

## Safe Pay Escrow Service Terms & Conditions

### 1. Application of Escrow Service Terms and Conditions

The contract for the provision of the Escrow Services by Safe Pay consists of these Escrow Service Terms and Conditions, the Booking Form and any documents incorporated by reference (Agreement). By signing the Booking Form, the Buyer and the Seller agree to be bound by this Agreement.

### 2. Appointment of Safe Pay

#### 2.1. Appointment

- (a) The Buyer appoints Safe Pay as the escrow agent on the terms and conditions contained in this Agreement.
- (b) The Seller appoints Safe Pay as the escrow agent on the terms and conditions contained in this Agreement.

#### 2.2. Acceptance of appointment

Safe Pay accepts its appointment as the escrow agent and agrees to hold and disburse the Escrow Amount to the Seller on the terms and conditions in this Agreement.

### 3. Escrow Amount

#### 3.1. Delivery of Escrow Amount to Safe Pay

The Buyer must pay the Escrow Amount, in available funds, into Safe Pay's nominated bank account on the date specified by Safe Pay and notified to the Buyer in writing. For the avoidance of doubt, Safe Pay will not commence any Escrow Services until the Escrow Amount plus the Escrow Fees have been paid.

#### 3.2. Delivery of Vehicle

The Seller must deliver the Vehicle to InTraffic, or make the Vehicle accessible for collection by InTraffic, by the Collection Date in accordance with the Transport Terms and Conditions.

#### 3.3. Disbursement of Escrow Amount to the Seller

- (a) Safe Pay shall disburse the Escrow Amount to the Seller's nominated bank account as soon as possible but no later than within 2 business days after the following has occurred:
  - (i) InTraffic has received the Vehicle from the Seller by the Collection Date and in accordance with the Transport Terms and Conditions; and
  - (ii) the VIN is recorded by InTraffic and is confirmed by InTraffic as matching the VIN of the Vehicle as specified in the Booking Form(collectively known as **Precedent Conditions**)
- (b) The Buyer must satisfy themselves that the vehicle is road worthy, registered and that if the Vehicle is subject to a security interest the relevant financier has released the Vehicle from the security interest.
- (c) The Buyer acknowledges that, Safe Pay is not responsible for receiving any of the following:
  - (i) a road worthy certificate related to the Vehicle;
  - (ii) the completed and signed Registration Application Form; and
  - (iii) if the Vehicle is subject to a security interest, written confirmation from the relevant financier confirming that the Vehicle has or will be released from the security interest upon disbursement of the Escrow Amount.
- (d) If the Precedent Conditions are not meet, the Seller will incur a Futile Fee in accordance with the Transport Terms and Conditions.
- (e) The Futile Fee will be payable by the Seller by the date specified in the invoice issued by Safe Pay to the Seller.

#### 3.4. Return of Escrow Amount to Buyer

All parties agree that Safe Pay can return the Escrow Amount to the Buyer's nominated bank account (less any fees or charges Safe Pay have reasonably incurred) in the event of the following:

- (a) If both the Buyer and the Seller have informed Safe Pay by written notice that the Agreement has been terminated; or

- (b) A period of 14 days from the Collection Date has passed and:
  - (i) Safe Pay has not received the Vehicle from the Seller; or
  - (ii) the relevant Precedent Conditions have not been met.

### **3.5. Non-interest bearing account**

The Escrow Amount shall be deposited into Safe Pay's nominated bank account which is an account that Safe Pay holds with an ADI that is designated as a trust account. For the avoidance of doubt, the Escrow Amount will not be placed in an interest bearing account.

