



# American Express Business Charge Card Member Agreement

# American Express Business Flexible Payment Option (FPO) Agreement

August 2023



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# Contents

<b>American Express Business Charge Card Member Agreement</b>	<b>3</b>
<b>American Express Business Flexible Payment Option (FPO) Agreement</b>	<b>29</b>

# American Express Business Charge Card Member Agreement

Effective from August 2023

## Introduction

This document along with the Financial Table make up the agreement for your Card account with us (called your *account*). It replaces any previous agreement provided to you for your account. Your use of your account is governed by this agreement. This agreement will be available electronically and may be sent to you electronically.

*You* and *your* mean the person who applied for this account but does not include an Employee Card Member. *We*, *us* and *our* mean American Express Australia Limited (ABN 92 108 952 085). *Business* means the business entity (whether a company, partnership, sole trader, association or other or organisation) which is liable to us, jointly and severally with you for all charges to the account and whose name may appear on the Card with your name. *Card* means any Card or other account access device we issue for the purpose of accessing your account. *Charge* means all transactions made using a Card or otherwise charged to your account, and includes purchases, fees, liquidated damages, commissions, taxes and all other amounts you and the business have agreed to pay us or are liable for under this agreement. *Online account* means a secure website where you may access account information.

**By using your account (or by signing and keeping the Card), you, the business and any Employee Card Members agree to the terms of this agreement.**

**Please read this agreement thoroughly and keep it for your reference. It is your responsibility and you agree to ensure that any Employee Card Members are aware of these terms.** Please see the “Employee Card Members” section of this agreement for additional details.

**This agreement contains a limitation of liability clause which limits our responsibility and liability. Please refer to the “Limitation of Liability” section of this agreement for additional details.**

## Use of your Card(s)/Codes

To prevent misuse of your account, you must ensure that you and any Employee Card Members:

- sign the Card in ink as soon as received;
- keep the Card secure at all times;
- regularly check that you still have the Card in your possession;
- do not let anyone else use the Card;
- ensure that you retrieve the Card after making a charge;
- never give out your Card details, except when using the Card in accordance with this agreement; and
- follow any activation process we tell you about, as soon as possible.

To protect your PIN (personal identification number), telephone codes, on-line passwords and any other codes provided and approved by us to be used on your account (called *codes*), you must ensure that you and any Employee Card Members:

- memorise the code;
- destroy our communication informing you of the code (if applicable);
- do not write the code on the Card;
- do not keep a record of the code with or near the Card or account details;
- do not tell the code to anyone;
- if you select a code, do not choose a code that can easily be associated with you such as your name, date of birth or telephone number; and
- take care to prevent anyone else seeing the code when entering it into an Automatic Teller Machine (called ATM) or other electronic device.

## **Permitted Uses**

You may use your account, subject to any restrictions set out in this agreement, to pay for goods and services from merchants who accept the Card (called *merchants*). Here are some examples:

- using your Card to pay for goods and services by presenting the Card to a merchant and complying with their request to sign or enter a code; and
- using your Card or the account to pay for goods and services ordered from a merchant by telephone, internet or mail.

If permitted by the merchant, you may return to the merchant goods or services obtained using your account and receive a credit to your account.

## **Prohibited Uses**

You must not:

- give your Card or account number to others or allow them to use your Card or account for charges, identification or any other purpose;
- return goods or services obtained using your account for a cash refund;
- use your Card to obtain cash from a merchant for a charge recorded as a purchase;
- use your Card for amounts that do not represent bona fide sales of goods or services, e.g. purchases at Merchants that are owned by you (or your family members) or employees or any other person contrived for cash flow purposes;
- obtain a credit to your account except by way of a refund for goods or services previously purchased on your account;

- use your account if you or the business are bankrupt or insolvent or if you do not honestly expect to be able to pay your closing balance on your next statement;
- use your Card if it is found by you after having been reported to us as lost or stolen;
- transfer balances from another account with us to pay your account;
- use your account if your Card has been suspended or cancelled or after the valid date shown on the front of the Card; or
- use your account for an unlawful purpose, including the purchase of goods or services prohibited by the laws of Australia or any other country where the Card is used or where the goods or services are provided.

It is your responsibility to ensure that there is no prohibited use of your account by you, the business and any Employee Card Members. You and the business will be responsible for any prohibited use of your account even if we did not prevent or stop the prohibited use.

## Statements

We will send or make available to you statements of account (called *statements*) periodically. We will normally send or make available to you a statement once every month. Each statement will show important information about your account, such as the outstanding balance on the last day of the statement period (called the *closing balance*), the payment due, the payment due date and will include charges made by you and any Employee Card Members. If your account is seriously overdue or inactive or the balance is less than \$10 or in credit, we may stop sending you statements.

Always check each statement for accuracy and contact us as soon as possible if you need more information about a charge on any statement.

If you have a complaint or problem with your statement or any charge on it, inform us immediately.

## GST Itemisation on statements

The Australian Taxation Office has issued legislative instruments which provides that Business Card Members of American Express Australia Limited can use their Business Card Statements including electronic data files, to support their claim for input tax credits without holding a tax invoice or adjustment note, provided certain requirements are provided and the respective legislative instruments are met. The necessary requirements are set forth in the following legislative instruments (or any updates to the following):

1. Goods and Services Tax: Waiver of Tax Invoice Requirement (Corporate Card Statements) No. 2 Determination 2020 or the prevailing legislative instrument issued by the ATO;

2. Goods and Services Tax: Waiver of Adjustment Note Requirement (Corporate Card Statements) Determination 2020 or the prevailing legislative instrument issued by the ATO.

In respect of the transactions where GST amount paid or payable is shown, the Business Card Statements issued by American Express Australia Limited generally meets the information requirements of the above legislative instruments. In circumstances where no GST breakdown has been provided, you are advised to obtain a tax Invoice or adjustment note to support your GST input tax claims. In addition, an adjustment note is also still required where an increasing adjustment to a GST input tax claim has been made. It is advised to consult your accountant or tax advisor to assess the accuracy of your GST input tax claims.

## **Fees**

The fees and commissions that apply to your account are set out and described in the Financial Table. You and the business agree to pay these fees and commissions and you authorise us to charge them to your account when due.

