

# Merchant - Terms and Conditions

## PART A: INTRODUCTION

### 1. About this Agreement

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- 1.1 You provide a food and dining experience to Customers.
- 1.2 We provide our Payment Facility under which you may receive payment from your Customers for your goods and services using the:
  - (a) Credit and Debit Facility; or
  - (b) BNPL Facility.
- 1.3 You agree that it is a condition of use of the Payment Facility that you apply the Customer Discount to Customer Sales using the Payment Facility.
- 1.4 This Agreement sets out the terms and conditions which apply to our Payment Facility.

### 2. Definitions and interpretation

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- 2.1 In this Agreement

**Acquiring Bank** means the bank(s) or the provider(s) of money processing services with which we have arrangements with and which will acquire money from the Customers' Card accounts and pay such money to the Trust Account less certain deductions.

**Affiliate** means a body corporate or other entity which we partially or wholly own, have a contractual relationship with, have control over or have a legitimate interest in.

**Agreement** means the agreement between you and us which comprises the Merchant Application Form, these Terms and Conditions and the Policies.

**App** means the application provided by us relating to the Payment Facility we offer and any upgrades and other software enabling use of the application.

**Bank** means an authorised deposit-taking institution as defined in the *Banking Act 1959 (Cth)*.

**Bank Account** any bank account you hold in your name opened with a Bank set out in the Application Form.

**BNPL Facility** means the "buy now, pay later" facility provided on the terms contained in Part C of this Agreement.

**Business Day** means a day on which Banks are trading in Brisbane.

**Card** means any Australian card issued by Visa or MasterCard but excludes Pre-paid Cards.

**Card Schemes** means the credit or debit card scheme offered by each of VISA, MasterCard, and any other such card scheme operator authorised by the Acquiring Bank.

**Cash Price** means the lowest price for your goods and services that you offer customers if they pay by cash.

**Chargeback** means a debit entry to the Trust Account (where applicable), the reversal of a credit previously settled to your Payment Destination, as a result of an invalid Transaction or a re-imbursalment claimed by an Issuing Bank on behalf of a Customer for the amount of a Customer's Transaction.

**Charges** means the fees and charges outlined in Merchant Application Form.

**Cleared Funds** means funds held in the Trust Account that are available for distribution to your Payment Destination.

**Credit and Debit Facility** means the credit and debit payments facility provided through the Acquiring Bank.

**Customer** means an online or in-store customer which is entitled to use our Payment Facility to purchase goods and services from you.

**Customer Discount** means:

- (a) if you have entered into a Promotion Agreement in addition to this Agreement, the Customer Discount specified in the Promotion Agreement;
- (b) if you have not entered into a Promotion Agreement, any discount that you may offer to Customers from time to time,

which a Customer will receive if the Customer pays you using our Payment Facility which shall be applied to the Cash Price and otherwise in accordance with clause 11.

**Customer Discount Price** means, in respect of a Sale, the Cash Price with the Customer Discount applied and as may be subsequently changed under clause 11.

**Deductions** means the (a) service charges, (b) transaction charges, (c) Chargebacks, (d) Refunds, (e) all government charges and taxes (including goods and services tax) that apply, (f) the full amount of all sales refund Transactions you process, (g) any overpayments or credits we have made in respect of Transactions due to errors or omissions, (h) the value of Transactions which are invalid, including any costs resulting from or monies paid or charges levied in relation to an investigation into the validity of the Transaction or suspected Chargeback, (i) any fees, fines or penalties charged by Card Schemes or costs charged by the Acquiring Bank or Card Schemes, including but not limited to the cost of all forensic investigations, incurred as a direct or indirect result of the your failure to observe your obligations under this Agreement and any other practical operating instructions provided by us, (j) any other money you owe us under this Agreement; (k) reasonable enforcement expenses for any breach of this Agreement and (l) any additional charges imposed by the Acquiring Bank or Card Schemes.

**Direct Entry** means the transfer of funds between Australian bank accounts, the clearing and settling of which is regulated by Australian Payments Clearing Association as the Bulk Electronic Clearing System.

