

**Welcome to Barpay.** Barpay LLC and/or its affiliates ("Barpay") provide features and services to you when you use Barpay or software provided by Barpay in connection with any of the foregoing (collectively, "Barpay Services"). Barpay provides the Barpay Services subject to the following conditions.

By using Barpay Services, you agree to these conditions. Please read them carefully.

These terms are in English, and may at times be translated into other languages. In the event of a conflict between these English terms and a translated version, the English language terms will control.

The most recent date of update of these terms is August 23rd, 2020.

## **PRIVACY**

Please review our Privacy Notice, which also governs your use of Barpay Services, to understand our practices.

## **ELECTRONIC COMMUNICATIONS**

When you use Barpay, or send e-mails, text messages, and other communications from your desktop or mobile device to Barpay, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you in a variety of ways, such as by e-mail, text, or in-app push notices. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

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## **PATENTS**

Barpay may apply for certain patents. Please contact us for questions about Barpay's patents and licenses.

## **LICENSE AND ACCESS**

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## **YOUR ACCOUNT**

If you use any Barpay Service, you are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer and mobile device, and you agree to accept responsibility for all activities that occur under your account or password. If you are under 18, you may use the Barpay Services only with involvement of a parent or guardian. Alcohol listings on Barpay are intended for adults. You must be at least 21 years of age to purchase alcohol, or use any app functionality related to alcohol. Barpay reserves the right to refuse service, terminate accounts, or remove or edit content in its sole discretion.

## FLASH SERVICE TERMS

Flash is a service provided by Barpay LLC ("Barpay") that enables users to discover and receive deals from local businesses within the Flash Network. By using the Flash service, you agree to the following additional terms:

1. **Opting In:** When you opt-in to service areas via text, you agree to receive text messages from businesses within the Flash Network. These messages may include deals, promotions, or other communications from participating businesses.
2. **Communication Preferences:** You may receive messages from any business within the Flash Network unless you choose to opt out. You have the ability to opt out of receiving messages from specific venues, service areas, or from the Flash Network as a whole at any time. Instructions on how to manage your communication preferences will be provided in each message.
3. **Data Usage:** By using the Flash service, you agree to allow Barpay and its partners to use your data in accordance with our Privacy Notice. This includes sharing your data with businesses within the Flash Network for the purpose of sending you relevant deals and promotions.
4. **Unsubscribing:** You may unsubscribe from the Flash Network or specific venues at any time by following the opt-out instructions provided in the text messages you receive or by contacting our support team.
5. **Service Availability:** The Flash service is available to users in specific geographic areas. Barpay reserves the right to expand or restrict service areas at its discretion.

## RETURNS, REFUNDS, AND CHARGEBACKS

Barpay serves as an intermediary between an end customer ("User") and a restaurant or bar ("Establishment"). All purchases made with Barpay are agreements between the User and the Establishment. If the User seeks a refund or cancellation of an order, the User must speak directly with the management or representative of the Establishment. If a User disputes a transaction (chargeback), or is issued a refund, the funds will be recouped from the Establishment incrementally by raising the Barpay transaction fees until balance is paid down. While Barpay typically fights all chargebacks, Barpay reserves the right to accept or fight any chargebacks on behalf of the Establishment. All chargebacks, whether won or lost, will incur a \$15 Fee.

## DECLINES

In the event a User's credit or debit card is declined, the tab will enter a "pending" state. The User's account will be frozen until the debt is settled. If the tab remains in a pending state for more than 30 days, the Establishment may contact [support@barpay.com](mailto:support@barpay.com) to recoup the funds.

## DESCRIPTIONS

Barpay attempts to be as accurate as possible. However, Barpay does not warrant that food and drink descriptions or other content of any Barpay Service are accurate, complete, reliable, current, or error-free. If an item described by Barpay itself is not as described, your sole remedy is to speak to a manager or representative of the Establishment.

## **PRICING**

All food and beverage prices on Barpay are created by the Establishment. Where discounts are offered through Barpay, Barpay cannot verify the accuracy of any advertised "full price" of any item.

## **SMARTTIP & CONVENIENCE FEE**

By using the Barpay application to order food and/or drinks, you are agreeing to pay Barpay's "SmartTip." The SmartTip is a guaranteed tip for servers or bartenders and a small service cost. The minimum tip guaranteed to the servers and bartenders is 15%. The guaranteed tip and the service cost amounts are subject to change without notice or warning.

By using the Barpay QR code order and pay system, you are agreeing to pay the convenience fee. The convenience fee is always the lesser of 5% of the gross sales total, or \$1.

## **AGE & OVER SERVICE VERIFICATION**

It is the sole responsibility of the Establishment to verify the Barpay User's age. It is also the sole responsibility of the Establishment to ensure that the User is not being over-served alcohol. Barpay, nor its affiliates, will not be held liable for any damages arising from underage or over-service from the Establishment. If a User has placed an order through the Barpay service, and is underage, or too inebriated to receive the drink, it is the Establishment's responsibility to refuse the service. Users that are underage or too inebriated to order will not receive their order and WILL NOT be refunded.

