

# Terms and conditions for DynamicPay

Applicable from 1 January 2018

## 1. The agreement

In order for Danske Bank (the “**bank**” or “**Danske Bank**”) to make DynamicPay available to the customer, the customer must sign a DynamicPay agreement with Danske Bank.

## 2. DynamicPay

### 2.1. Conditions for using DynamicPay

To be able to use DynamicPay, the customer must have:

- (a) entered into an agreement with Danske Bank about Business Online®, including the payment module, and
- (b) opened an account with Danske Bank in the currencies required by the bank.

### 2.2. Description of DynamicPay

#### 2.2.1. Use of DynamicPay

DynamicPay is a dynamic discount platform which enables the customer to make proposals to its suppliers to settle an invoice in respect of services or goods purchased by the customer on a date prior to its original due

date against a reduction of the original invoice amount (a “**proposal**”).

2.2.2. Submission of payment instructions  
From time to time, the customer may submit a payment instruction in respect of an invoice to Danske Bank through Business Online® or in another manner agreed between the customer and the bank. Danske Bank may require that payment instructions related to DynamicPay are submitted through one or more separate Business Online user profile(s) and/or in one or more specific file formats determined by Danske Bank.

2.2.3. Submission of proposals  
The customer may instruct Danske Bank to submit a proposal to a supplier who has signed up for the DynamicPay platform (a “**supplier**”) through the DynamicPay platform.

An instruction must be submitted in the manner and format specified by Danske Bank and must contain all information required by the bank to generate a proposal. The bank is not required to comply with an incomplete

instruction and may, but will not be obliged to, inform the customer if an instruction is incomplete. The customer may instruct Danske Bank to submit several proposals in relation to the same invoice.

#### 2.2.4. Processing of proposals

Upon receipt of an instruction to submit a proposal pursuant to 2.2.3, Danske Bank will submit the proposal to the relevant supplier through the DynamicPay platform as soon as possible. If the instruction to submit the proposal is received on a day that Danske Bank is open for business [in Denmark] (a “**Business Day**”) after the cut-off time set by Danske Bank or on a day that is not a business day, Danske Bank will not be required to submit the proposal to the relevant supplier until the following business day.

#### 2.2.5. Procedure for acceptance

If the relevant supplier accepts a submitted proposal, the customer will be deemed to have entered into an irrevocable and binding agreement with the relevant supplier (a “**discount agreement**”) on changing the original

payment date to the adjusted payment date agreed in the discount agreement and the original payment amount to the adjusted payment amount agreed in the discount agreement.

#### 2.2.6. Revocation of proposals

The customer will not be obliged to make any proposals. The customer may revoke a proposal via DynamicPay until it has been accepted by the relevant supplier.

#### 2.2.7. Amendment of payment instructions

The customer irrevocably and unconditionally authorises and instructs Danske Bank to change a relevant payment instruction and effect payment of the relevant invoice in accordance with the terms of a discount agreement.

### 2.3. Effecting payments

All payments made under or in connection with DynamicPay are made pursuant and subject to the terms and conditions of Business Online.

### 2.4. No agreement with Danske Bank

Danske Bank will under no circumstances become a party to the discount agreement or any other agreement between the customer and the supplier. Any claims or disagreements relating to an invoice or a discount agreement is a matter solely between the customer and the relevant supplier. The customer bears the full risk of any failure by a supplier to fulfill any of its obligations towards the customer.

### 2.5. Other effects of discount agreements

The customer will be responsible for any tax, value added tax or accounting effects of entering into a discount agreement.

### 2.6. Certain limitations on use

DynamicPay may be used for the customer's commercial purposes only. DynamicPay may not be used for illegal activities or purposes or for activities or purposes that Danske Bank deems to be morally or ethically questionable or that may harm the image or brand of Danske Bank or DynamicPay.

## 3. Information about suppliers

### 3.1. Notification of a supplier

The customer may request Danske Bank to offer a business that supplies goods and/or services to the customer (a "**potential supplier**") to become a supplier. In order to become a supplier, a potential supplier must sign up to use DynamicPay.

Danske Bank may refrain from providing DynamicPay to a specific supplier or a potential supplier if it, in the opinion of the bank, is necessary to prevent a violation of any applicable law, good standard or practice or the bank's internal procedures to prevent money laundering or financing of terrorism. Only suppliers and potential suppliers established or registered in selected jurisdictions determined by the bank from time to time may sign up to use DynamicPay.

### 3.2. Onboarding procedure

The customer and the bank may agree on a specific onboarding procedure for potential suppliers.