## **Liquidated Damages**

If you do not pay the full closing balance by the due date on your monthly statement, you are in default and you agree that we may charge you liquidated damages as specified in the Financial Table on any overdue amount. Liquidated damages may themselves be included in a future closing balance in any subsequent statement until paid in full.

## **Right to Change Fees, Liquidated Damages and Commissions**

We reserve the right to change the circumstances in which any of the fees, liquidated damages or the currency conversion commission on your account are charged and the amount of those fees or commission, provided we reasonably believe the fees, liquidated damages or the currency conversion commission associated with your Card or Account still represent good value and are competitively priced. We will provide notice of any change if required by applicable law in accordance with the "Changes" section of this agreement. You and the business agree that we may impose additional fees and commissions at any time by giving you notice as set out in the "Changes" section of this agreement.

## **Liability**

You and the business are jointly and severally liable and promise to pay to us when due all amounts outstanding on your account which includes paying:

- charges on all Cards issued to you and to any Employee Card Members even if there was no signature or Card presented (including telephone, internet and mail orders) and even after Cards have been cancelled and this agreement has been ended;

- charges made by any other person if you or any Employee Card Member allowed them to use your account;
- charges made in breach of this agreement or fraudulently by you or permitted by you or any Employee Card Member; and
- unauthorised charges related to a lost or stolen Card or code being used by an unauthorised person under the circumstances and within the limits set out in the “Lost and Stolen Cards and Misuse of Your Account” section of this agreement.

## **Charge Approval**

Unless we inform you of a spending limit, each charge is approved based on the expense level and credit history of all of your accounts established with us, our subsidiaries and affiliates and/or licensees, as well as on your credit history with other financial institutions and your personal resources and income known by us.

We may at our discretion decide and inform you of a credit limit applicable to your account which is the maximum amount which can be outstanding at any time on your account (including use by any Employee Card Members).

You agree to manage your account so that charges billed to your account do not exceed the credit limit.

## **Card is Our Property**

Although you and any Employee Card Member use Cards on your account, all Cards remain our property at all times. You may be asked and you agree to return the Card to us or anyone we ask to take it on our behalf, including merchants. We may also inform merchants that your Card is no longer valid.

## **Payments**

Payments are due and payable to us on the date set out on your monthly statement, unless we notify you that it is due immediately.

Payments may be made by any of the methods set out in your statement. You must also comply with any instructions and requirements regarding payments as set out in your statement or that we otherwise provide you.

You must pay us in Australian dollars. Payments will not be credited to your account until received and cleared by us. Any time periods that we may provide are estimates only. Please make sure that you allow sufficient time for us to receive and clear payments by the payment due date even if the payment due date falls on a weekend or holiday. This includes mailing time for payments sent by mail and processing time for payments made using payment services offered by participating financial institutions (which you should check with the financial institution). We are not responsible for any delays in receiving payments and you must pay any charges which may apply. If you choose to pay by direct debit, you

agree that any specific terms that we provide to you at enrolment will apply and form part of this agreement. Third parties involved in the sending or processing of payments such as postal authorities or financial institutions are not our agents and their receipt of a payment will not be considered a payment received by us.

We do not have to accept payments that do not conform to our requirements. If we accept a payment that does not conform to our requirements (for example, a payment made in a foreign currency), the payment may be delayed and will not be credited to your account until it is converted into the required form. We may charge your account for any costs we incur and we may impose additional charges for converting payment including the currency conversion commission as specified in this agreement.

If we accept late or partial payments or any payment described as being in full or in settlement of a dispute, we will not lose any of our rights under this agreement or the law including the right to recover the full balance owing.

Payments for your account must be sent separately from payments to any other account. If multiple payments are sent together or if you do not clearly designate your account to be paid, we may apply payments to any account at our sole discretion.

Although we may credit your account for a payment, we reserve the right to reverse the payment if it is returned or dishonoured for any reason.

If you do not make your payment as required or if there is a dishonoured payment, we may consider your account in default under the "Default" section of this agreement.

## **Allocation of Your Payments**

We will normally apply payments to your account in the following order:

- first, to applicable delinquency charges, linked Credit Card account minimum dues, if any, purchases, in that order;
- second, to fees;
- third, to other fees charged by us that appear as a separate item on your monthly statement, for example statement reprint fees; and
- fourth, to charges, other than those above.

## **Payments to Third Parties**

If your account application was obtained from a third party, such as a merchant or sales agent, or if your account or the Card is co-branded with another business, we may pay compensation to them, although the amount of compensation payable to them is unascertainable at this time.

## Charges Made in Foreign Currencies

For each charge submitted to us in a currency other than Australian Dollars (a 'Foreign Charge'), on the day we process the Foreign Charge we will:

- Convert it to US Dollars first (unless it was submitted to us in US Dollars);
- Convert the US Dollar amount into Australian Dollars; and
- Apply a single non-refundable currency conversion fee to the Australian Dollar amount of the Foreign Charge.

We use exchange rates from customary industry sources, or a specific rate if required by law. We use the exchange rate from the weekday prior to the day we process the Foreign Charge (or two weekdays prior for Foreign Charges processed on 1 January and 25 December). The exchange rate we use may be higher or lower than the exchange rate available on the day you made the Foreign Charge, and exchange rate fluctuations can be significant. When making a Charge in a foreign currency you may have the choice to allow a third party to convert the Charge into Australian Dollars at the point of sale. If you choose this option, then that third party will:

- Determine the exchange rate and any commission or fees payable for the currency conversion; and
- Submit that Charge to us in Australian Dollars, meaning we will not convert the Charge or apply currency conversion fee.

You acknowledge that any refund of a Foreign Charge may be different to the Foreign Charge amount originally processed on your Account.

The difference is generally because:

- the refund and Foreign Charge may be processed on different days with different rates;
- we do not apply any currency conversion fee to refunds of Foreign Charges;
- the refund may be only a partial refund for the Foreign Charge; or
- where third parties convert Charges in foreign currency, those third parties may treat refunds differently to the original foreign currency Charge.

## Employee Card Members

At your request we may issue a card on your account to another person (called an *Employee Card Member*). Employee Card Members must be aged at least 18 years. We may limit the number of Employee Cards issued on one account. We generally do not provide copies of agreements, statements, notices and other communications to an Employee Card Member. You acknowledge that we will provide information to an Employee Card Member about their use of the account (for example their charges).

Please see the “Liability” section of this agreement regarding the liability of an Employee Card Member for charges made by that Employee Card Member.

