



## Terms of Service

Last Update: March 26, 2015

The PayPal BUY WITH MOBILE service (“Service”) is provided in the United States of America by PayPal, Inc., 2211 North First Street, San Jose, California 95131, USA (“BUY WITH MOBILE”, BUY WITH MOBILE “we,” or “us”).

BUY WITH MOBILE allows participating third party sellers (“Merchants”) to receive payment from you for the purchase of products and services (“Goods”) from a mobile phone with text messaging capabilities by adding the charge to your mobile carrier phone bill (“Mobile Carrier Purchases”).

This is an important document, which you must consider carefully when choosing whether to use the BUY WITH MOBILE Services. Please be advised: This Agreement contains provisions that govern how legal claims you and we have against each other are resolved (see Section 7 “Agreement to Arbitrate” below). Those dispute-resolution provisions contain an Agreement to Arbitrate, which will, with limited exception, require you to submit claims you have against us to binding and final arbitration and (1) you will only be permitted to pursue claims against BUY WITH MOBILE on an individual basis, not as a plaintiff or class member in any class or representative action or proceeding, and (2) you will only be permitted to seek relief (including monetary, injunctive, and declaratory relief) on an individual basis.

## Your Consent and Acknowledgment

Prior to making a purchase using our Service, you acknowledge that:

- You agree with and accept these Terms of Service as amended by us from time to time by posting to the BUY WITH MOBILE website(s) or otherwise;
- You represent and warrant that you own and/or are authorized to use the mobile phone number provided by you and used to initiate any transaction;
- You have verified the type of Good you wish to purchase from the Merchant;
- You authorize and direct your mobile carrier to bill you for the cost of the Goods and any related charges;
- Any transactions initiated by you through the Service are non-cancellable and cannot be refunded;
- BUY WITH MOBILE is not liable to you or any third party for any unauthorized use or access of your mobile phone;
- You are not obliged to use the Service;
- Goods purchased using the Service are provided by Merchants and not by BUY WITH MOBILE, and that BUY WITH MOBILE shall have no liability to you whatsoever regarding Goods or their delivery.



## Fees

BUY WITH MOBILE will not charge you a fee to use the Service. All you pay for is the Goods at the price indicated by the Merchant.

BUY WITH MOBILE acts solely as a payment provider to the Merchant in sending your payment authorizations and directions to mobile carriers. Accordingly, your purchases may be subject to additional charges imposed by your mobile carrier. You are solely responsible for those charges and finding out what they are.

We also remind you that the Goods that you are about to purchase are subject to the Merchant's applicable terms and conditions.

## Requirements to Use the Service

In order to use the Service you must:

- Have a mobile phone with text messaging capabilities and be authorized by your mobile carrier to use premium text messaging services;
- Have a plan or prepaid contract with your mobile carrier that enables you to send and receive premium text messages for Mobile Carrier Purchases;
- Have a mobile carrier which is part of BUY WITH MOBILE's network of participating mobile operators;
- Be at least 13 years old. If you are 13 or older but under the age of 18, you must review these Terms of Service with your parent or guardian and have their approval.

You consent to receive autodialed or pre-recorded calls and text messages from BUY WITH MOBILE at any telephone number that you have provided us or that we have otherwise obtained. We may place such calls or texts to (i) notify you regarding your account; (ii) troubleshoot problems with your account (iii) resolve a dispute; (iv) collect a debt; (v) poll your opinions through surveys or questionnaires, (vii) contact you with offers and promotions; or (viii) as otherwise necessary to service your account or enforce this Terms of Service, our policies, applicable law, or any other agreement we may have with you. Standard telephone minute and text charges may apply.

BUY WITH MOBILE may share your telephone numbers with our service providers (such as billing or collections companies) who we have contracted with to assist us in pursuing our rights or performing our obligations under this Terms of Service, our policies, applicable law, or any other agreement we may have with you. You agree these service providers may also contact you using autodialed or pre-recorded calls and text messages, as authorized by us to carry out the purposes we have identified above, and not for their own purposes.

BUY WITH MOBILE may, without further notice or warning and in its discretion, monitor or record telephone conversations you or anyone acting on your behalf has with



<BUSINESS> or its agents for quality control and training purposes or for its own protection.

## Privacy

Protecting your privacy is very important to us. Please review our [Privacy Policy](#) in order to better understand our commitment to maintaining your privacy, as well as our use and disclosure of your Information.