#### **4. Additional information**

The customer must provide such additional information and documents that Danske Bank reasonably requests for the purpose of performing the obligations contemplated in the DynamicPay agreement these terms and conditions.

#### **5. Responsibility for information**

The customer is responsible for the correctness and completeness of all information and instructions provided to Danske Bank. When the customer provides information or instructions through Business Online or any other relevant communications channel, the customer is responsible for completing all relevant fields and data boxes correctly.

If the customer provides any information, instruction or document that is incorrect, incomplete or not provided to the bank in a timely manner, the bank may not be able to perform its obligations under the DynamicPay agreement and these terms and conditions correctly or timely with the result that the

customer may breach its obligations towards one or more suppliers and/or suffer a loss. The customer will be liable for any loss, expense or claim which is a direct or indirect result of an incorrect or incomplete information or instruction provided by the customer or a failure by the customer to provide information or an instruction to Danske Bank or any other relevant party in a timely manner.

#### **6. Further actions**

The customer must perform or have someone else perform – as soon as reasonably possible – all such further actions, and execute and deliver all such other agreements, certificates, instruments and documents, as the bank may reasonably request in order for the bank to be able to perform the service and its other obligations under the DynamicPay agreement and these terms and conditions.

#### **7. Funding of transactions, etc.**

##### **7.1. Customer's funding obligation**

At any time, the customer must have sufficient funds in the customer's account(s) with Danske Bank to meet all payment obligations

towards the suppliers and any other third party.

#### **7.2. No funding obligation for Danske Bank**

Unless otherwise specifically agreed, neither Danske Bank nor any of its affiliates will be obliged to lend, extend credit or otherwise provide or make funds available to the customer. The customer acknowledges to be explicitly aware that any failure by the customer to hold sufficient funds on its account(s) with Danske Bank may result in a default by the customer of its obligations towards a supplier which may result in severe losses for the customer.

#### **8. Authorisations**

##### **8.1. General authorisation**

The customer authorises Danske Bank to provide the service to the customer and to sign any document, give any instruction and take any action on behalf of the customer, provided that such action is required in order for Danske Bank to perform its obligations under the DynamicPay agreement and these terms and conditions.

### **8.2. Authorisation to transfer**

The customer authorises Danske Bank to make transfers from the customer's accounts, provided that such transfer or delivery is based on a service document or otherwise required in order for Danske Bank to perform its obligations under the DynamicPay agreement and these terms and conditions.

### **8.3. Authorisation to disclose**

The customer authorises Danske Bank, on the customer's behalf and at the discretion of the bank, to contact, instruct and disclose any relevant information about the customer and any invoice to a supplier, payment system or any other relevant third party if such contact, instruction or disclosure in the opinion of the bank is necessary or desirable for the performance by the bank of its obligations under the DynamicPay agreement and these terms and conditions.

### **9. Reliance by Danske Bank**

Danske Bank may rely on any instructions, information or documents provided to the bank if the person providing or purporting to provide

such instruction, information or document is a person whom the bank reasonably believes to be acting with authority on the customer's behalf. It is solely the customer's responsibility to ensure that any of the customer's employees, representatives or agents that give instructions to or otherwise communicate with the bank have the authority to do so.

### **10. Legal proceedings; other advice**

DynamicPay does not include the following services:

- (a) legal proceedings between the customer and any supplier or any other third party. In the event that Danske Bank and/or any of its employees, agents or representatives voluntarily or pursuant to law, rules or orders of a court or administrative or arbitral panel, participate or are made to participate in legal proceedings involving the customer, the customer agrees to pay any and all expenses incurred by the bank in that connection as well as reasonable fees set

by the bank for the performance of such additional service(s);

- (b) collection services; or
- (c) the provision of tax, regulatory, accounting or legal advice. The customer acknowledges and agrees that the customer cannot rely on information about such matters that the customer obtains, explicitly or implicitly, from the bank in connection with or incidental to the performance of the bank's obligations under the DynamicPay agreement these terms and conditions.

### **11. Representations and warranties**

On each day that the DynamicPay agreement is in effect, the customer represents and warrants to the bank that:

- (a) the customer has all necessary authority, powers, consents, licences and authorisations and have taken all necessary action to enable the customer to lawfully enter into and

perform the DynamicPay agreement, these terms and conditions and any proposal or discount agreement;

- (b) the DynamicPay agreement, these terms and conditions and any proposal and discount agreement and the obligations created under them are binding upon the customer and enforceable against the customer in accordance with their terms and do not and will not violate the terms of any regulation, order, charge or agreement by which the customer is bound; and
- (c) any information which the customer provides or has provided to the bank is – to the best of the bank’s knowledge – accurate and not misleading in any material respect, and the customer is duly authorised and have obtained all necessary consents from any relevant third parties and authorities under personal data protection laws and any other relevant regulations to provide

such information to the bank and for its use of such information as contemplated in the DynamicPay agreement and these terms and conditions.