You agree and are responsible to ensure that each Employee Card Member reads, understands and complies with this agreement including the Financial Table and any notices and other communications that we may send to you.

To cancel an Employee Card, please see the “Default/Closing Your Account” section of this agreement.

## **Use of Cash Machines**

The Express Cash™ Program is governed by one or more agreements separate from this agreement.

## **Recurring Charges**

You or an Employee Card Member may authorise a merchant to bill your account at regular intervals for goods or services (called *recurring charges*). Here are some important things that you need to know about recurring charges and your account.

### **Replacement Cards and Cancelled Cards**

A replacement or new Card (called a *replacement Card*) may be issued to you if your Card is lost, stolen, damaged, cancelled, renewed or switched to a different Card type. Your Card may also be cancelled or no further charges permitted without a replacement Card being issued (called a *cancelled Card*).

**In order to avoid potential disruption of recurring charges and the provision of goods or services by the merchant in the case of a replacement Card or cancelled Card, it is always your responsibility to contact the merchant and provide replacement Card information or make alternate payment arrangements.** You and the business agree to be responsible for any recurring charges that may continue to be charged to your account from a Card (including charges to Employee Cards on your account) that has been replaced or cancelled.

Recurring charges may be automatically charged to a replacement Card without notice to you.

Please note that we generally do not provide replacement Card information (such as Card number and Card expiry date) to the merchant.

### **Stopping Recurring Charges**

To stop recurring charges being billed to your account, you must have the right to do so by law or under your arrangement with the merchant and you must advise the merchant in writing or in another way permitted by the merchant, to stop billing charges to your account.

### **Our Enrolment Services**

If we permit, you or an Employee Card Member may authorise us or our agent to enrol you with a merchant for recurring charges. You will remain responsible to make other payment

arrangements until the recurring charges begin to be applied to your account. We are not responsible for any failure to enrol your account for recurring charges or if the merchant fails to charge your account. The paragraph “Stopping Recurring Charges” above also applies if you or an Employee Card Member uses our enrolment services.

## **Authorisation**

We may require charges to be authorised by us before they are accepted by a merchant. We may refuse any request for authorisation of a charge on reasonable grounds, including for example and without limitation where the value of charge exceeds the available credit balance, where we suspect the charge is fraudulent, is subject to Australian or United States sanctions or does not comply with this agreement, or where we reasonably believe that you may be unable to fulfil your obligations under this agreement.

## **Renewal and Replacement Cards**

You and the business authorise us to send you and any Employee Card Members a renewal Card or a replacement Card before the current Card expires. You and any Employee Card Members must destroy any expired Cards by cutting them up. This agreement as amended or replaced continues to apply to any renewal or replacement Cards we issue.

## **Privacy**

The collection, use and disclosure of your information by us is regulated by the Privacy Act. Our Privacy Statement sets out policies on the management of your personal information. In particular, it sets out policies dealing with:

- The collection, use and disclosure of your credit information and personal information.
- How you can access your personal information.
- How you can opt-out from our marketing lists.

A full copy of our Privacy Statement is provided at the end of this agreement.

## **Additional Services**

We may make available additional services or benefits which will be subject to separate terms and conditions. Examples of services or benefits include insurance, assistance services, rewards programs and merchant offers.

We may receive compensation from additional service providers and our compensation may vary by provider and product. Your account will be charged for any fees or premiums that may apply for services and benefits.

Services and benefits that are provided by third parties are subject to the terms and conditions set by the third party and any dispute must be settled directly with the third party. Services and benefits may be changed or cancelled with 30 days' notice with or without a reason, provided we reasonably believe the overall service and benefits associated

with your Card still represent good value and are competitively priced. We are not responsible for any service or benefit not directly provided by us.

If your account is closed, it will be your responsibility to obtain replacement services and benefits or make new payment arrangements with the third party if the service is still available.

## **Lost and Stolen Cards and Misuse of Your Account**

You must tell us immediately by telephone on the number set out at the front of this agreement if:

- a Card is lost or stolen,
- a renewal Card has not been received,
- someone else learns a code, or
- you suspect that your account is being misused.

If a Card that you have reported lost or stolen is later found, you must destroy it and wait for the replacement Card.

## **Liability for Unauthorised Charges**

For unauthorised charges, provided that you, the business and any Employee Card Members complied with this agreement including the section "Use of your Card(s)/Codes" and provided that you, the business and any Employee Card Members did not contribute to, were not in any way involved in or did not benefit from the theft, loss or misuse of the Card then you, the business and any Employee Card Members will not be liable to us for any unauthorised charges, unless you have delayed notifying us, in which case you will be liable for all unauthorised charges until you did notify us.

If you, the business or any Employee Card Members did not comply with this agreement, or if you, the business and any Employee Card Members contributed to, were involved in, or benefited from the loss, theft or misuse, you and the business are liable for any charges for example, if you gave your Card and/or codes to another person to use.

You, the business and any Employee Card Members agree to cooperate with us, including giving us a statutory declaration, affidavit and/or a copy of an official police report, if we ask. You, the business and any Employee Card Members also agree that we may provide information to regulatory authorities.

## **Changes**

We may change any provision of this agreement at any time, including fees, liquidated damages, commissions, how we apply payments and benefits and services associated with the account and changes affecting your payment obligations, provided we reasonably believe the overall fees, liquidated damages, commissions, how we apply payments and benefits and services associated with your Card still represent good value and are competitively priced. We will inform you in accordance with the "Communicating With You" section

of this agreement and as required by law. We will give you at least 20 days' advance written notice, except where the change reduces what you have to pay or the change happens automatically under this agreement.

If you are dissatisfied with any change to this agreement, you may cancel your agreement as set out under the "You May Close Your Account" section of this agreement. We will give you a pro-rated refund of any annual fee if you cancel this agreement as a result of a change that we have made to your detriment and such cancellation is communicated to us within 30 days of our notifying you of that change.

If we have made a major change or a lot of minor changes in any one year, we may give you an updated copy of this agreement or a summary of the changes.

## **Assignment**

We may assign, transfer or sell our rights, benefits or obligations under this agreement at any time to any of our related bodies corporate or to a third party and you consent to this without us having to notify you. If we do so, or intend to do so, you, the business and any Employee Card Member agree that we can give information about you, the business and any Employee Card Members and your account to the third party or related party. Your statutory rights will not be affected.

