

Terms & Condition

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1. Service Offer

Kinetic Innovative Technologies sdn bhd (hereinafter – Kineticpay) is a technical service provider in the field of marketplace platform. For this purpose, Kineticpay has developed a software (hereinafter – Kineticpay platform), which can be accessed by the contractual party (hereinafter – merchant) on the Internet to initiate online transactions (Only for our hosting customer). The important functionality of the Kineticpay application is to receive the transaction data collected by or through the merchant and to forward it to the respective third party, agreed on by the parties, who processes the credit card transactions on behalf of the merchant (hereinafter – payment service provider). The contractual relationships with the payment service providers, necessary for the processing and clearing of transactions, are maintained by the merchant. Kineticpay does not enter into possession of the funds to be transferred (Section 1). The Kineticpay platform can be accessed by means of an application service providing via a data processing interface established by Kineticpay for this purpose (hereinafter – interface). The merchant's data processing systems are connected to the interface by the merchant in accordance with the documentation about the Kineticpay application available at www.Kineticpay.my (hereinafter – documentation). The Kineticpay application, the interface, and the documentation will be referred to collectively as the Kineticpay platform.

2. Subject Matter of the Agreement

1. Under this contract between Kineticpay and the merchant, the Kineticpay platform for the merchant is provided by Kineticpay in accordance with the merchant contract issued by Kineticpay and the Kinetic Innovative Technologies sdn bhd terms and conditions (hereinafter “the Agreement” or “this Agreement”). The Kineticpay platform has the functionality described in the documentation. The interconnection point for the data to be transferred between the parties is the address of the interface function on the Kineticpay platform in the data processing centre.
2. The connection of the data processing systems used by the merchant to each of the Internet and the interface is not part of the services to be provided by Kineticpay and falls within the sole responsibility of the merchant.
3. Kineticpay's service obligation is limited to the forwarding of data provided via the Kineticpay platform, in unchanged form, to the respective payment service provider and forwarding of data received from the payment service provider for the merchant, in unchanged form, to the merchant. Kineticpay is allowed to involve a third party for the provision of its services. Kineticpay is not responsible for the accuracy and completeness of the data to be transmitted.
4. Kineticpay is responsible for the security of transactions data within Kineticpay's area of influence. This extends to data which Kineticpay stores, processes or transmits for the merchant in the course of service provision, or such data or information where the security of the merchant's saved/processed transactions could be interfered with.

3. Right of use

1. The merchant receives the right of use to the Kineticpay platform limited to the duration of the contract, territorially restricted to the following countries, which is non-exclusive, non- sublicensable, non- transferrable and non-assignable. Countries in scope: Malaysia. The right of use is valid for access to the platform via the Internet and for use of the functionalities associated with the Kineticpay platform in accordance with the regulations of this contract and the documentation. The merchant shall be entitled to use the documentation solely for the connection of the utilized data processing system to the Kineticpay platform and to store the data transmitted to the merchant via the Kineticpay platform on its data processing system or a data processing system of a third party authorized by the merchant.
 2. The right of use granted to the merchant by Kineticpay is limited exclusively to the processing on payment on the Internet. However, the processing of sales requires that the merchant has a respective agreement with a payment service provider, which entitle the merchant to accept payments with payment tools as granted by him in a separate agreement. Such right is not granted hereby; it can only be agreed separately between the merchant and one payment service providers.
 3. The merchant shall not,
 - reverse engineer an object code form of a part of the Kineticpay application;
 - provide to third parties the rights of use to the Kineticpay platform as well as to the individual elements of the Kineticpay platform, whether by renting, lending or by granting sub- licences, unless Kineticpay has previously approved this explicitly in writing.
 - Using our kineticpay platform for secondary level of aggregation (sub vendor or customer)
 4. Rights other than those mentioned in these conditions are not granted. Paragraph 7 of these terms and conditions shall remain unaffected.
4. Updates / New Releases
1. Kineticpay is entitled, at any time, even without the consent of the merchant, to make or order changes to the Kineticpay platform (updates and/or new releases). These changes should be created by Kineticpay in such a way as to not limit the contracted services.
 2. The merchant shall be obligated to install immediately the provided changes to the Kineticpay platform (updates and/or new releases) to guarantee the contracted services.
 3. Kineticpay will communicate major updates and/or new releases via email to the merchant in due time.
5. Warranty and Liability
1. Kineticpay warrants to the merchant that it is authorized to grant the use set forth in this agreement to the merchant. The merchant shall ensure that the Kineticpay platform is used solely in accordance with this agreement. Kineticpay points out that for technical reasons it is not possible to ensure continuous system availability. Kineticpay is not liable for errors resulting from the provision of telecommunication and/or Internet while establishing the connection to the Kineticpay platform (for example, as a result of line overload).