## Complaints and Support

If you have a complaint about BUY WITH MOBILE, our goal is to learn about and address your concerns and, if we are unable to do so to your satisfaction, to provide you with a neutral and cost effective means of resolving the dispute quickly. Complaints regarding our Services may be reported to Customer Service online via the “Email Us” link on the “[Contact us](#)” page at any time, or by calling the Customer Service telephone number located on the BUY WITH MOBILE website(s).

## Applicable Law

You agree that, except to the extent inconsistent with or pre-empted by federal law and except as otherwise stated in this Terms of Service, the laws of the State of Delaware, without regard to principles of conflict of laws, will govern this Terms of Service and any claim or dispute that has arisen or may arise between you and BUY WITH MOBILE.

## Agreement to Arbitrate.

You and BUY WITH MOBILE each agree that any and all disputes or claims that have arisen or may arise between you and BUY WITH MOBILE, including without limitation federal and state statutory claims, common law claims, and those based in contract, tort, fraud, misrepresentation or any other legal theory, shall be resolved exclusively through final and binding arbitration, rather than in court, except that you may assert claims in small claims court, if your claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. This Agreement to Arbitrate is intended to be broadly interpreted. The Federal Arbitration Act governs the interpretation and enforcement of this Agreement to Arbitrate.

- a. Prohibition of Class and Representative Actions and Non-Individualized Relief.

YOU AND BUY WITH MOBILE AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND BUY WITH MOBILE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD



RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER BUY WITH MOBILE USERS.

b. Arbitration Procedures.

Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator or arbitrators instead of a judge or jury, and court review of an arbitration award is very limited. However, the arbitrator(s) can award the same damages and relief on an individual basis that a court can award to an individual. The arbitrator(s) also must follow the terms of this Terms of Service as a court would. All issues are for the arbitrator(s) to decide, except that issues relating to arbitrability, the scope or enforceability of this Agreement to Arbitrate, or the interpretation of subsection (a) of this Agreement to Arbitrate ("Prohibition of Class and Representative Actions and Non-individualized Relief"), shall be for a court of competent jurisdiction to decide.

The arbitration will be conducted by the American Arbitration Association ("AAA") under its rules and procedures, including the AAA's Consumer Arbitration Rules (as applicable), as modified by this Agreement to Arbitrate. The AAA's rules are available at [www.adr.org](http://www.adr.org). Document3

The arbitration shall be held in the county in which you reside or at another mutually agreed location. If the value of the relief sought is \$10,000 or less, you or BUY WITH MOBILE may elect to have the arbitration conducted by telephone or based solely on written submissions, which election shall be binding on you and BUY WITH MOBILE subject to the discretion of the arbitrator(s) to require an in-person hearing, if the circumstances warrant. In cases where an in-person hearing is held, you and/or BUY WITH MOBILE may attend by telephone, unless the arbitrator(s) requires otherwise. Any settlement offer made by you or BUY WITH MOBILE shall not be disclosed to the arbitrator.

The arbitrator(s) will decide the substance of all claims in accordance with applicable law, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator(s) shall not be bound by rulings in prior arbitrations involving different BUY WITH MOBILE users, but is/are bound by rulings in prior arbitrations involving the same BUY WITH MOBILE user to the extent required by applicable law. The award of the arbitrator(s) shall be final and binding, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

c. Costs of Arbitration.

Payment of all filing, administration, and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this Agreement to Arbitrate. If the value of the relief sought is \$10,000 or less, at your request, BUY WITH MOBILE will pay all filing, administration, and arbitrator fees associated with the arbitration. Any request for



payment of fees by BUY WITH MOBILE should be submitted to the AAA along with your Demand for Arbitration and BUY WITH MOBILE will make arrangements to pay all necessary fees directly to the AAA. If the value of the relief sought is more than \$10,000 and you are able to demonstrate that the costs of accessing arbitration will be prohibitive as compared to the costs of accessing a court for purposes of pursuing litigation on an individual basis, BUY WITH MOBILE will pay as much of the filing, administration, and arbitrator fees as the arbitrator deems necessary to prevent the cost of accessing arbitration from being prohibitive. In the event the arbitrator determines the claim(s) you assert in the arbitration to be frivolous, you agree to reimburse BUY WITH MOBILE for all fees associated with the arbitration paid by BUY WITH MOBILE on your behalf that you otherwise would be obligated to pay under the AAA's rules.

d. Severability.

