

Till2Go Application - End-User License Agreement ("EULA")

This End-User License Agreement ("EULA") is a legal agreement between "you" (either an individual or a single entity) and Smartpay New Zealand Limited ("Smartpay") for the use of Smartpay's TILL2GO mobile application, which records cash and credit/debit card transactions on your mobile device ("Mobile App").

The Mobile App can only be used to accept card payments if you have a PCI compliant certified EFTPOS terminal that uses an approved Smartpay integration ("Compliant Terminal") and authorised merchant number. Accordingly, the terms of your Smartpay payment terminal agreement and/or acquiring bank merchant agreement ("Terminal Agreement") will also apply to the use of the Mobile App (and will prevail over this EULA to the extent of any conflict).

By downloading, installing, copying, or otherwise using the Mobile App, you agree to be bound by the terms of this EULA.

1. Grant of License

- 1.1 Installation and Use: Smartpay grants you the right to download, install and use the Mobile App on any mobile device you own or control, in order for you to connect your mobile device to your Compliant Terminal and process credit card and EFTPOS payments for your business, and/or record cash and credit/debit card transactions on your mobile device for your business in New Zealand and/or Australia, subject to the terms and conditions set out in this EULA.
- 1.2 Upgrades: The terms of this EULA will govern any upgrades provided to you that replace and/or supplement the then current version of the Mobile App, unless such upgrade is accompanied by a separate license in which case the terms of that license will apply.

2. Description of Other Rights and Limitations

- 2.1 Smartpay's Obligations: Smartpay will use its reasonable endeavours to ensure the Mobile App enables you to record transactions on your mobile device.
- 2.2 Your Obligations: You must:
 - a) Not distribute copies of the Mobile App to third parties, including (without limitation):
 - i. Making available any data, content or other information from the Mobile App to any third party;
 - ii. Renting, leasing, lending, sublicensing or otherwise making available the Mobile App to any third party; or
 - iii. Reverse engineer, decompile, or disassemble or otherwise attempt to access or discover the source or object code of the Mobile App.
 - b) Secure your internet connections, login details and passwords and not disclose these to any other person;
 - c) Comply with all applicable laws regarding use of the Mobile App. Without limitation, you must not use the Mobile App for any immoral, unlawful, illegal or other purpose which Smartpay determines to be objectionable (including any purpose which is detrimental to the interests of Smartpay).
- 2.3 Support: Smartpay will also provide the support services as set out in Appendix A (the "Support Services")
- 2.4 Consent to Use of Data: You agree that Smartpay may collect, retain and use technical data and related information, including but not limited to technical information about your mobile device, system and application software, and peripherals, that may be gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Mobile App. Smartpay may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you.
- 2.5 Details: You agree that all information and details provided by you on registration are true, accurate and up-to-date in all respects and at all times.

Till2Go Application - End-User License Agreement (“EULA”)

3. Fees

Use of the Mobile App is free of charge. However, card transactions initiated through the Mobile App will be routed through your Smartpay payment terminal, so charges may be payable in accordance with your Terminal Agreement. Smartpay reserves the right to introduce a fee for the Mobile App or for additional functionality, but if it does so it will give you prior written notice.

4. Intellectual Property

You acknowledge and agree that Smartpay is the sole owner of all copyrights, brands, trade names, ideas, systems, applications, trade secrets, know how or other intellectual property (together, the “Intellectual Property”) in the Mobile App and you will not make any claim to nor will you have any interest in, any part of the Intellectual Property (whether during the term of this EULA or following its expiry or termination). Smartpay grants you a non-exclusive, non-transferrable, royalty free license to use the Intellectual Property for the duration of this EULA and only for the purpose set out in clause 1.1.

5. Term and Termination

5.1 Term: This EULA is effective from the date the Mobile App is downloaded and installed until terminated by you or Smartpay.

5.2 Termination: You or Smartpay may suspend or terminate this EULA or any part thereof at any time without notice. In the event you terminate this EULA you must immediately destroy all copies of the Mobile App and Intellectual Property in your possession.

5.3 No Remedies: To avoid doubt, termination of this EULA is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination and a party may take action against the other party under this EULA in respect of a breach of the EULA arising prior to the effective date of termination.

6. No Warranties

6.1 No Warranties: Smartpay expressly disclaims any and all warranties for the Mobile App to the maximum extent permitted by law. Subject to the express provisions set out in Appendix A, the Mobile App is provided on an ‘as is’ basis and without any express or implied warranty of any kind, including but not limited to any warranties of merchantability, non-infringement, or fitness for a particular purpose. Smartpay makes no warranties respecting any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb, or other such computer program.

6.2 Business Purpose: You acknowledge that the Mobile App is being accessed for legitimate business purposes and, to the maximum extent allowed by law, nothing in any consumer protection legislation will apply to this EULA.