2. The warranty of Kineticpay is limited to fixing interface defects by rectification. Kineticpay is liable only for the replacement of data if the merchant has ensured that it is economically viable to recover the data from data material with reasonable effort. Kineticpay's liability is excluded if damage is related to the use of interface information that is out of date or has been inadmissibly changed by the merchant as compared to the original interface version, or related to the interrupted connection to the Kineticpay platform, unless the merchant can prove that the interruption is based on circumstances Kineticpay is responsible for.
 3. Kineticpay's liability is further excluded if damage is related to the interrupted connection to the Kineticpay platform, unless the merchant can prove that the interruption is based on circumstances Kineticpay is responsible for.
 4. Kineticpay is not liable for the accuracy and completeness of data submitted by the merchant, payment service providers and other third parties, and/or taken from public directories, and for data managed by it or any third party. The foregoing limitation of liability applies particularly to information with incorrect or incomplete content, auditory errors, input errors, transfer and transmission errors, identity confusion, especially in consequence of incomplete personal data, incorrect or incomplete information as a result of technical defects, and restrictions or failures of the readiness to provide information for technical reasons.
 5. In all other cases, Kineticpay is liable for intent and gross negligence in full scope. For other negligent actions, Kineticpay is liable solely for
 - personal injury,-
 - damage, for which Kineticpay is responsible due to mandatory statutory provisions, and
 - damage due to the breach of material obligations, which endangers the achievement of the purpose of this agreement and/or the performance of which enables the proper implementation of this agreement and/or on which the merchant may rely regularly (cardinal obligations). In the event of a breach of cardinal obligations, Kineticpay's liability for simple negligence is limited to damages which are typical in relation to this agreement and foreseeable at the time this agreement was concluded.
 6. Kineticpay is not liable for damages that occur by force majeure, riots, war and natural events or by other circumstances that Kineticpay is not responsible for (e.g. strikes, lockouts, disruptions of transit, official or administrative orders domestically and abroad).
 7. Kineticpay's liability for loss of profit is excluded. This does not apply in the case of deliberate actions by Kineticpay.
6. Compensation; Reimbursement of expenses
1. The merchant's due fees and charges to be paid for Kineticpay's services under this Agreement (hereinafter "remuneration") arise from the "price list" (www.Kineticpay.my/pricing) unless otherwise explicitly agreed in writing to the contrary between Kineticpay and the merchant in individual cases. The rates in the "Prices and Services" charges and prices are calculated in MYR plus any GST/VAT at the statutory rate, as far as this is applicable.
 2. For provision of services, by law or pursuant to a contractual accessory obligation or which it performs in its own interest, Kineticpay is not charged with

any fee, unless it is permitted by law and will be charged in accordance with the legal provisions.

3. Changes in charges for services, which are typically taken from the merchant in the context of the business relationship on a permanent basis (in particular for the use of the Kinetipay platform), are agreed with the customer no later than six weeks before the proposed effective date in writing or by electronic communication with the merchant. The merchant's agreement shall be deemed given, if he has not objected before the proposed effective date of the change. Kinetipay shall inform the merchant of this de facto acceptance in its notice.
4. The merchant may only set off undisputed or legally established claims against claims of Kinetipay. The exercise of a right of lien by the merchant is excluded.
5. A possible claim of Kinetipay for reimbursement of expenses is subject to the statutory provisions.
6. Costs and expenses arising from debit payments, which incur charges through lack of funds or the merchant giving wrong account details are to be borne by the merchant, in particular in the case of non-payment of a direct debit to the Kinetipay bank, the merchant shall be charged a fee passed on by Kinetipay bank to the debit submitter.

