

**PAYACA LIMITED**  
**Terms of Business with Tradespeople**

These Terms apply to you as a Tradesperson when using our Platform to manage quotations, invoicing and/or payment from your Customers and constitute a legally binding agreement which governs the relationship between you and us. Please ensure you have read these Terms carefully. By registering with us and using our Platform, you confirm that you agree with these Terms.

Last updated: 19 November 2019

**1. INTERPRETATION AND DEFINITIONS**

1.1. The following definitions shall apply to these Terms:

<b>Account</b>	shall have the meaning given to it in Clause 3.2;
<b>Applicable Laws</b>	means all laws, regulations, statutes, orders, and directives in force from time to time;
<b>Business Day</b>	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
<b>Commencement Date</b>	means the date on which an Account is created and these Terms are accepted by the Tradesperson;
<b>Customer</b>	means the individual, company or organisation who requests a Quote and who may subsequently instruct the Tradesperson to carry out Work;
<b>Customer Data</b>	means any personal data, including but not limited to, name, address, gender, occupation, email address, card details or bank information, which may be provided to the Tradesperson by a Customer as part of the instructions and/or performance of the Work;
<b>Data Protection Laws</b>	means any laws and regulations relating to privacy or the use or processing of data relating to natural persons, including: (a) EU Directives 95/46/EC and 2002/58/EC (as amended by 2009/139/EC) and any legislation implementing or made pursuant to such directives, including (in the UK) the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) EU Regulation 2016/679 ( <b>GDPR</b> ); and (c) any laws or regulations ratifying, implementing, adopting, supplementing or replacing GDPR; in each case, to the extent in force, and as such are updated, amended or replaced from time to time;
<b>Good Industry Practice</b>	means the exercise of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced tradesperson engaged in the activities of a similar scope and complexity to those that are the subject of these Terms;
<b>Intellectual Property Rights</b>	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, utility models, domain names and all similar rights and, in each case: (i) whether registered or not; (ii) including any applications to protect or register such rights; (iii) including all renewals and extensions of such rights or applications; (iv) whether vested, contingent or future; and wherever existing;
<b>Invoice</b>	means the statement of the charges payable by the Customer to the Tradesperson for the Work;

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<b>Losses</b>	means all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, ex gratia compensation payments, demands and legal and other professional costs (calculated on a full indemnity basis);
<b>Parties</b>	means Payaca and the Tradesperson and <b>Party</b> shall be construed accordingly;
<b>Payaca</b>	means Payaca Limited with registered company number 1173058 and registered office address: the Tramshed, 25 Lower Park Row, Bristol, BS1 5BN;
<b>Platform</b>	means our website <a href="http://www.payaca.com">www.payaca.com</a> , any other website or application owned by Payaca and any other affiliated payment application (including, but not limited to, social media sites and booking applications);
<b>Quote</b>	means an estimate of costs provided by the Tradesperson to the Customer for the Work;
<b>Service</b>	means Payaca's provision of the Platform through which a Tradesperson, in their professional conduct of business, can generate and manage Quotes, statements, Invoices, payment, receipts and any other service offered through the Platform from time to time;
<b>Terms</b>	means these terms of business;
<b>Tradesperson</b>	means the individual or company offering or engaged in trading or a trade;
<b>Tradesperson Information</b>	means all information, data or content provided by a Tradesperson to any form or medium, whether or not such information is owned by the Tradesperson; and
<b>Work</b>	means the work or services requested by the Customer and undertaken by the Tradesperson.

1.2. In these Terms, unless the context otherwise requires:

- 1.2.1. Clause and paragraph headings shall not affect the interpretation of these Terms;
- 1.2.2. the singular includes the plural and vice versa;
- 1.2.3. references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.2.4. **including** (or similar words) means including without limitation;
- 1.2.5. references to legislation (including any subsidiary legislation) include any modification or re-enactment of such legislation;
- 1.2.6. references to **we**, **our** or **us** means Payaca; and
- 1.2.7. references to **you** or **yours** means the relevant Tradesperson.