With the exception of any of the provisions in subsection (a) of this Agreement to Arbitrate ("Prohibition of Class and Representative Actions and Non-Individualized Relief"), if a court decides that any part of this Agreement to Arbitrate is invalid or unenforceable, the other parts of this Agreement to Arbitrate shall still apply. If a court decides that any of the provisions in subsection (a) of this Agreement to Arbitrate ("Prohibition of Class and Representative Actions and Non-Individualized Relief") is invalid or unenforceable, then the entirety of this Agreement to Arbitrate shall be null and void. The remainder of the Terms of Service, including all other provisions of Section 17 (Disputes with BUY WITH MOBILE), will continue to apply.

## Limitation of Liability

To the maximum extent permitted by law, in no event shall BUY WITH MOBILE, its affiliated companies, its suppliers, or their respective officers, directors, employees, agents, successors or assigns be liable for any special, incidental, indirect, punitive, or consequential damages whatsoever (including, but not limited to, damages for: loss of profits, loss of information, personal injury, negligence, and any other pecuniary or other loss whatsoever arising out of or in any way related to the use of or inability to use the Service even if such party has been advised of the possibility of such damages. In no event shall BUY WITH MOBILE be liable to you for any amount over ten U.S. Dollars (\$10.00).



## Acceptable Use

You will at all times adhere to all applicable laws, rules, and regulations applicable to your use of the Service. Without limiting the foregoing, you may not act as a payment intermediary, aggregator or service bureau or otherwise resell the Service on behalf of any third party, including without limitation the handling, processing, and transmission of funds for any third party. We may refuse to provide and have the right to disable the Service to you or any other user at any time for any reason or no reason whatsoever, including, without limitation, if we suspect fraud, illegal, unauthorised or improper conduct or if your use of the Service results in excessive requests for refunds or chargebacks.

## Release of BUY WITH MOBILE

If you have a dispute with your mobile carrier or one or more Merchant, you hereby release BUY WITH MOBILE, its affiliates, and their respective officers, directors, employees, agents, successors and assigns from any and all claims, demands, liabilities, losses and damages of every kind and nature arising out of or in any way connected with such disputes.

## No Warranty

Our website(s) and the Service are provided on an 'as is' basis. To the fullest extent permitted by applicable laws. We make no representations or warranties of any kind, express or implied, regarding our website(s), the Service, or any application or documentation, including without limitation: (i) any implied warranties of fitness for a particular purpose, title or non-infringement; (ii) that our website(s), the Service, or any application or documentation will meet your requirements, will always be available, accessible, uninterrupted, timely, secure, operate without error, or will contain any particular features or functionality. Except as otherwise required by applicable laws, we may terminate your use of the Service and expand, reduce or suspend the type and or dollar amount of transactions allowed using the Service, change the enrolment process and transaction limits associated with it from time to time based on security issues and other factors at any time in our sole discretion without prior notice.

## Intellectual Property

"BUY WITH MOBILE" and the BUY WITH MOBILE logo are registered trademarks protected by law. All other names of companies and products mentioned may be trademarks of their respective owners. You may not copy, display or use any of these marks without prior written permission of the mark owner.



## General

Following the requirements of 47 U.S.C. Section 230(d), as amended, we hereby notify you that parental control protections are commercially available that may assist you in limiting access to material that is harmful to minors. For more information on how to obtain such protections see GetNetWise (<http://kids.getnetwise.org/>) and OnGuard Online (<http://onguardonline.gov/>). BUY WITH MOBILE does not endorse any particular provider or service that enables parental controls. As required under California Civil Code Section 1789.3, BUY WITH MOBILE provides you with the following specific consumer rights notice regarding: The Complaint Assistance Unit of the Division of Consumer Service of the California Department of Consumer Affairs may be contacted by mail at 1625 North Market Blvd., Sacramento, California 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

If any part of these Terms of Service is for any reason found to be invalid, illegal or unenforceable, all other parts nevertheless remain valid, legal and enforceable. In lieu of the unenforceable provision, the parties agree that the court should attempt effect as much as possible the economic, legal and business objectives as were intended by the unenforceable provision.

These Terms of Service set forth the entire understanding and complete and exclusive statement of the agreement between BUY WITH MOBILE and you with respect to the subject matter and they supersede any proposal or prior agreement, oral or written, and any other communications between the parties in relation to the subject matter of these Terms of Service.

These Terms of Service and the relationship between us shall be governed by and interpreted in accordance with the laws of the State of California exclusively, as such laws apply to contracts between California residents performed entirely within California, excluding its conflicts of laws principles. For complaints that cannot be resolved otherwise, you submit to the exclusive jurisdiction of and venue in the federal and/or state courts for Santa Clara County, California, for all claims arising out of or relating to these Terms of Service or the relationship between the parties.