## **Severability**

If any provision of this agreement conflicts with any applicable law or regulation, that provision will be deemed to be modified or deleted so as to be consistent with law or regulation. This will not affect the parties' obligations which will continue as amended.

## **Suspension**

We may on reasonable grounds immediately stop you or any Employee Card Member from using the Card or we may refuse to authorise a charge. For example, we may do so where the available credit balance has been exceeded, or where we suspect that a charge is fraudulent, or does not comply with law or this agreement, or where we reasonably believe that you will be unable to comply with your obligations under this agreement. We will notify you as soon as reasonably practicable of such a suspension. This agreement will continue if we take either of these actions and you will still be responsible for all charges on your account.

## **Default/Closing Your Account**

### **Default**

We may treat your account as being in default at any time in the event that you or the business fails to comply with your obligations under this agreement, such as failure to make any payment when it is due or if any form of payment is returned or not honoured in full.

We may also consider your account to be in default at any time if any statement made by you or the business to us in connection with your account was false or misleading, you or the business breach any other agreement that you may have with us or with any of our related bodies corporate, or if bankruptcy or other creditor proceedings are threatened or initiated against you or the business or we have any reason to believe that you may not be creditworthy.

The inclusion of previously billed charges and/or any portion of dishonoured payments shown on a statement will not constitute a waiver by us of any default.

In the event of any default, you and the business will also be responsible for all reasonable costs incurred by us or our agents including collection, collection agency, and legal advisor fees and costs, in recovering any amounts unpaid and in protecting ourselves from any harm we may suffer as a result of the default.

### **You May Close Your Account**

You or the business may end this agreement at any time by paying off all amounts owing on your account, destroying all Cards issued on your account, stopping use of your account and requesting the closure of your account.

We will only close your account when you have paid off all amounts you owe us. All fees continue to accrue if outstanding balances exist on a cancelled Card. You can cancel a Card issued to an Employee Card Member by informing us.

### **We May Close Your Account or Cancel Any Card**

We can end this agreement or cancel any or all Cards, your FPO facility (if applicable) or features and services at any time, including but not limited to, if you or the business:

- are in default or are bankrupt, insolvent, or unable to pay your debts or if you become involved in any action or process (including a voluntary process) normally associated with insolvency, including, without limitation, receivership, liquidation, or voluntary administration; or
- cease to carry on a business; or
- in the event you, the business or an Employee Card Member materially breaches this agreement or any other agreement between us or with any of our affiliates; or
- in the event that we deem the levels of fraud or credit risk on any or all Cards or loans is unacceptable to us; or
- in the event that your Account remains inactive for a period of time that is unacceptable to us, provided we have made reasonable attempts to contact you; or
- in the event that you, the business or any Employee Card Member has contravened any applicable laws or regulations; or

- in the event that we determine you, the business or an Employee Card Member are engaged in abuse, misuse or gaming in connection with any points offer; or
- if we are required to do so by law.

We may also end this agreement or cancel any or all Cards or loans with 30 days' notice with or without a reason. If we take such action, you and the business will still be obligated to pay all amounts owing on your account, including amounts owing by any Employee Card Members.

If we end this agreement, you and the business must pay all money you owe us immediately, including any amounts owing by Employee Card Members and unbilled charges that may not be shown on your last statement. We will only close your account when you have paid off all amounts you owe us.

If your Card is cancelled for any reason, all other Cards issued on your account will be cancelled at the same time. You and the business will continue to be responsible for all charges made using your account, including recurring charges until your account is no longer used and any recurring charges are stopped.

## **Communicating With You**

We may communicate with you by any commonly used method of communication including by mail or otherwise delivered to you at the address which is maintained in our records for your account, telephone, mobile phone, email, SMS, facsimile, posting on an American Express website (including [americanexpress.com.au](http://americanexpress.com.au)) or within your online account on such a website, through links provided on a statement or other notice, using other electronic communication channels or any combination of these. To access communications provided through your online account, you must register and select a User ID and Password. Our communications with you may include account servicing messages, statements, disclosures, notices (which include changes to this agreement and collection notices), alerts, information about products and services and other communications.

This agreement, statements, changes to this agreement, regulatory disclosures and notices, and other communications will generally be sent to you electronically. You, the business and any Employee Card Members agree that we may communicate to you by electronic means and that these communications have been provided in writing and it is your responsibility to access and check your electronic communications regularly for statements and other communications.

All mailed communications that we send to you will be deemed to have been received by you 7 business days after the date of the mailing unless you actually receive it earlier or when received in the case of a communication delivered by hand. All electronic communications that we provide including

a statement will be deemed to have been received by you on the day that we send the notification email or SMS, post the electronic communication and/or make the communication available within your online account even if you do not access the electronic communication for any reason, and/or post the electronic communication even if you do not access the electronic communication for any reason.

You must inform us immediately if you change the address or other contact information (such as postal or email address, telephone or mobile phone number) you have given to us, including any changes to the business or Employee Card Member details. If we have been unable to deliver any statements or other communications or these have been returned, we may stop attempting to communicate with you until we receive accurate contact information. We are not responsible for any failure to receive any communication (including a statement) if we send it to the address or in accordance with other contact information for your account appearing in our records or if we do not send the communication because previous communications have been undeliverable. You must inform us if you want an address or other contact information to apply to more than one account with us.

You must also inform us of any changes to other information previously provided to us such as information you provided when you applied for your account. You also agree to give us any additional information and support documentation that we request or as required by law.

## **Where the Business Operates as a Trust**

If the business operates as a trust:

- this agreement binds the business personally and as trustee of that trust; and
- you must use the Card for business purposes of the trust only.

You and the business also represent and warrant to us that:

- the trust is validly formed and any relevant trust document is valid and complies with the law;
- the business is properly appointed as sole trustee of the trust;
- the business has always complied, and will comply, with the terms of the trust and its duties and powers as trustee;
- the business has power to enter into this agreement and to perform its obligations as trustee of the trust; and
- the entry by the business into this agreement is for proper trust purposes;
- the business has a full right of indemnity from the trust assets in respect of all charges, liabilities and obligations under this agreement; and

- the business is entitled to use trust assets to meet any of your or the business' obligations under this agreement, ahead of any rights of any of the beneficiaries.

