or any of them arising from your action including negligence, misrepresentation, fraud, breach of law or breach of the Terms. You indemnify the Indemnified Parties for any Loss or Claim suffered or incurred from the unauthorised use of your Username or a Password.
2. If the Indemnified Party caused or contributed to a Loss or Claim, then your liability under section 8.2.d.1 above is limited to the amount of the Loss or Claim which is directly attributable to your conduct.

9. CHANGES TO TERMS

- 9.1 What can we do?** – We may change any of these Terms from time to time.
- 9.2 Prior notice** – We'll give you at least 10 days' prior notice (longer if required by legislation or any other code of conduct we subscribe to) of any change that is likely to materially affect or disrupt the manner in which you use PayDirect Mobile.
- 9.3 Urgent changes** – However if we need to restore or maintain the security of PayDirect Mobile immediately, we may change your use and access to PayDirect Mobile without advance notice.
- 9.4 Right of termination** – If we make a change to PayDirect Mobile or these Terms under sections 9.1 or 9.2 above, then you have the option to terminate PayDirect Mobile under section 7.1.

10. NOTICES

- 10.1** You agree that all communications between you and us in relation to PayDirect Mobile will be by email or by us posting a notification on the MYOB website (myob.com), unless another method is agreed to by you.
- 10.2** Any notice or other communication by us by email is regarded as being given by the sender and received by the addressee when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee).
- 10.3** If the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day. We may provide a notice or other communication to you by a posting to the MYOB website (myob.com). That notice or other communication is regarded as being given by us and received by you when the posting is made to the MYOB website. We recommend that you bookmark and regularly check the MYOB website for notices or other communications.

11. LEGAL

You should note a few things about these Terms:

11.1 This is our complete agreement – These Terms and the documents incorporated by reference, including your application for PayDirect Mobile and any price increase notifications provided to you by email, letter or phone from time to time, contain the whole of the agreement between us and you in relation to PayDirect Mobile. Any representations or warranties made by our staff before you are accepted for your PayDirect Mobile subscription are not effective unless expressly set out in these Terms. Any waiver of our rights or powers under these Terms may only be given in writing signed by our authorised officer.

11.2 What happens if some of these Terms can't operate?
If any part or provision of these Terms are void, unenforceable or illegal in a jurisdiction, that part or provision does not apply in that jurisdiction. However, the remainder of these Terms continue in operation in that jurisdiction unless this would alter the basic agreement between you and us, in which case we can terminate your use of PayDirect Mobile at our election.

11.3 No waiver by us – If we do not insist upon strict performance of any part or provision of these Terms, that waiver will not be deemed to be a waiver of a subsequent breach or default of these Terms.

11.4 Assignment – You cannot assign or otherwise transfer the benefit of the agreement between us and you without our prior written consent. We can assign or otherwise transfer the benefit of the agreement between us and you.

11.5 Which laws apply to these Terms? – These Terms are governed by the laws of Victoria, and the courts of the applicable state or country referred to in this clause have jurisdiction over the parties to these Terms (being you and us).

12. YOUR PRIVACY

12.1 We collect, disclose and use your Personal Information to provide the products and services you have asked for and associated support, respond to your enquiries or feedback and to promote the products and services offered by us and Third Parties. We may collect Personal Information from you, from public sources such as social media websites, and from Third Parties that provide us with marketing leads.

12.2 To do these things, we may provide your Personal Information to our related companies, Third Parties and to people to whom we outsource functions. Some of the entities may be located in Australia, New Zealand, Singapore, India, the Philippines, the United States or other countries. If you do not provide your Personal Information, it may affect our ability to do business with you.

12.3 You consent to us collecting, using and disclosing your Personal Information for the purposes set out in section 12.1 above.

12.4 You can ask us not to use your information to promote products and services by following the process outlined in the MYOB Group Privacy Policy. The MYOB Group Privacy Policy contains information on how to:

- update your preferences about the marketing and promotional material we send to you;
- request access to and seek correction of the Personal Information we hold about you;
- make a privacy complaint; and
- how we will deal with your complaint.

You can contact us about your privacy by email at privacy_officer@myob.com.au, or by post at "Privacy Officer", MYOB Australia Pty Ltd, PO Box 371, Blackburn Victoria 3130.

12.5 You consent to the sharing of information including your Personal Information between us, the Bank and other Third Parties in relation to your application for, and if you are approved, the ongoing administration of your use of PayDirect Mobile.

12.6 Notwithstanding our Group Privacy Policy, we may observe your use of PayDirect Mobile and access all information you input or can access through PayDirect Mobile. This will enable us to assist you with problems and make improvements for future versions of PayDirect Mobile and other products and services.

12.7 You must ensure that all Users read this 'Your privacy' section and the policies described above before using PayDirect Mobile or providing their Personal Information to us.

12.8 If you provide any Personal Information about third party individuals to us, you must take reasonable steps to ensure that those individuals are aware of the matters in this 'Your Privacy' section and that we may collect, use and disclose their information to provide you with PayDirect Mobile.

MYOB is a registered trade mark and PayDirect is a trade mark of MYOB Technology Pty Ltd.