## **4. Escrow agent**

### **4.1. Duties and responsibilities**

- (a) The duties and responsibilities of Safe Pay are limited to those set out in this Agreement and, accordingly, Safe Pay:
  - (i) acts as a depository only and is not responsible or liable for the sufficiency or validity of any funds deposited within its trust account;
  - (ii) will have no further duties or responsibilities under this Agreement following disbursement of the Escrow Amount under this Agreement; and
  - (iii) is not and must not be treated as being a trustee or fiduciary acting for the benefit of any of the parties.
- (b) For the avoidance of doubt,
  - (i) Safe Pay is not required to use or advance its own funds or otherwise incur financial liability on its part in performance of its duties or the exercise of its rights under this Agreement; and
  - (ii) this clause does not limit, reduce or void any obligations Safe Pay owes to the Buyer under the Transport Terms and Conditions.

### **4.2. Notifications to Safe Pay**

- (a) Safe Pay:
  - (i) is only subject to, and only obliged to recognise, notifications or directions given in accordance with this Agreement; and
  - (ii) is entitled to rely on any notification which Safe Pay in good faith believes to be genuine.

### **4.3. Release from liability**

- (a) Safe Pay:
  - (i) will not be liable for any error of judgment or for any acts done or steps taken or omitted by it in connection with this document, except for Safe Pay's own gross negligence or wilful misconduct or that of any of its directors, officers, employees, agents or representatives; and
  - (ii) may rely upon advice given to it by its legal advisers on any legal questions arising in connection with the administration of this Agreement and will be free of liability for acting in reliance on that advice.
- (b) The Seller and the Buyer waive any claim which it may have or may assert against Safe Pay arising out of the execution, delivery or performance by Safe Pay of this Agreement, unless that claim is based upon the gross negligence or wilful misconduct of Safe Pay or any of its directors, officers, employees, agents or representatives.
- (c) The Seller and the Buyer indemnify and hold harmless Safe Pay from any liabilities or claims (including reasonable legal fees) which Safe Pay may incur or sustain as a result of its performance under this Agreement except if the liability or claim is due to the gross negligence or wilful misconduct of Safe Pay or any of its directors, officers, employees, agents or representatives.

### **4.4. Interpleader and legal proceedings**

- (a) If a dispute arises between the parties with respect to the escrow arrangements contained in this Agreement, Safe Pay:
  - (i) may interplead all of the assets held in escrow by it under this document in a court of competent jurisdiction; and
  - (ii) will then be fully relieved from any liability or obligation with respect to those interpleaded assets.
- (b) The Seller and the Buyer must pursue any legal redress or recourse in connection with any dispute relating to the escrow arrangements contained in this Agreement without making Safe Pay a party, unless the dispute is based upon the gross negligence or wilful misconduct of Safe Pay or any of its directors, officers, employees, agents or representatives.

## 5. Our Charges

The Buyer must pay the Escrow Fees to Safe Pay by the date set out in Safe Pay Invoice.

## 6. GST

### 6.1. Interpretation

In this clause 6, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in that Act.

### 6.2. GST gross up

If a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 6.2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

### 6.3. Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 6.2.

### 6.4. Tax invoice

A party need not make a payment for any additional consideration payable pursuant to clause 6.2 until it receives a tax invoice for the supply to which the payment relates.

## 7. Confidentiality

To the extent that one party receives information from the other party which is inherently confidential in nature, the receiving party agrees not to disclose such information to a third party without the authority of the disclosing party, except to the extent permitted by law or otherwise in circumstances where such information had entered the public domain.

## 8. Privacy

To the extent that we collect personal information from you pursuant to this Agreement, including credit card information, such information will be handled in accordance with our privacy policy. Our privacy policy can be accessed on our website Privacy Policy – Safe Pay (<https://Safe Pay.com.au/privacy-policy/>) and the terms are deemed to be incorporated into this agreement. To the extent that you collect personal information from us pursuant to this Agreement, you undertake to handle and process such information strictly in accordance with the Australian Privacy Principles.