**Issuing Bank** means the bank that issued the Card to the Customer.

**Merchant Account** means an account that we create to identify you and to enable you to use our Payment Facility.

**Merchant Application Form** means the application form that you need to complete to use our Payment Facility on our Website or App.

**Merchant Discount** means the discount to the Cash Price which must be greater than the Customer Discount you agree to accept in full and final satisfaction of payment for goods and services purchased by

Customers using our Payment Facility which shall be agreed upon when you set up your Merchant Account and as may be subsequently changed under clause 10.

**Merchant Discount Price** means, in respect of a Sale, the Cash Price with the Merchant Discount applied.

**Payment Charges** means any transaction fees such as bank fees or merchant fees incurred by us to make a payment to your Payment Destination. We will notify you of the Payment Charges when you set up a Merchant Account with us via the Website or App.

**Payment Destination** means any or all of the following payment destinations:

- (a) your Bank Account;
- (b) your Card; or
- (c) any other payment destination approved by us.

**Payment Facility** mean the payment facility and associated services offered by us from time to time via our Website or App, including the:

- (a) Credit and Debit Facility; or
- (b) BNPL Facility.

**Payment Request** means, in relation to a Sale, a payment request from you to us generated from our Payment Facility when a Sale is completed with a Customer using our Payment Facility.

**PCIDSS** means the Payment Card Industry Data Security Standards. This refers to the data security standards mandated by Visa and MasterCard to facilitate protection of Customer payment data from unauthorised access, which is applicable to any person who stores, processes or transmits card data regardless of that storage or transmittal device.

**Policies** means all of our policies displayed on our Website or App.

**Pre-paid Card** means any stored value or prepaid card and includes both open loop and closed loop pre-paid cards.

**Prohibited Use** means:

- (a) selling of products that are illegal or breach any law or regulation; and
- (b) any use other than in connection with a genuine and legitimate business that provides a food and dining experience .

**Promotion Agreement** means the agreement entitled 'Promotion Agreement' entered into between you and us from time to time.

**Refund** means a refund of the amount of a Transaction to a Customer totaling no more than the original Transaction value.

**Sale** means a sale of goods and/or services by you to a Customer.

**Terms and Conditions** means these terms and conditions.

**Transaction** means a financial transaction conducted by a Customer using the Credit and Debit Facility

when interacting with you.

**Trust Account** means a bank account or sub-account of a bank account operated by or on behalf of us for the purpose of receiving from the Acquiring Bank and paying Cleared Funds to your Payment Destination.

**Website** means [www.payo.com.au](http://www.payo.com.au) and any other website operated by us.

**we, us or our** means Payo Pty Ltd ACN 635 654 821 and includes our Affiliate, where applicable.

**you or your** means the person identified when a Merchant Account is created. If such person does not exist, the name or details are used by someone who is not in fact that person or is otherwise provided dishonestly or fraudulently, then 'you' or 'your' means the person who clicks to accept these Terms and Conditions.

2.2 In this Agreement, unless the context indicates a contrary intention:

- (a) a reference to:
  - (i) the singular includes the plural and vice versa;
  - (ii) an individual or person includes a corporation, partnership, venture, association, authority, trust, state or government;
  - (iii) dollars or \$ is to an amount in Australian currency;
  - (iv) time is to time in the state or territory where the Services are performed;
  - (v) a day is to a period of time commencing at midnight and ending 24 hours later;
  - (vi) a month is to a calendar month;
- (b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) any headings in this Agreement are for convenience only and do not affect interpretation, and
- (d) including and similar expressions are not to be treated as words of limitation.

### **3. Agreement**

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3.1 This Agreement is a contract between you and us.

3.2 This Agreement comprises the Merchant Application Form, these Terms and Conditions and the Policies.

3.3 By completing the Merchant Application Form and clicking accept to these Terms and Conditions, you agree to be bound by this Agreement.

## **PART B: CREDIT AND DEBIT FACILITY**

### **4. Credit and Debit Facility**

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4.1 We agree to use our best endeavours to provide the Credit and Debit Facility to you on a 24 hour, seven (7) days a week basis, subject to the Acquiring Bank providing its services during these times.