You and the business will be in default if any of the following events happen:

- the trust is held by a court not to have been properly constituted or you or the business concede that the trust has not been properly constituted;
- the trust terminates or the beneficiaries of the trust resolve to terminate the trust;
- the business ceases to hold the trust assets or property in its name or it ceases to be trustee; or
- the business commits a breach of trust which, in our opinion, is material.

You and the business agree to notify us in writing immediately if any of the above events of default occur.

## **Direct Debit Service Agreement**

This direct debit service agreement authorises us (American Express user ID No. 517) to withdraw money from your nominated account set out in the direct debit request and this agreement. If you have any enquiries relating to this direct debit service agreement you should contact us.

Before you complete the direct debit request, you should confirm with your financial institution that your nominated account can accept direct debits. The nominated account must belong to you or the business.

If we want to change this direct debit service agreement, we will notify you within 14 calendar days in advance of any change. Please notify us in writing if you want to:

- make a change to this direct debit service agreement;
- stop or defer an individual payment; or
- cancel this direct debit service agreement. However, note that we may have to close your account if you cancel this direct debit service agreement.

If you want to dispute a debit that has been made from your nominated account, you should contact us in writing immediately and we will respond to you within seven days.

If the debit date is on a weekend or public holiday in Sydney, we will process your payment on the next business day.

You must make sure that sufficient cleared funds are available in your nominated account on the payment date. If there are insufficient funds and your financial institution dishonours the payment then:

- we will charge you a dishonour fee as outlined in the Financial Table;
- any charges and tax on those charges incurred by your financial institution may be debited from your account;
- any charges and tax on those charges incurred by us may be debited from your account; and

- the amount of the dishonoured debit will be debited to your account.

We also reserve the right to cancel the direct debit request if any debit is returned unpaid by your financial institution.

We will keep your financial institution account details confidential. However, we will disclose these details:

- if you consent; or
- to the extent required by law, for example, if a court order requires disclosure; or
- for the purposes of this direct debit service agreement, for example, to settle a dispute.

You indemnify and keep us indemnified against all losses, costs, damages and liability that we suffer as a result of you giving us incorrect or false information in your direct debit request. Your indemnity:

- extends and covers all changes you make to your direct debit request; and
- continues after this direct debit service agreement is ended.

## **No waiver of our rights**

If we fail to exercise any of our rights under this agreement, this will not be a waiver of our rights and will not prevent us from exercising them later.

## **Set Off**

You and the business each agree that we may set off any amount that you or the business owe to us against any amounts that we owe to you and/or the business under any agreement.

## **Complaints and Problems with Goods or Services Purchased**

If you have a complaint or problem with a merchant or any goods and services charged to your account, you must still pay all charges on your account and settle the dispute directly with the merchant.

## **Assignment of Claims**

Although we may have no obligation to do so, if we credit your account in relation to your claim against a third party such as a merchant, you, the business and any Employee Card Member are automatically deemed to have assigned and transferred to us, any rights and claims (excluding tort claims) that you, the business and any Employee Card Member have, had or may have against any third party for an amount equal to the amount we credited to your account. After we credit your account, you, the business and any Employee Card Member agree not to pursue any claim against or reimbursement from any third party for the amount that we credited to your account. You, the business and any Employee Card Member also agree to cooperate with us if we decide to pursue a third party for the amount credited. Cooperation includes signing any documents

and providing any information that we require. Crediting your account on any occasion does not obligate us to do so again.

## **Examples**

When we provide examples in this agreement, they do not limit the provisions of this agreement. The terms “*includes*”, “*such as*” and “*for example*” mean, respectively, “*includes without limitation*”, “*such as but without limitation*” and “*for example but without limitation*”.

## **Governing Law**

This agreement is governed by the laws of the State or Territory of Australia as stated on your billing address or if your billing address is overseas, as stated on your last known Australian billing address and the courts of that State or Territory shall have jurisdiction over all parties to the agreement.

## **Taxes, Duties and Exchange Control**

You, the business and any Employee Card Member must pay any government tax, duty or other amount imposed by law in any country in respect of the Card, any charge on your account or any use of the account by you or any Employee Card Member.

## **Limitation of Our Liability**

We are not responsible or liable to you, the business or any Employee Card Member for:

- any delay or failure by a merchant to accept the Card;
- our refusal to authorise a charge;
- goods and services you charge to your account, including any dispute with a merchant about goods and services charged to your account;
- any costs, damages or expenses arising out of our failure to carry out our obligations under this agreement if that failure is caused by a third party or because of a systems failure, data processing failure, industrial dispute or other action outside our control; and
- loss of profits or any incidental, indirect, consequential, punitive or special damages regardless of how they arise.

For example, we will not be liable to you, the business or any Employee Card Member for any malfunction or failure of the Card or refusal by a merchant to accept the Card.

## **Complaints**

### **Unauthorised charges**

You agree that when requested you shall provide all the reasonable assistance and relevant information, including written statements, to us and/or the Police in relation to your claim of unauthorised charges.

By reporting the existence of unauthorised charges, you agree to allow us to release any information that you have provided

which is subject of an investigation of unauthorised charges to the Police and any other investigative or statutory authority.

## **Resolving Disputes**

American Express is committed to resolving disputes raised by its customers as part of its service philosophy. American Express has established internal procedures to resolve complaints, whilst also being a member of an external dispute resolution scheme, the Australian Financial Complaints Authority (AFCA).

If you have a complaint about the provision of our credit services, please take the following steps:

- Please contact us by phone on 1300 132 639 to discuss your complaint.
- If your complaint is not satisfactorily resolved within twenty (20) business days, please address your complaint in writing to:

### **The Complaints Manager**

American Express Australia Limited  
GPO Box 1582  
Sydney NSW 2001

- American Express makes every endeavour to resolve complaints in a prompt and fair manner, having regard to the law. If however you continue to remain dissatisfied with American Express' decision, you may seek to have your complaint considered by AFCA, an independent, external dispute resolution body. AFCA will review our actions in accordance with its Scheme Rules to determine if we have fulfilled our obligations to you. Please note that AFCA will refer you to American Express if you didn't first raise your complaint with us.

You may contact AFCA by the following means:

Mail: **Australian Financial Complaints Authority Limited**  
GPO Box 3, Melbourne VIC 3001

Telephone: 1800 931 678

Internet: [www.afca.org.au](http://www.afca.org.au)

## **American Express Privacy Statement**

The following statement describes how American Express collects, uses, shares and keeps your credit information and personal information.