In the event there is a dispute between the customer (User) and Barpay, Barpay may request to see any video evidence/tapes the Establishment may have recorded. It will be at the discretion of the Establishment to release the recorded video to Barpay.

## **FAST PASS**

Users of Barpay's service have access to a feature called "Fast Pass." This feature allows Users to pay a premium to "skip the line" outside of the Establishment. It is the Establishment's responsibility to ensure that Fast Pass Users are the next patrons admitted to the venue. This does not mean that they will be let in immediately. In some cases, the door may need to be held if the Establishment is at capacity (fire code). If the door is not being held, then it is the Establishment's responsibility to honor Users that have purchased a Fast Pass by allowing them into the Establishment before customers that did not purchase a Fast Pass or pay a premium to enter.

It is the Establishment's responsibility to check a User's ID (when applicable).

Users are responsible for ensuring they are of age to enter the Establishment, are not too intoxicated, and are following any sort of dress code the Establishment requires. The User will not be issued a refund if they are in violation of anything mentioned above.

IF THE ESTABLISHMENT FAILS TO HONOR A PURCHASED FAST PASS BY NOT ALLOWING THE USER WHO IS OF AGE, NOT INTOXICATED, AND FOLLOWING DRESS CODE TO ENTER THE ESTABLISHMENT, THEN BARPAY MAY SEEK DAMAGES FOR ANY COST INCURRED FOR USER REFUNDS AND ANY SORT OF REPUTATION DAMAGE THAT HAS BEEN CAUSED.

## **DIGITAL MENUS**

Establishments utilizing Barpay's contactless digital menus understand and agree that this is an experimental service and adequate terms have not been established. Payment processing and subscriptions are handled by Stripe and all matters related to payment processing will be bound by Stripe's terms of service. Barpay, LLC and or its affiliates will not be held liable for anything whatsoever arising from the use of the digital menu service. Establishment understands that there are paid and free versions of the digital menu service. Barpay and or its affiliates, including third-party services like Google AdSense, may display advertisements near or next to your menu. Paid versions of the digital menu are ad-free.

## **APP PERMISSIONS**

When you use any app created by Barpay, you may grant certain permissions to us for your device. Most mobile devices provide you with information about these permissions.

## **SERVICE TERMINATION**

If the Establishment decides to discontinue the Barpay service at their venue, it is required that they give Barpay a minimum of 14 days notice before doing so. This ensures that Barpay has appropriate time to disable the service for the Establishment and doesn't cause confusion for the Users. Failure to provide written notice 14 days in advance may result in damages sought after by Barpay against the Establishment for any harm caused to Barpay's reputation by the Establishment for not offering the service to the Users.

## **OTHER BUSINESSES**

Parties other than Barpay operate stores, restaurants, bars, provide services, or sell product lines through the Barpay Services. In addition, we may from time to time provide links to the sites of affiliated companies and certain other businesses. We are not responsible for examining or evaluating, and we do not warrant the offerings of, any of these businesses or individuals or the content of their Web sites. Barpay does not assume any responsibility or liability for the

actions, product, and content of all these and any other third parties. You should carefully review their privacy statements and other conditions of use.

## **DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

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## **DISPUTES**

Any dispute or claim relating in any way to your use of any Barpay Service will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act and federal arbitration law apply to this agreement.

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court

(including injunctive and declaratory relief or statutory damages), and must follow the terms of these Conditions of Use as a court would.

To begin an arbitration proceeding, you may file a claim online at [www.adr.org](http://www.adr.org), or by emailing [casefiling@adr.org](mailto:casefiling@adr.org). The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA's Supplementary Procedures for Consumer-Related Disputes. The AAA's rules are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. Payment of all filing, administration, and arbitrator fees will be governed by the AAA's rules.

We each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. If for any reason a claim proceeds in court rather than in arbitration we each waive any right to a jury trial. We also both agree that you or we may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

## **APPLICABLE LAW**

By using any Barpay Service, you agree that the Federal Arbitration Act, applicable federal law, and the laws of the state of California, without regard to principles of conflict of laws, will govern these Conditions of Use and any dispute of any sort that might arise between you and Barpay, LLC.

## **SUBPOENAS**

If you have a subpoena to serve on Barpay, please note that Barpay does not accept service via e-mail or fax and will not respond to the subpoena. All subpoenas must be properly served on Barpay, preferably by mailing the subpoena to the address above.

## **NOTICE AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT**

If you believe that your work has been copied in a way that constitutes copyright infringement, please submit your complaint to us by mailing us at the address above.

## **ADDITIONAL BARPAY SOFTWARE TERMS**

**Use of the Barpay Software.** You may use Barpay Software solely for purposes of enabling you to use and enjoy the Barpay Services as provided by Barpay, and as permitted by the Conditions of Use, these Software Terms and any Service Terms. You may not incorporate any portion of the Barpay Software into your own programs or compile any portion of it in combination with your own programs, transfer it for use with another service, or sell, rent, lease, lend, loan, distribute or sub-license the Barpay Software or otherwise assign any rights to the Barpay Software in whole or in part. You may not use the Barpay Software for any illegal purpose. We may cease providing any Barpay Software and we may terminate your right to use

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