- 4.2 We will transfer by Direct Entry, the balance of all Cleared Funds into your Payment Destination less Deductions.
- 4.3 We will perform ongoing merchant monitoring of you as required by us, the Card Schemes or the Acquiring Bank.
- 4.4 You undertake to:
- (a) use your best endeavours to maintain Chargeback rates below chargeback thresholds set by the Card Schemes;
  - (b) reconcile all Transactions;
  - (c) perform fraud control and risk monitoring in accordance with our requirements, as is advised from time to time;
  - (d) respond promptly to all customer inquiries, including cancellations and order changes.
  - (e) provide us with a complete list of your websites and inform us of any changes to such list within five (5) Business Days of such change;
  - (f) comply with Australian applicable laws relevant to the operation of your business;
  - (g) not use the Credit and Debit Facility for a Prohibited Use;
  - (h) not do anything that constitutes or encourages a violation of any applicable law or regulation in Australia or an overseas jurisdiction, including but not limited to the sale of illegal goods or the violation of export controls, obscenity laws or gambling laws;
  - (i) not offer for sale goods or services, or use or display materials, that are illegal, obscene, vulgar, offensive, dangerous, or are otherwise inappropriate;
  - (j) not generate a significant number of complaints for failing to be reasonably accessible to Customers;
  - (k) fully comply with the PCIDSS;
  - (l) not, either directly or indirectly, process any Transaction which was not originated as a result of a Transaction between you and a Customer to whom you have actually supplied the goods and/or services for which the card was used in payment; and
  - (m) not split a Transaction into two or more Transactions on the same card to avoid having to obtain an authorisation.

## **5. Fees and processing charges for the Debit and Credit Facility**

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- 5.1 In consideration of providing the Debit and Credit Facility, you shall pay us the Charges, which shall be deducted from funds held in the Trust Account.
- 5.2 We may at any time review the Charges payable under this Agreement and will notify you of such changes in accordance with this Agreement.
- 5.3 You must pay:
- (a) all duties, taxes and charges, including goods and services tax, in relation to this Agreement or any document related to this Agreement to which you are a party; and

(b) all fees charged by the Acquiring Bank in relation to Card Schemes.

5.4 The amounts payable to us under this Agreement are exclusive of any goods and services tax.

5.5 To the extent that anything done or to be done under or in connection with this Agreement by us constitutes a taxable supply for the purposes of any goods and services tax legislation, the amounts expressed elsewhere in this Agreement as payable or to be provided in relation to that supply will automatically include the additional amount on account of goods and services tax. Such amount will have been calculated by multiplying the value of the non-taxed amount payable or to be provided by you for the relevant taxable supply by the prevailing goods and services tax rate. Any additional amount paid or payable on account of goods and services tax shall be calculated and shall be payable by you without any deduction or set-off of any amount payable by us to you.

5.6 If it is determined on reasonable grounds that the amount of any goods and services tax paid or payable by us differs for any reason from the amount of any goods and services tax recovered from you, the amount of goods and services tax recovered or recoverable from you shall be adjusted by us repaying to you the amount of the overpayment or by you paying to us the amount of the underpayment, as the case may be.

## **6. Surcharging**

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6.1 You must ensure that you:

- (a) charge a Customer a price for goods and services comparable to the price it charges for cash for those goods and services;
- (b) honour the payment of goods or services by a Customer via the Debit and Credit Facility in accordance with this Agreement;
- (c) clearly disclose any surcharges that might apply before processing the Transaction, if you charge a fee for Transactions;
- (d) include any surcharge in the relevant Transaction and not process as a separate Transaction;
- (e) limit the cost of the surcharge to the permitted surcharge as defined by the Reserve Bank of Australia in a standard or other instrument as updated; and
- (f) before a Transaction is completed, allow the Transaction to be cancelled, without the Customer incurring any cost after advising the Customer of the total Transaction amount.