## **12. Use of DynamicPay**

DynamicPay and the DynamicPay platform may only be used by the customer. The customer may not resell, reframe, distribute, outsource, use or provide on a timeshare or a service bureau basis or otherwise directly commercialise the sale or lease of the use of DynamicPay or the DynamicPay platform.

## **13. Fees and costs**

### **13.1. Fees**

Danske Bank charges fees for its provision of DynamicPay to the customer. The fees and payment terms are set out in the List of Fees and Charges. A fee becomes due for payment immediately on the relevant payment date set out in List of Fees and Charges . All fees are listed exclusive of VAT and taxes. If the fees for the service is subject to VAT, Danske Bank is entitled to add VAT at the applicable VAT rate to the fees and charge the VAT to the

customer. At present, the service is considered to be subject to VAT, and therefore, the fees will be charged including VAT. If a later reassessment of the service results in the fees being VAT exempt retrospectively, the previously charged VAT will be repaid to the customer to the extent that the VAT is repaid by the tax authorities to Danske Bank.

### **13.2. Amendment of fees**

Danske Bank may amend or supplement the List of Fees and Charges at any time at one month’s written notice to the customer.

The bank has a right to impose increased costs related to its offering of DynamicPay to the customer without notice if such increase is caused by changes in the regulatory environment applicable to the bank or the service.

### **13.3. Costs**

Danske Bank may, without notice, charge the customer for any costs or fees imposed on the bank by a third party for transactions, with the addition of VAT and tax if relevant.

#### 14. Events of default

If any of the following events occur, it will be considered as the customer's default:

- (a) a failure by the customer to make any payment of fees, costs, reimbursements or indemnification amounts to Danske Bank or its affiliates under the DynamicPay agreement or these terms and conditions, unless such payment is received by the bank no later than two business days after the bank has notified the customer of the failure to make the payment;
- (b) any representation or warranty made by the customer is incorrect, untrue or ceasing to be true when made or repeated or deemed to have been made or repeated or any undertaking made by the customer where such undertaking is not met;
- (c) a material breach of any other obligation under the DynamicPay

agreement or these terms and conditions, unless such breach is remedied (provided that it can be remedied) no later than five business days after the bank has notified the customer about the breach or the customer has become aware of the breach;

- (d) the customer (i) is dissolved or liquidated, (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due, or (iii) becomes subject to insolvency proceedings, bankruptcy proceedings or any analogous or similar proceedings; or
- (e) any event of default occurs under any agreement between the customer and the bank or any of the banks affiliates.

If a default occurs, Danske Bank has a right (but not an obligation) to terminate the

DynamicPay agreement with immediate effect by notifying the customer in writing.

#### 15. Changes to these terms and conditions

Danske Bank may change these terms and conditions by giving one month's written notice to the customer. If the changes to the service terms are required because of changes in applicable law or regulations, Danske Bank may change the terms without notice to the customer. Moreover, the bank may change these terms without notice if the changes are for the benefit of the customer.

#### 16. Voluntary termination

The DynamicPay agreement may be terminated by either party at one month's written notice to the other party after which date the bank will cease to make DynamicPay available to the customer.

#### 17. Survival of terms

18. Clauses 5, 9, 17, 18, 20, 26 and 27 of these terms and conditions will survive

the termination of the DynamicPay agreement.

## **19. Limitation of liability**

### **19.1. General limitation of liability**

Danske Bank will only be liable under or in connection with the DynamicPay agreement or these terms and conditions for damage or loss caused directly by the bank's gross negligence or wilful misconduct.

### **19.2. No liability for profits or indirect loss**

Danske Bank will under no circumstances be liable under or in connection with the DynamicPay agreement or these terms and conditions for:

- any loss (whether direct or indirect) of business profits, revenue or of data; or
- any indirect, consequential or incidental damages, liabilities, claims, losses, expenses, awards, proceedings and costs,

in each case, regardless of whether the possibility of such damages was disclosed to

or could reasonably have been foreseen by the servicer.