7. Obligations of the Merchant

1. The merchant will refrain from obtaining, itself or through unauthorized third parties, information or data without authorization or intervening in or allowing others to intervene in programs operated by Kinetipay or invading networks of Kinetipay without authorization.
2. The merchant must ensure at any time that there are adequate funds for debit payments.
3. The merchant must obtain any necessary authorizations from its customers for the required transfers of information within the scope of the services offered by Kinetipay. The merchant is responsible for the legally compliant collation, storage and transmission of its customers' information (in particular personal data) to Kinetipay. The merchant shall notify its customers about the handling of the information within the scope of a data privacy statement.
4. The merchant shall be obligated to inform its customers that its services are charged through the payment service provider. Should the customer or contract partner make claims against Kinetipay arising from the billing relationship, the merchant shall indemnify Kinetipay from all claims or demands internally.
5. The merchant shall be obligated to manage passwords and login details for the Kinetipay platform in a secure and confidential manner. The merchant is not permitted to disclose such information or make it available to third parties. If passwords or login data are used by unauthorized persons, the merchant is liable for use contrary to this agreement and any damages or losses caused thereby..
6. The merchant shall be obligated to specify all the information requested at the time this agreement is concluded truthfully and completely and to designate a valid and accessible e-mail address to receive messages from Kinetipay during the contractual relationship. This includes details of changes of the merchant master data (bank data, company form, address, contact information, company data) as well as changes of these terms and conditions. The merchant has to inform immediately of any change of e-mail address. If the merchant fails to do

so, Kineticpay is not responsible for any difficulties and disadvantages of the merchant.

7. The merchant undertakes to notify Kineticpay without delay of the intended suspension of its services, as well as impending insolvency.
8. The merchant undertakes to protect its licensing data (public/private key) and not to pass it on to third parties.

8. Third-party Claims; Information Obligations; Release

1. The merchant shall immediately inform Kineticpay of any knowledge about the possible infringement of proprietary rights. Also, Kineticpay will immediately inform the merchant of any copyright infringement. If claims are made or to be expected against the merchant, Kineticpay can change or replace the Kineticpay platform at its cost to an extent reasonable for the merchant. If this or the obtaining of a right of use is not possible with reasonable effort, the contracting party may terminate the agreement extraordinarily in writing without any notice.
2. The merchant agrees to indemnify Kineticpay in the internal relationship from all possible claims of third parties based on illegal or uncontractual acts of the merchant or content errors in information provided by the merchant or concerning the Internet domain used by the merchant. This applies in particular to copyright, trademark, privacy, antitrust infringements and other violations of statutory provisions or rules and regulations of institutions.

9. Adherence to legal Provisions

1. The merchant undertakes to strictly adhere to statutory provisions in its offers. In particular, it will not offer illegal content. In particular, it will not offer any content, services, or similar in violation of Malaysian Laws. In addition, Kineticpay excludes certain product categories from the outset, such as and not limited to:
 - Direct Marketing
 - Outbound telemarketers
 - Marketplace
 - SaaS (Software as a Service) aggregator platform
 - Multi-level marketing businesses
 - Rebate-based business and up-sell Unlicensed Multi-level marketing merchants
 - Telemarketing
 - Time sharing
 - Sell counterfeit goods
 - Selling items / services that relates to transactions involving (a) narcotics, steroids, certain controlled substances or other products that present a risk to consumer safety, Eg: Drugparaphernalia, prescription and controlled medicines
 - Operate business that encourage, promote, facilitate or instruct others to engage in illegal activity, including violence, racial or other forms of intolerance that is discriminatory or the financial exploitation of a crime
 - Sale of stolen goods including digital and virtual goods, Tobacco, E-Liquids and E-Cigarettes product/service must be legal to be sold in the area that you are selling from and to the state/country you are selling to. The website must have a disclaimer of item not sellable to buyers below 18 years old. Kineticpay ONLY allows local transactions

under this category of business activity from our hosting customer only.

- Fireworks and hazardous materials
- Items encouraging illegal activity
- or anything pertaining to the above categories

Please refer <https://www.Kineticpay.my/prohibited-product/>

2. The merchant is further obliged not to publish any wrong or misleading information about its offer, in particular when offering paid services on the Internet, to designate them accordingly and not to offer them as “free content”. Furthermore, the merchant is obliged not to spam.
3. In the case of violations of the above provisions, Kineticpay is allowed to cancel the contractual relationship with the merchant at any time without any notice period and to interrupt the connection to the Kineticpay platform without prior notice. In the event of a breach of the above provisions, the merchant shall be liable to Kineticpay for the resulting damages and has to indemnify Kineticpay in the internal relationship from any claims of third parties.