6.2 You acknowledge that the card issuers may from time to time change the classification of a card (i.e. standard or premium) and, as a result when applying a surcharge rate to a Customer, it cannot be guaranteed that the classification of the card on which you have based the surcharge will be the same as the classification on which you are charged a merchant service fee in relation to the same Transaction.

6.3 You must pay any fines associated with your non-compliance of Card Scheme surcharging rules.

## **7. Accounts and Deductions**

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7.1 You authorise us to make Deductions from funds held in the Trust Account in respect of Transactions to which such Deductions relate or from any other funds held by us and we may adjust any payment to your Payment Destination to correct any errors identified. If we debit the Trust Account in which there are insufficient funds, then the payment may be reversed and you will be regarded as not having made the payment.

- 7.2 If at any time there are insufficient funds in the Trust Account to allow all Deductions to be made, we may pay the shortfall from future payments received.
- 7.3 We may appropriate funds held in the Trust Account, towards any and all amounts you owe us under this Agreement. If we do this, the balance of the Trust Account will reduce by the amount used for this purpose. We will notify you promptly after exercising our right to appropriate money in the Trust Account.
- 7.4 You must pay on demand the amount of any debt you owe us under this Agreement which remains unpaid. Should you fail to pay any debt which you owe us by the date we set as the due date for that debt, this will be deemed a default of you and we may commence enforcement action and report your default to a credit reporting agency, in accordance with any notice period required by law, which may affect your credit rating and you may have difficulty obtaining finance in the future.
- 7.5 We may also debit or credit the Trust Account with the amount of any deficiencies or charges we establish are payable following an audit or check of you including where the audit has been carried out by a third party on behalf of us or the Acquiring Bank.
- 7.6 You are responsible for reconciling sales and settlements for all Transactions. If you have any concerns about any missing amounts, you must contact us within five (5) Business Days from the date of the Transaction to have it reviewed. Any disputes raised after this time will not be reprocessed.
- 7.7 You are responsible for reconciling the statements that we send you under this Agreement to ensure that payments to and from the Trust Account have occurred in accordance with this Agreement. It is your obligation to check the accuracy of the statements. If you fails to notify us within 3 months of an incorrect fee being processed, and thus an incorrect amount was debited from the Trust Account, or a payment should have been made you, then you will have no claim against us and the account with us will be deemed settled. This includes but is not limited to terminal rental fees, minimum service fees, termination fees and Transaction fees.

## **PART C: BNPL FACILITY**

### **8. BNPL Facility**

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- 8.1 We agree to provide you with our BNPL Facility for you to accept payment from Customers who use our BNPL Facility to purchase goods and services offered on-line or by in-store by you at the Customer Discount Price in accordance with this Agreement.
- 8.2 By accepting payment for a Sale from a Customer using our BNPL Facility:
- (a) you agree, at all times, to apply the Customer Discount to all Sales from Customers using our BNPL Facility; and
  - (b) you agree, at all times, to accept payment at the Merchant Discount Price less Payment Charges in accordance with clause 9 in full and final satisfaction of the Customer's obligation to pay you for all purchases paid for using our BNPL Facility in accordance with this Agreement.
- 8.3 We do not warrant or guarantee:
- (a) the suitability or reliability of our BNPL Facility or of the content on our Website;
  - (b) continuous, uninterrupted or secure access to our BNPL Facility;
  - (c) the amount of time needed to complete processing of Purchase Request or payment transactions;

- (d) that the Customer you are dealing with will complete the transaction; or
- (e) the identity of any Customer.

8.4 We do not determine if you are liable for any taxes or collect or pay any taxes on your behalf that may arise from your use of our BNPL Facility.

## **9. Payments to you under the BNPL Facility**

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9.1 We will receive a Payment Request from you when a Sale is completed with a Customer using our BNPL Facility.

9.2 Subject to clauses 17.1 and 18, upon receipt of a Payment Request, you agree, in respect of the Sale the subject of the Payment Request:

- (a) to accept the Merchant Discount Price less the Payment Costs from us in full and final satisfaction of the Customer's obligation to pay you the Customer Discount Price;
- (b) the payment in sub paragraph (a) will be made by us paying funds to your Payment Destination; and
- (c) we have up to 7 days to make pay you the amount in sub paragraph (a).