### **19.3. No liability for losses incurred by the Customer**

Danske Bank will not be responsible for losses incurred directly or indirectly because of any act or omission by the customer or any employee, agent or representative of the customer.

### **19.4. No liability for transmission failures**

The customer accepts that:

- the communication risk associated with the distribution of instructions and information via fax or email is borne by the customer;
- Danske Bank is not liable for errors or losses resulting from forgery or distortion of faxes, email orders or instructions, distorted or forged signatures or other forms of improper or unlawful action by any person (other than an employee or agent of the bank); and

- the bank is not liable for losses resulting from its non-execution of a settlement transaction because of incomplete instructions from the customer.

### **19.5. Maximum liability**

The customer agrees that the bank's liability towards the customer, which relates, directly or indirectly, to the DynamicPay agreement or these terms and conditions or any of the bank's obligations thereunder, will be limited to a total amount of DKK 1,000,000 and the customer hereby waives any and all liability claims exceeding this amount.

## **20. Indemnification**

The customer will reimburse, indemnify and hold harmless the bank, its affiliates and their employees and agents for any and all losses arising directly or indirectly from the bank's performance of its obligations under these terms and conditions, unless such loss was caused directly by the bank's gross negligence or wilful misconduct.

## 21. Illegality

Danske Bank may refuse to provide DynamicPay in respect of a specific transaction and/or to perform a specific instruction or order given by the customer if the bank considers that doing so would be in violation of any applicable law or good market practice or the bank's internal procedures to prevent money laundering and financing of terrorism.

If, in any applicable jurisdiction, it becomes unlawful or unreasonably burdensome for the bank to make DynamicPay available or perform any other obligation under the terms and conditions, the bank will have a right (but not an obligation) to terminate the DynamicPay agreement with immediate effect by giving written notice to the customer.

## 22. Force majeure

Danske Bank will under no circumstances be obliged to perform its obligations under the DynamicPay agreement or these terms and conditions and will under no circumstances be liable for not performing its obligations under

the DynamicPay agreement or these terms and conditions due to the occurrence of any of the following events and as long as such event persists:

- (a) any breakdown of or lack of access to IT systems or damage to data in these systems due to any of the factors listed below and regardless of whether or not the bank, an affiliate or a third-party supplier is responsible for the operation of these systems;
- (b) power failure or a breakdown of the bank's telecommunications, legislative or administrative intervention, acts of God, war, revolution, civil unrest, sabotage, terrorism or vandalism (including computer virus attacks or hacking);
- (c) strikes, lockouts, boycotts or picketing, regardless of whether the bank or its organisation is itself a party to or has started such conflict and regardless of its cause (this also applies if the conflict affects only part of the bank); or

- (d) other circumstances beyond the bank's control.

Nothing in this clause 22 will extend the bank's liability beyond the limitation set out in clause 18.

## 23. Notices

Notices may be sent by registered mail, email, or fax to the addresses and persons specified under the clause "Contact Information" in the DynamicPay agreement.

The customer consents to the bank providing the customer with general information, to the extent permitted by mandatory rules, by posting such information on the bank's website at [danskebank.dk](https://danskebank.dk) or the website of the DynamicPay platform [dynamicpay.com](https://dynamicpay.com) (or any other website that the bank may use from time to time to notify the customer).

**24. Consent to unencrypted communication**

The customer consents to receive notices from Danske Bank by email in non-encrypted form.

**25. Assignment**

**25.1. Assignment by the customer**

The customer may not charge, assign or transfer, in full or in part, its rights and/or obligations under the DynamicPay agreement or these terms and conditions to any person without prior written consent from the bank.

**25.2. Assignment by Danske Bank**

To the extent permitted by law, the bank may charge, assign or transfer, in full or in part, its rights and/or obligations under the DynamicPay agreement or these terms and conditions to an affiliate without the consent of the customer. Moreover, the bank may transfer, in full or in part, any claim against the customer to a third party if a customer default has occurred.

**26. Severability**

Each of the DynamicPay agreement and these terms and conditions is severable, and if any provision (or any part of any provision) of the DynamicPay agreement or these terms and conditions is or becomes invalid under applicable law or regulations, the remaining provisions and, where applicable, the remainder of the provision in question, will not be affected and will remain in full force.

**27. Law and venue**

Each of the DynamicPay agreement or these terms and conditions is governed by and construed in accordance with the laws of Denmark, and all disputes arising out of or relating to a service document that cannot be settled to the parties' satisfaction will be subject to the non-exclusive jurisdiction of the City Court of Copenhagen (in Danish: *Københavns Byret*).