## 9. Force Majeure Event

- (a) If a party is wholly or partially precluded from complying with its obligations under this Agreement by Force Majeure Event affecting that party, then that party's obligation to perform in accordance with this Agreement (except where there is an obligation to pay for a service that has been rendered) will be suspended for the duration of the delay arising out of the Force Majeure Event.
- (b) As soon as possible after a Force Majeure Event arises, the party affected by it must, if it has not already done so, notify the other party of the Force Majeure Event and the extent to which the notifying party is unable to perform its obligations under this Agreement.
- (c) For the purposes of this Agreement a "Force Majeure Event" means anything outside that party's reasonable control, including without limitation, fire, flood, drought, hail, storm, lightning, act of God, peril of sea or air, explosion, sabotage, accident, embargo, labour dispute or shortage, civil commotion and act of war.

## 10. Termination

In the event the Seller or the Buyer breach the terms of this Agreement, Safe Pay may terminate this Agreement immediately by providing written notice.

## 11. General

### 11.1. Assignment

Both parties may only assign their rights under this Agreement with Safe Pay's prior consent.

### 11.2. Governing law

This Agreement is governed by the laws in force in the State of Victoria, Australia.

### 11.3. Entire Agreement

This Agreement, including documents incorporated by reference, constitutes the entire agreement between the parties. To the extent of an inconsistency between the component documents of this Agreement, the documents will be interpreted in the following order of precedence:

- (a) these Escrow Service Terms and Conditions and Booking Form;
- (b) our privacy policy;
- (c) any other document incorporated by reference.

No employee, servant or agent or third-party has the authority to alter or vary these terms and conditions. Any such alteration or variation shall only apply if approved in writing by Safe Pay.

### 11.4. Disputes

If you dispute your obligation to make a payment, or if you have any other reason for disputing whether we have met our obligations under this agreement, you should contact us in accordance with paragraph 11.5. We will make a reasonable attempt to mediate any complaint but otherwise we do not commit to following a formal alternative dispute resolution process. Notwithstanding the foregoing, we do not seek to exclude the applicability of any statutory dispute resolution scheme.

### 11.5. Contact

Your point of contact with us in relation to any issue arising out of the transaction should be the person so stipulated in the Booking Form or alternatively you can contact us as follows:

- (a) Safe Pay Administration Team  
contactus@safepay.com.au  
1300 887 957;
- (b) and if we direct you to do so, to:  
Customer Care Centre: ccc@cevalogistics.com  
Phone 13 2277 (13 CARS)

## 12. Definitions - In this document

**ADI** means an authorised deposit-taking institution as defined in section 5 of the Banking Act 1959.

**Agreement** means the agreement entered into by the Seller, the Buyer and Safe Pay in relation to the provision of the Escrow Services and governed by the Booking Form and these Escrow Service Terms and Conditions.

**Buyer** means the buyer of the Vehicle.

**Collection Date** means the date by which the Seller must deliver the Vehicle to InTraffic, or the Vehicle must be accessible for collection by InTraffic, in accordance with the Transport Terms and Conditions.

**Escrow Amount** means the purchase price the Buyer and the Seller have agreed to for the purchase of the Vehicle as set out in the Booking Form.

**Escrow Fees** means the fees for the provision of the Escrow Services as set out in Safe Pay Invoice.

**Escrow Services** means the services to be provided by Safe Pay to the Buyer and Seller in accordance with this Agreement.

**Futile Fee** means the fee the Seller will incur in accordance with the Transport Terms and Conditions if the Precedent Conditions are not met.

**Safe Pay** means inTraffic Safe Pay Pty Ltd ACN 651 296 141 trading as Safe Pay.

**Safe Pay Invoice** means the invoice issued to the Buyer upon completion and acceptance of the Booking Form.

**Precedent Conditions** means the conditions set out in clause 3.3(a).

**Booking Form** means the Booking Form completed in relation to the transport of the Vehicle and signed by Safe Pay, the Buyer and Seller.

**Seller** means the seller of the Vehicle

**Transport Services** means the services provided by inTraffic in accordance with the Transport Terms and Conditions.

**Vehicle** means the vehicle the Seller has agreed to sell to the Buyer.

**VIN** means the Vehicle's identification number.