## **10. Merchant Discount for the BNPL Facility**

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10.1 We may from time to time request you agree to a variation of the Merchant Discount. If you do not accept our request within five Business Days, then this Agreement will come to an end subject to any rights or obligations arising prior to that date.

## **PART D: GENERAL**

### **11. Customer Discount for the Payment Facility**

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11.1 You must provide the Customer Discount set out in the Merchant Application Form to our Customers using the Payment Facility.

11.2 We may from time to time request you agree to a variation of the Customer Discount. If you do not accept our request within five Business Days, then this Agreement will come to an end subject to any rights or obligations arising prior to that date.

11.3 You must:

- (a) ensure that the Customer Discount is applied to the Cash Price for all goods and services you sell to our Customers who use the Payment Facility.
- (b) ensure that your Cash Price applies to all your customers that pay cash for your goods and services and no further discount is provided to them;
- (c) you must not inflate your Cash Price to our Customers;
- (d) you must not discriminate against our Customers because they are using the Payment Facility;
- (e) you acknowledge that you may not be able to sell your goods and services to some of our Customers but for the Payment Facility;

- (f) you must not engage in any sort of price manipulation practice; and
- (g) you must not engagement in any unlawful, fraudulent or misleading conduct.

## **12. Entitlement to use our Payment Facility**

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- 12.1 To be entitled to use our Payment Facility, you must:
- (a) be capable of entering into a legally binding contract;
  - (b) have a valid and verifiable email address;
  - (c) have Australian mobile telephone number;
  - (d) provide your address in Australia;
  - (e) have access to a Payment Destination; and
  - (f) meet our verification of identity requirements.
- 12.2 By entering into this Agreement, you represent and warrant that you are entitled to use our Payment Facility and that you are the person entering into this Agreement.

## **13. Checks**

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- 13.1 By completing the Merchant Application Form and clicking to accept these Terms and Conditions you authorise us to verify your identity, including verifying your identity in accordance with the the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). This means we may collect and hold personal information and credit-related information about you if you are an individual or one of the following individuals in relation to:
- (a) company: the directors and shareholders of that company;
  - (b) partnership: the partners;
  - (c) sole trader: the sole trader; or
  - (d) trust: the trustee and beneficiaries.
- 13.2 In pursuance of clause 13.1:
- (a) You acknowledge and agree that we can rely upon:
    - (i) the information you provide to us;
    - (ii) the identity that you use; and
    - (iii) that your use of your Merchant Account and our Payment Facility be for the intended purpose.
  - (b) You must provide any information or documents requested by us to verify your identity.
  - (c) You authorise us to make, directly or through third parties, any enquiries we need to verify your identity and assess your identity under this Agreement including ordering a credit report, performing other repayment capability checks and verifying information you provide against third

party databases.

- (d) All information that we collect about you, including information collected in connection with the verification of your identity, will be collected, used and stored in accordance with our privacy policy displayed on our Website or App.
- (e) If we reasonably consider that you have breached an obligation under this Agreement in relation to your identity, the information you provide to us and/or your use of your Merchant Account and our Payment Facility, you agree, on request from us, to provide us with copies of all documents, notes or communications in relation to such alleged breach.

13.3 If your information changes, you must update it through your Merchant Account via our Website or App.

## **14. Your Merchant Account**

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14.1 Once the things in clause 13.1 have been completed to our satisfaction, we will open your Merchant Account which will allow you to use our Payment Facility.

14.2 You may only accept payment for Sales using our Payment Facility if you have a Merchant Account.

14.3 Once your Merchant Account is created, you will be asked to choose and enter a secure password. You may subsequently access your Merchant Account using your password on our Website or App.