If you do not agree to our use of your credit information and personal information in this way, we may be unable to provide our products and services to you. The way we collect, use, share and keep your information is subject to the Privacy Act.

### **Online Privacy Statement**

The American Express Online Privacy Statement describes how we may collect, use, share and keep information that we get about you online. When you use or access any of our online services, content or programs, whether on your

smart phone, tablet or other mobile device, our Online Privacy Statement applies.

The Online Privacy Statement is available at the link at the bottom of the American Express Australia homepage or at: [americanexpress.com.au/privacy](https://americanexpress.com.au/privacy)

### **Credit Reporting Policy**

The American Express Credit Reporting Policy contains additional information about:

- credit reporting including credit reporting bodies to which American Express is likely to disclose your credit information
- how you may complain about a failure of American Express to comply with the Privacy Act, and how American Express will deal with a complaint.

The Credit Reporting Policy is available at: [americanexpress.com.au/CreditInfo](https://americanexpress.com.au/CreditInfo)

### **Collection, use and sharing of credit information**

American Express may obtain both consumer and commercial credit reports about you from a credit reporting body for purposes including:

- assessing your credit worthiness
- assessing this application
- collecting overdue payments
- American Express' internal management purposes relating to the provision or management of your Card account (consumer credit or commercial credit as relevant)
- helping you to avoid defaulting on your obligations with American Express
- for any other use in connection with your account as permitted under the *Privacy Act 1988*.

American Express may disclose information about you to credit reporting bodies before, during or after credit is provided to you. This includes:

- that you have applied for a Card, including the account credit limit
- that American Express is a credit provider to you, including the type of credit, account opening and closing dates, and credit limit
- 24 months of repayment history on your Card account
- default information related to payments that are at least 60 days overdue (and advice that overdue payments have been paid in full)
- that you have committed a serious credit infringement
- that you have made a request to correct your personal information
- any other information as permitted under the *Privacy Act 1988*.

American Express may exchange information about you with credit providers named in your application or in a credit report issued by a credit reporting body. Among other things, this is to:

- assess your credit worthiness, this application and any subsequent application for credit
- notify other credit providers of a default by you
- exchange information about your account when you are in default with other credit providers
- complete any approval process for any transactions you wish to make on your account
- administer your Card account
- notify that you have made a request to correct your account

American Express may also exchange credit information about you with any person considering whether to act as a guarantor in relation to this and future applications by you for credit.

### **Collection of personal information**

Generally, if you are applying for a Card account we collect your personal details (such as name, date of birth and address), details about your employment, financial circumstances and other information relevant to your Card account.

American Express collects information about you in a number of ways, including:

- directly from you, such as in your credit application or when you enter one of our competitions or promotions
- from your use of our products and services, such as when you make a purchase using your Card account or when you access one of our websites
- from credit reporting bodies, as described above for credit information or for identity verification
- from others, such as people or companies named in your credit application (for example your employer)

### **Using personal information**

We may use the information we collect about you on its own or combine it with other information to:

- deliver products and services, including:
  - for the same purposes as for credit information listed above
  - issuing your Card
  - verify your identity when you contact us
  - manage your Card account and your transactions
  - tell you about new features, benefits and updates to your accounts, products and services
- advertise and market our products and services – and those of our business partners – including to:
  - send or provide you with marketing, promotions and offers
  - analyse whether our marketing, promotions and offers are effective

- help us determine whether you may be interested in new products or services
- conduct research and analysis, including to:
  - better understand our customers
  - allow you to rate and review our products and services
  - produce data analytics, statistical research and reports
  - review and improve our products and services and make them easier to use
  - develop new products and services
- manage fraud and security risk, including to:
  - detect and prevent fraud or criminal activity
  - safeguard the security of your information
  - assess credit risks relating to our business, including to evaluate and process your applications for our products and services and manage your existing accounts
- use it in other ways as required or permitted by law or with your consent.

### **When we might share your Personal Information**

We do not share Personal Information with anyone except as described below. We only share Personal Information as required or as permitted by law as follows:

- people you authorise to use or access your account (for example, additional Card Members)
- with credit reporting bodies, for the same purposes as for credit information listed above
- the provider of any payment service you use to make payments to American Express
- with regulatory authorities, courts and governmental agencies to comply with legal orders, legal or regulatory requirements, and government requests and to detect and prevent fraud or criminal activity, and to protect the rights of American Express or others
- within the American Express Family of Companies
- with our Service Providers who perform services for us and help us operate our business (for example, Card manufacturers, collection agents, mail houses and reward redemption partners). We require Service Providers to safeguard Personal Information and only use your Personal Information for the purposes we specify
- share and exchange information with business partners and co-brand partners with whom we jointly offer or develop products and services for marketing, planning, product development and research purposes (but they may not use your Personal Information – in particular your email address – to independently market their own products or services to you unless you provide your consent)
- with third parties in the context of a sale of all or part of the American Express Family of Companies or their assets

- any other purpose you have consented to.

### **Aggregated and De-identified Information**

Aggregated or de-identified Information is not personal information and does not identify you individually; however, it may be derived from personal information. It helps us to analyse patterns among groups of people. We may share aggregated or de-identified Information in several ways, for example:

- for the same reasons as we might share Personal Information
- with any Business Partners to help develop and market programs, products or services and present targeted content and marketing
- with Business Partners to conduct analysis and research about customers.

### **Recording Phone Calls**

American Express may also monitor and record your telephone conversations with us for staff training and service quality control purposes.

### **Direct Marketing**

From time to time, American Express, its agents and business partners (including insurance companies) will send you and any additional Card Members information about products, services, offers and other promotions on offer from American Express or jointly with its business partner. These communications may be sent electronically (for example by email, mobile message or push notification), by phone or by post. You can opt-out from receiving direct marketing at any time by calling 1300 132 639. You can also adjust your communication preferences using our Online Preferences or opt-out of email marketing by clicking “unsubscribe” in the footer of our emails. This will continue until you opt-out or until twelve months after you cease being an American Express Card Member.

### **Transfer of your personal information and credit information overseas**

American Express is a global organisation and we may use international entities to help our business functions. As a result, American Express may need to share your information outside of Australia. It is impracticable for American Express to list out each and every country that we may share your information to, but such countries include the United States of America, Malaysia, India, Mexico, Argentina and the United Kingdom. American Express will ensure that any transfer of your personal information is subject to appropriate conditions of confidentiality to ensure your information is handled consistently with the Australian Privacy Principles.