7. Limitation of Liability

7.1 Indirect and Consequential Losses: In no event will Smartpay be liable (whether in contract, tort (including negligence) or otherwise) to you for:

- a) Loss of revenue or profit, loss of anticipated savings, loss of goodwill or opportunity, loss of production, loss or corruption of data or wasted management or staff time; or
- b) Loss, damage, cost or expense of any kind whatsoever that is indirect, consequential, or of a special nature, arising directly or indirectly out of this EULA or the Mobile App, even if you had been advised of the possibility of such damages, and even if such loss, damage, cost or expense was reasonably foreseeable by you.

7.2 Liability Cap: Smartpay excludes all liability for any and all claims made under this EULA or in relation to the Mobile App (whether in contract, tort (including negligence) or otherwise) to the maximum extent permitted by law. In the event that such liability cannot be excluded, you agree that Smartpay’s maximum liability to you is \$100 in aggregate.



Till2Go Application - End-User License Agreement (“EULA”)

8. General

- 8.1 **Applicable Law:** This EULA is governed by and to be construed in accordance with the laws of New Zealand and you accept that the New Zealand courts have non-exclusive jurisdiction to deal with any dispute, litigation or other matter relating to this EULA or the Mobile App.
- 8.2 **Severability:** If at any time any provision of these terms is or becomes illegal, invalid or unenforceable in any respect, that provision shall be read down to become legal, valid or enforceable or, if this is not possible, deleted. The other terms of this EULA shall continue to apply with full force and effect.
- 8.3 **Entire Agreement:** This EULA represents the entire agreement concerning the Mobile App between you and Smartpay, and it supersedes any prior proposal, representation, or understanding between the parties.
- 8.4 **Amendments:** This EULA may be amended at any time by Smartpay by notifying you of the new EULA (which may be by email or text or posting of the new terms on the Mobile App or Smartpay website).
- 8.5 **Assignment and Sub-Contracting:** Smartpay may assign or transfer any of its rights and obligations under this EULA without your approval. Your rights and obligations under this Agreement are personal to you and may not be assigned, sub-licensed, sub-contracted, transferred or otherwise disposed of.
- 8.6 **Nature of Relationship:** Nothing contained in this EULA will be deemed or construed to constitute any party to be a partner, agent, franchisee or representative of any other party, or to create any trust or commercial partnership. Neither party shall have the authority or power to bind the other or to contract in the name of the other in any way or for any purpose.
- 8.7 **Authority:** The person entering into this EULA confirms that they are properly and duly authorized to enter into this EULA on behalf of you.
- 8.8 **Privacy Act:** You authorise Smartpay to collect, retain and use personal information about you and Smartpay may use such personal information to enforce Smartpay’s rights under this EULA and market any goods or services Smartpay provides to you. You acknowledge that where the information can be readily retrieved you shall have the right to request correction and the right to be notified of action taken in response to any such request, subject to payment of any reasonable charge.

9. Mobile Devices

- 9.1 **Liability:** When you download, install or use the Mobile App on a mobile device, you acknowledge that:
- the EULA is between Smartpay and you, and not the provider of the mobile device or operating system (the “Mobile Provider”); and
 - The Mobile Provider has no responsibility or liability in respect of any matter relating to the Mobile App, including your use or possession of the Mobile App.
- 9.2 **Privity:** Smartpay and you agree that the Mobile Provider, and its subsidiaries, are third party beneficiaries of the EULA and that the Mobile Provider has the right to enforce the EULA against you as a third-party beneficiary.

Till2Go Application - End-User License Agreement (“EULA”)

APPENDIX A – SUPPORT POLICY

Smartpay agrees to provide the support services for the Mobile App as described in this Appendix A.

Support Overview

Smartpay will take all reasonable steps to ensure that the Mobile App will function as intended once you download it. To this end, Smartpay agrees to provide the following support:

- Till2Go software upgrades, including error corrections and possible enhancements;
- Telephone support for technical issues, at 0800 476 278 between standard business hours (being 8.30am and 5pm Monday to Friday, excluding public holidays) to provide a question and answer and advisory service;
- A general support email address info@smartpay.co.nz;
- An FAQ page available on its website (www.smartpay.co.nz).

However, for the avoidance of doubt, the following is specifically excluded:

- Support of hardware IN ANY FORM (e.g. mobile devices, printers, modems);
- Support of third party software packages (e.g. email, spreadsheets etc), or operating system (iOS, Android).

Additional Terms

You are expected to be autonomous in downloading, setting up and learning how to use the Mobile App. Basic information is provided in the form of freely accessible online guides and an in-app help menu.

Smartpay shall not be liable if at any time the Mobile App malfunctions and/or causes you any loss or damage, or if any other loss or damage suffered as a result of any partial or total breakdown of, or inability to use, the Mobile App.

You acknowledge that issues may arise that are out of Smartpay’s control. Smartpay cannot attempt to duplicate problems occurring in unsupported hardware and operating systems.

Investigation and programming changes can only be made to the latest version of the Mobile App. There is no obligation to upgrade immediately upon receipt of a new release; however, to resolve problems, Smartpay may require that the latest release is installed.