**2. YOUR OBLIGATIONS**

2.1. You warrant that:

- 2.1.1. you will co-operate with us in all matters relating to the Service, Platform, Quotes and payments;
- 2.1.2. you shall only use the Platform to request and receive payment of Work which are for the bona fide sale of lawful services and related account management activities;
- 2.1.3. you shall not solicit or use Customer Data for any other purpose than to manage and process Quotes, Invoices and payment for the performance of Work;
- 2.1.4. you will perform the Work in accordance with Good Industry Practice;
- 2.1.5. you will comply with all Applicable Laws, when complying with your obligations under these Terms and performing the Work;

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- 2.1.6. act in the best interest of Payaca and not undertake any activities which may in any way harm our business or reputation; and
- 2.1.7. you will obtain and maintain adequate insurance with a reputable insurance provider, including public liability insurance of at least [one million pounds (£1,000,000)].
- 2.2. If you fail to fulfil or perform any of the obligations listed in Clause 2.1 we may, at our sole discretion and without incurring any liability to you:
  - 2.2.1. suspend or remove your Account; and/or
  - 2.2.2. immediately terminate these Terms.

**3. SCOPE OF OUR SERVICE**

- 3.1. These Terms shall commence on the Commencement Date and shall continue until terminated in accordance with these Terms.
- 3.2. To access and use our Platform you must create an account (**Account**). This will enable you to access and use certain features of the Platform such as sending Quotes to Customers and requesting and receiving payment. You can register for an Account using your professional or business email address and creating a password. You must provide accurate, current and complete information during the registration process and keep your Account and contact information up-to-date at all times.
- 3.3. You are responsible for maintaining the confidentiality and security of your Account credentials and may not disclose your credentials to any third party. You must immediately notify us if you know or have any reason to suspect that your credentials have been lost, stolen, misappropriated, or otherwise compromised or in case of any actual or suspected unauthorised use of your Account. You are liable for any and all activities conducted through your Account, unless such activities are not authorised by you and you are not otherwise negligent (such as failing to report the unauthorised use or loss of your credentials).
- 3.4. If you are operating through a company, you must have authority to create and/or access an Account on behalf of that company. By accessing or using the Platform you represent and warrant that you have the relevant authority from the company to enter into these Terms for and on its behalf.

**4. QUOTES**

- 4.1. The information included in a Quote is your responsibility and we are not responsible for the information provided. If you require a deposit prior to commencing the Work, this must be set out in the Quote. If the Quote changes, you are responsible for updating the Customer accordingly.

**5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1. We retain ownership of all Intellectual Property Rights in the Platform.
- 5.2. Payaca grants you a non-exclusive, perpetual and irrevocable licence to use its Intellectual Property Rights for the provision of the Service and use of the Platform. You shall not sub-licence, assign or otherwise transfer the rights granted in this Clause 6.2.
- 5.3. You agree to grant Payaca a non-exclusive, royalty-free, worldwide licence to use, reproduce, modify, display, publish, adapt, make available, communicate, perform, sub-licence and distribute any information (or parts of it) provided to us, to the extent necessary to enable us to provide the Service.
- 5.4. You shall indemnify us against any Losses incurred by Payaca as a result of or in connection with any action, demand or claim that our use or possession of any Tradesperson Information you have provided to us infringes the Intellectual Property Rights of any third party.

**6. TERMINATION**

- 6.1. Either Party may terminate these Terms by giving no less than one (1) month's written notice to the other Party.
- 6.2. We may terminate these Terms in accordance with Clause 2.2.
- 6.3. Without affecting any other right or remedy available to it, either Party may terminate these Terms with immediate effect by giving written notice to the other Party if:

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- 6.3.1. the other Party commits a material breach of these Terms and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that Party being notified in writing to do so;
- 6.3.2. the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- 6.3.3.** the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 6.3.4.** Termination of these Terms shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of these Terms which existed at or before the date of termination.

**7. CONFIDENTIALITY**

- 7.1. Each Party undertakes that it shall not at any time, and for a period of five (5) years after termination of these Terms, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by Clause 7.2.
- 7.2. Each Party may disclose the other Party's confidential information:
  - 7.2.1. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or
  - 7.2.2. to its employees, officers, representatives, sub-contractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under these Terms. Each Party shall ensure that its employees, officers, representatives, sub-contractors or advisers to whom it discloses the other Party's confidential information comply with this Clause 7.
- 7.3. Neither Party shall use the other Party's confidential information for any purpose other than to perform its obligations under these Terms.