## **Access and corrections**

You may access your personal information and credit information held by American Express, and advise if you think it is inaccurate, incomplete or out-of-date. You may do so by contacting:

### **The Privacy Officer**

American Express Australia Limited

GPO Box 1582

Sydney NSW 2001

Phone: 1300 132 639

## **How we store your personal information**

American Express stores personal information in a combination of secure computer storage facilities and paper based files and other records. American Express has taken a number of steps to protect the personal information we hold from misuse, loss and unauthorised access, modification or disclosure. American Express uses generally accepted technology and security so that we are satisfied that your information is transmitted safely to us through the internet or other electronic means. American Express will take reasonable steps to securely destroy or permanently de-identify personal information when we no longer need it.

## **Information about other persons**

If you provide personal information about someone else to American Express, you must make sure that the individual has seen, understood and agreed to:

- their personal information being collected, used and disclosed by American Express in accordance with this notice
- their ability to access that information in accordance with the *Privacy Act 1988* and to advise American Express if they think the information is inaccurate, incomplete or out-of-date
- the contact details of the American Express privacy officer.

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**Postal Address**

American Express Australia Limited  
Card Member Services  
GPO Box 1582  
Sydney NSW 2001

**Lost or Stolen Cards  
in Australia**

Telephone 1300 366 549

**Overseas**

Report your loss or theft to the nearest  
American Express Travel Service location

**Account Enquiries**

Telephone: 1300 366 549 (in Australia)  
Please have your Card number ready and key in  
when prompted

# American Express Business Flexible Payment Option (FPO) Agreement

Effective from August 2023

# INTRODUCTION

This document along with the FPO Financial Table make up the FPO Agreement for your use of the Flexible Payment Option (FPO) facility on your Linked Account. It replaces any previous FPO Agreement provided to you in relation to your use of FPO.

**You** and **your** mean the person to whom a Linked Account was issued and who is enabled to use FPO in accordance with this FPO Agreement but does not include an Employee Card Member.

**We, us** and **our** mean American Express Australia Limited (ABN 92 108 952 085).

**Business** means the business entity (whether a company, partnership, sole trader, association or other organisation) which is liable to us, jointly and severally with you for all Charges on your Linked Account and whose name may appear on the Card with your name.

**Card** means any card or other account access device we issue for the purpose of accessing your Linked Account.

**Charge** means all transactions made using a card or otherwise charged to your Linked Account, and includes purchases, fees, commissions, interest, taxes and all other amounts you have agreed to pay us or are liable for under this FPO Agreement.

**FPO Agreement** means the conditions which govern the use of the FPO facility.

**Linked Account** means your business charge card account with us.

**Linked Account Agreement** means the conditions which govern the use of your Linked Account.

**By using the FPO facility on your Linked Account, you agree to the terms of this FPO Agreement.**

**Please read this FPO Agreement thoroughly and keep it for your reference. You agree that it is your responsibility and you agree to ensure that any Employee Card Members are aware of these terms.** Please see the "Employee Card Members" section of your Linked Account Agreement for additional details.

**This FPO Agreement contains a limitation of liability clause which limits our responsibility and liability. Please refer to the "Limitation of Liability" section of this FPO Agreement for additional details.**

## About your Flexible Payment Option Facility

Your FPO facility may only be used in conjunction with your Linked Account.

Despite anything to the contrary in the Linked Account Agreement, FPO is a feature on your Linked Account which permits you to carry forward a portion of your monthly statement balance when you want to, up to a maximum of your FPO limit.

## FPO Limit

We will at our discretion and in compliance with applicable law, decide and inform you of the FPO limit applicable to your FPO facility.

Any transactions that exceed your FPO limit will be due in full in accordance with your Linked Account Agreement.

**Changes by you:** You may request, and we may agree, in our discretion and subject to you providing the information we request, to increase your FPO limit at any time. You may request, and we will agree to reduce your FPO limit at any time.

**Changes by us:** You acknowledge that we may change your FPO limit at any time. We will give you notice of such a change as soon as is reasonably practicable.

## Statements

We will adjust your Linked Account statement every month so that it informs you of your monthly Closing Balance and the Minimum Amount Due for that statement period. When paying your statement account balance each month, you have the choice to pay the full Closing Balance, Minimum Amount Due, or any amount in between. Interest charges will apply when you don't pay the full Closing Balance.

It is your responsibility to keep your contact details up to date at all times. You must inform us immediately if there are any changes to your mailing address or email address to which we send statements or other communications.

We are not responsible if you do not receive any communication from us (such as a statement or an account alert) because you failed to keep your contact details updated.

## Minimum Amount Due

You agree to pay us at least the Minimum Amount Due by the due date specified in your statement.

The Minimum Amount Due is calculated as set out in the FPO Financial Table.

You can always pay us (i) more than the Minimum Amount Due, (ii) before the due date, (iii) more often than once a month, or (iv) the outstanding balance at any time.

Please note that credits for example as a result of goods that are returned to a merchant or a service fee credit, do not constitute a payment and do not satisfy the requirement to pay the Minimum Amount Due.

## Allocation of your payments

When utilising the FPO facility on your Linked Account, we will normally apply payments received from you in the following order:

- first, to Interest Charges;
- second, to Account Fees;
- third, to any Overdue balance;
- fourth, to any balance on your statement exceeding your FPO Limit;

- fifth, to any balance on your statement within your FPO Limit;
- sixth, to any charges that have not yet appeared on your statement.

Within any category of items, we apply payments first to the item with the lowest interest rate or, for items on the same interest rate, first to the oldest item.

## **Interest**

If you elect to utilise the FPO facility on your Linked Account, each Charge that you or any Employee Card Members make will constitute a loan from us to you.

### **How do you receive an interest grace period for purchases on your Card?**

Interest will not be charged on Charges during the interest grace period. You will have an interest grace period for purchases of the number of days set out in the “Maximum duration of interest free period” section in the FPO Financial Table from the statement date on your statement to the payment due date (due date) or as otherwise notified to you if every month we receive payment in full by the payment due date.

Payment in full is identified as the Closing Balance on your statement.

## **Interest on other charges**

Billed interest is included in the balance on which interest is calculated. Interest is charged on billed interest in the same way (including a grace period) as set out above.