10. Duties of Confidentiality and Data Protection

1. The merchants and Kineticpay undertake to maintain both secrecy and confidentiality with respect to customer information of the other party. The parties further undertake to keep all of the data and information known as a result of the contractual business confidential, to use only in the context of the existing contract, and not to make accessible to third parties. This does not cover situations in which the respective party is legally obliged to transfer the data.
2. Kineticpay is allowed to release the name or business name of the merchant to third parties as a reference. This applies in particular to the announcement of the offer of the merchant with the logo of the merchant and the mention of its name or company name on websites, in brochures and other documents of Kineticpay. However, this does not result in any publication obligation for Kineticpay. If the referencing or disclosure should not occur, the merchant must inform Kineticpay in writing or by e-mail. The obligation of secrecy in 10.1 remains unaffected.
3. The parties further undertake to ensure data protection within the meaning of the applicable data protection regulations and to maintain, as well as to ensure the confidentiality, availability, and the correctness of the data. In particular, the parties are obliged to ensure the protection of their computer systems against unauthorized and accidental destruction, accidental loss, counterfeiting, theft, unlawful use, unauthorized change and copying of data, unauthorized access to the data and other unauthorized edits, as well as against technical failure adequately in accordance with latest technology standards.

11. Duration of the Contract

This agreement begins with the conclusion of this agreement by the parties after Kineticpay has notified the merchant of his/her successful completion of the risk assessment or of the settlement (commission payout) of a certain payment method (e.g. FPX, Credit Card) which may differ from the agreed start of term of the contract. The contract has an indefinite term and can be terminated by both parties at any time with a term of one month to the end of the month. The right to extraordinary termination for important reason remains unaffected. Kineticpay is entitled thereto, in particular in the event of unauthorized interventions of the merchant in the Kineticpay platform and violation of the obligations referred to in paragraph 3.3. At contract termination, the merchant has to stop using the Kineticpay platform immediately and return the documentation provided forthwith. Any expenses and costs

arising from the merchant's termination of the contract (e.g. data migration to a new service provider) shall be borne by the merchant. For the duration of the contract and the period afterwards, Kinetipay and the partners undertake to treat all received data according to the applicable data protection provisions.

12. Contract Changes

Under these terms and conditions Kinetipay is allowed for the purposes of simplifying and accelerating its business in view of the multitude of contracts with merchants to change this contract, as well as the documentation by unilateral declaration to the merchant in writing or in text form. The change becomes effective when the merchant does not object to the change declaration within 6 weeks after its receipt.

Kinetipay undertakes to instruct the merchant in the event of change declaration about the special significance of the merchant's behaviour after receipt of the declaration.

13. Miscellaneous

1. The presentation of the services of Kinetipay on the Internet does not represent a binding offer from Kinetipay. This agreement is concluded upon its signature by both parties or, in the event of online conclusion, upon confirmation by the merchant in the provided place for acceptance of these terms and conditions and after corresponding confirmation from Kinetipay.
2. Kinetipay has the right to involve third parties in the performance of its obligations arising from this agreement. Kinetipay may require that certain processing steps are carried out directly through such third parties, completely or partially. The merchant is not allowed to involve third parties in the performance of the duties under this agreement without the express written consent of Kinetipay.
3. Supplementary agreements, changes or additions must be made in writing or in text form, in cases specified herein, to be effective.

14. Severability clause

1. Should one or several provisions of these general terms and conditions be or become invalid or prove to be unenforceable, this shall not affect the validity of the other provisions. In this case, the contracting parties shall replace the invalid or unenforceable provision by another provision that comes closest to the economically intended purpose. The same applies in the case of a regulatory gap.
2. This contract is subject to Malaysia law or other by other payment service provider (e.g PAYNET, MPGS). The place of performance for the services of Kinetipay is the place of the registered office of Kinetipay. Place of jurisdiction for all disputes arising between Kinetipay and the merchant is also the registered office of Kinetipay, or by choice of Kinetipay the registered office of the merchant.

15. Postpaid For Corporate Merchants

1. Charges will be different for postpaid and corporate merchants (RM0.70/transaction), reconciliation, tax, support charges depend on the transaction.
2. For corporate merchant our system will calculate and generate invoice after we reconcile your account settlement (commission payout), tax charges, support that we received, integration part, security part, server consumption, and all this will a few days regarding your transaction.

3. For this action, last settlement (commission payout) will be hold until invoice is ready.
4. Contra price will be implement if your settlement (commission payout) is beyond your invoice charges.
5. Postpaid For Corporate Merchants is automatically agreed after you are using our service and merchant will automatically get RM0.70 / transaction.