**8. LIMITATION OF LIABILITY**

- 8.1. Whilst we will make every effort to ensure the smooth running of our Platform, we cannot guarantee uninterrupted use of our Platform and we are not liable for any Losses arising out of or in connection with any interruptions, breakdown, repair, upgrade or maintenance to our Platform or our Service.
- 8.2. Subject to the limitations set out in these Terms and to the extent permitted by law, we shall only be liable to you (whether in contract, tort (including negligence) or otherwise) for all Losses arising out of or in connection with these Terms, up to the lower of:
  - 8.2.1. an aggregate amount of 110% of the Fees paid or payable by you in accordance with these Terms in the twelve (12) months' preceding the event giving rise to a claim; or
  - 8.2.2. three thousand pounds (£3,000).
- 8.3. To the extent permitted by law, we shall not be liable for:
  - 8.3.1. any punitive, special, indirect or consequential loss or damage;
  - 8.3.2. loss of product;
  - 8.3.3. loss of profit;
  - 8.3.4. loss of revenue;
  - 8.3.5. loss or damage to goodwill or reputation;
  - 8.3.6. or loss of any claim; and/or
  - 8.3.7. any direct, indirect, consequential or punitive damage, Losses or costs suffered, incurred, paid or payable by you,

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arising out of or in connection with your use, inability to use or delay of the Platform or our provision of the Services.

- 8.4. You shall indemnify us against all Losses, damages, costs, charges and expenses arising out of or in connection with:
  - 8.4.1. a claim by a Customer in respect of the relevant Work; and/or
  - 8.4.2. a breach of these Terms by you.
- 8.5. Nothing in this Clause 9 shall limit or exclude any liability for:
  - 8.5.1. death or personal injury; or
  - 8.5.2. fraud or fraudulent misrepresentation.

**9. DATA PROTECTION**

- 9.1. The terms **Data Controller**, **Data Processor** and **Processing** shall have the meanings set out in the Data Protection Laws.
- 9.2. You acknowledge that you are the Data Controller of any Customer Data which is transmitted or received in connection with the Works and you warrant that you shall comply with the obligations of a Data Controller under the Data Protection Laws.
- 9.3. The Parties acknowledge and agree that Payaca is a Data Processor and shall comply with the obligations of a Data Processor under the Data Protection Laws.
- 9.4. As a Data Processor, we shall:
  - 9.4.1. assist with your obligations pursuant to Article 32 to 36 of the GDPR;
  - 9.4.2. provide reasonable assistance to enable you to respond to any subject access requests by a Customer pursuant to Data Protection Laws;
  - 9.4.3. implement and maintain technical and organisation measures to ensure adequate and appropriate security measures for Processing Customer Data; and
  - 9.4.4. only process Customer Data in accordance with your written instructions.

**10. GENERAL**

- 10.1. Neither Party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure is a result of events, circumstances or causes beyond its reasonable control.
- 10.2. We may at any time assign, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under these Terms.
- 10.3. You shall not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under these Terms without our prior written consent.
- 10.4. Any notice given to a Party under or in connection with these Terms shall be in writing and shall be sent by post or email to the address specified in writing to each other from time to time.
- 10.5. Any notice shall be deemed to have been received:
  - 10.5.1. if delivered by hand, on signature of a delivery receipt; or
  - 10.5.2. if sent by pre-paid registered post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; and
  - 10.5.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. For the purposes of this Clause 10.5.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 10.6. We may update and amend these Terms at any time by giving you one (1) week's written notice.
- 10.7. These Terms constitute the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether

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written or oral, relating to its subject matter.

- 10.8. Each Party acknowledges that in entering into these Terms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.
- 10.9. Except as expressly provided elsewhere in these Terms, a person who is not a Party to these Terms shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms.
- 10.10. These Terms and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England.
- 10.11. The Parties agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms or its subject matter or formation.