### **How do we calculate interest and when is it added to your statement?**

**Interest on Charges:** Any interest on a Charge applies from and including the day it is made (also referred to as the transaction date on your statement), or from the first day of the statement period in which the Charge is first debited to your account, if that is later, until the day we receive payment in full and credit your Linked Account.

Interest is calculated each day during a statement period on the daily closing balance of Charges on which interest is payable (taking into account any payments or credit to the FPO facility of your Linked Account) at the daily rate (which is the annual interest rate divided by 365). We add together the interest charges for each day and the total interest for the statement period is then charged to the FPO facility on your Linked Account and will appear on your statement on the last day of the statement period identified as “interest charge”.

If different interest rates apply to different parts of the balance on the FPO facility of your Linked Account, we will separately calculate each daily closing balance and interest in the same manner. Daily closing balances with a credit balance are treated as zero (0).

## **What interest rates apply to the FPO facility on your Linked Account?**

We charge interest at the annual percentage rate or rates (called interest rate) set out in the FPO Financial Table, or as otherwise notified to you from time to time. The interest rate(s) applicable to a billing period will be set out on your statement.

## **Authorisation**

We may require Charges to be authorised by us before they are accepted by a merchant. We may refuse any request for authorisation of a Charge on reasonable grounds, including for example and without limitation where we suspect the Charge is fraudulent, is subject to Australian or United States sanctions or does not comply with this FPO Agreement, or where we reasonably believe that you may be unable to fulfil your obligations under this FPO Agreement.

In some cases, a merchant may authorise a Charge in advance and your available FPO limit will be reduced by the amount of the authorisation. For example, when you rent a car, the merchant may initially authorise the full amount of the proposed car rental charge. This means that your available credit will be reduced by that amount, which may (i) restrict your ability to make further Charges to the FPO facility of your Linked Account or (ii) increase the amount due and payable.

## **Default/Closing the FPO facility on your Linked Account**

We may treat the FPO facility on your Linked Account as being in default at any time in the event that you or the business fails to comply with your obligations under this FPO Agreement such as failure to make any payment when it is due, failure to pay any amounts payable in accordance with this FPO Agreement to reduce the unpaid balance to your FPO limit or if any form of payment is returned or not honoured in full.

We may also consider the FPO facility on your Linked Account to be in default at any time if any statement made by you or the business to us in connection with your account was false or misleading, you or the business breach any other agreement that you may have with us or with any of our related bodies corporate, or if bankruptcy or other creditor proceedings are threatened or initiated against you or the business or we have any reason to believe that you may not be creditworthy.

If you are in default and subject to applicable law we may at our discretion require that you pay all sums owing on the FPO facility on your Linked Account including unbilled Charges that may not be shown on your statement.

The inclusion of previously billed minimum payments, any portion of dishonoured payments and any over-limit amounts in the Minimum Amount Due section of your statement will not constitute a waiver by us of any default.

In the event of any default, you will also be responsible for all reasonable costs incurred by us or our agents including legal advisers, in recovering any amounts unpaid and in protecting ourselves from any harm we may suffer as a result of the default.

### **You may Cancel the FPO facility on your Linked Account**

You or the business may end this FPO Agreement at any time by paying off all amounts owing on the FPO facility on your Linked Account and requesting the cancellation of the FPO facility on your Linked Account.

We will only cancel the FPO facility on your Linked Account when you have paid off all amounts you owe us.

### **We may Cancel the FPO facility on your Linked Account**

We can end this FPO Agreement or cancel your FPO facility immediately in accordance with the “We May Close Your Account or Cancel Any Card” section of your Linked Account Agreement.

We may also terminate this FPO Agreement at any time with 30 days’ notice with or without a reason.

If we take such action, you will still be obligated to pay all amounts owing on the FPO facility on your Linked Account.

If we end this FPO Agreement you must immediately pay any sums that are due and payable and continue to pay the Minimum Amount Due. We will only close the FPO facility on your Linked Account when you have paid off all amounts you owe us.

You will continue to be responsible for all Charges made using your Card, including recurring Charges until your Card is no longer used and any recurring Charges are stopped.

## **Incorporation of Linked Account Agreement**

In addition to the obligations set out in this FPO Agreement, the following sections of your Linked Account Agreement, and related definitions, are incorporated into this FPO Agreement and apply to your use of the FPO facility on your Linked Account:

- Use of your Card(s)/Codes
- Permitted Uses
- Prohibited Uses
- Statements (although see additional details set out in this FPO Agreement)
- GST Itemisation on statements
- Liability
- Card is our Property
- Payments
- Payments to Third Parties
- Charges made in Foreign Currencies
- Employee Card Members
- Recurring Charges

- Renewal and Replacement Cards
- Privacy (including the American Express Privacy Statement)
- Lost and Stolen Cards and misuse of your Account
- Liability for Unauthorised Charges
- Changes
- Assignment
- Severability
- Suspension
- Communicating with you
- No waiver of our rights
- Complaints and problems with good or services Purchased
- Assignment of claims
- Examples
- Governing Law
- Taxes, duties and exchange control
- Complaints

## **Limitation of our Liability**

We are not responsible or liable to you or any Employee Card Member for:

- any delay, failure or any refusal by a merchant to accept the Card;
- our refusal to authorise a Charge
- goods and services you charge to your Card, including any dispute with a merchant about goods and services charged to your Card; and
- except in relation to our liability set out in the EFT Code of Conduct (where applicable), loss of profits or any incidental, indirect, consequential, punitive or special damages regardless of how they arise.

If any warranties or conditions are implied under the *Australian Securities and Investments Commission Act 2001* or any similar law in respect of goods or services supplied under this FPO Agreement or in connection with a Card, then our liability for a breach of any such warranty or condition is limited to:

- in the case of goods, the replacement cost of the goods, the supply of equivalent goods, the repair of the goods, or the cost of having the goods repaired; and
- in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

**Postal Address**

American Express Australia Limited  
Card Member Services  
GPO Box 1582  
Sydney NSW 2001

**Lost or Stolen Cards  
in Australia**

Telephone 1300 132 639

**Overseas**

Call collect (reverse charges) to Australia  
+61 2 9271 8666

**Account Enquiries**

Telephone: 1300 132 639 (in Australia)  
Internet: [americanexpress.com.au](http://americanexpress.com.au)