14.4 You must not permit others to use your Merchant Account or allow anyone else to have or use your secure password.

14.5 You agree that if anyone else uses your Merchant Account to accept payment for a Sale using our Payment Facility, that person will be deemed to be you for the purposes of this Agreement and that will not affect our obligations to you under this Agreement or your obligations to us under this Agreement notwithstanding that:

- (a) we know that there has been unauthorised use of your Merchant Account;
- (b) there is a dispute in relation to the Sale; or
- (c) any rights or claims that we may have against that person.

except where we have caused unauthorised access or use of your Merchant Account.

14.6 You must:

- (a) not use your Merchant Account for any unlawful, fraudulent or improper activity;
- (b) immediately notify us if you believe that your Merchant Account may be subject to an unauthorised transaction, fraudulent activity or security breach;
- (c) co-operate with us to investigate any suspected unlawful, fraudulent or improper activity on your Merchant Account, including authorising us to disclose information to third parties such as Visa and MasterCard for the purpose of identifying fraud and unlawful behaviour;
- (d) pay any taxes that may apply to your Merchant Account or use of our Payment Facility; and
- (e) not in any way damage or cause harm to our Payment Facility, Website or App.

14.7 You authorise us (or any third parties providing services on our behalf) to disclose to third parties, to the

extent required by any applicable laws or regulations, any information in relation to you or your Merchant Account.

## **15. In-store Sales**

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- 15.1 After you have entered the details of the Sale into the App, we will provide your electronic device with a unique QR Code or unique near-field communication via the App.
- 15.2 To accept payment for in-store Sales using our Payment Facility, you must allow a Customer to use the Customer's electronic device (such as a mobile phone) with the App installed to either:
- (a) use its camera to scan the QR Code; or
  - (b) use its near-field communication device (**NFC Device**) to scan your NFC Device.
- 15.3 The Sale will be completed once either the QR Code or near-field communication is scanned by the Customer's electronic device.
- 15.4 Payments will then be made to you in accordance with the terms of this Agreement.
- 15.5 You are responsible for keeping your electronic device secure at all times from theft, fraud, misuse or unauthorised use.

## **16. Closing your Merchant Account**

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- 16.1 You may close your Merchant Account by contacting us via the Website or App. All outstanding Payment Requests prior to closure of your Merchant Account will be paid by us provided you have not breached this Agreement.:
- 16.2 We may close your Merchant Account at any time and if we do so, this Agreement will continue to apply to any Payment Requests prior to such closure until all amounts owing have been paid by us provided you have not breached this Agreement.

## **17. Breach of this Agreement**

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- 17.1 If you breach this Agreement, you agree that in addition to our other rights, we may suspend our obligation to pay for your Payment Request until we ascertain our loss contributed by your breach. We may then set off our loss against our obligation to pay the Payment Request.
- 17.2 We may also limit your access to our Payment Facility or suspend your Merchant Account if we suspect that there is any unlawful, fraudulent or improper activity on your Merchant Account.
- 17.3 Except as otherwise stated, this Agreement will terminate once your Merchant Account is closed but you will remain responsible for all outstanding obligations relating to the Merchant Account even after it has been closed.

## **18. Payment Requests**

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- 18.1 We may refuse to pay a Payment Request, refuse to provide the Payment Facility to you or cancel a Payment Request:
- (a) if we believe it is necessary to prevent the risk of fraud and money laundering or terrorism financing; and

- (b) if we believe that our systems in relation with the Payment Facility have been tampered with.

## **19. Refunds**

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- 19.1 The Sale is a contract between you and the Customer. We take no responsibility for the goods and services the subject of the Sale. You acknowledge that the Payment Facility is a means for you to accept payment for the Sale. All refunds and returns must be handled between you and Customer.
- 19.2 Unless we are notified by you that a return and refund is in progress, we will continue to process any Payment Request.
- 19.3 You may notify us that there is a refund to a Customer by using the refund function on the Website or App, in which case:
- (a) if the Customer has used our Payment Facility to pay for the Sale but we have not made payment to you, we will cancel the payment to you for that Payment Request;
- (b) if we have made a payment to you for that Payment Request, you acknowledge that you will owe us the amount that has been paid by us and we may set off against that amount against any amounts we otherwise owe you under this Agreement.

## **20. Disputes between you and a Customer**

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- 20.1 If you have a dispute with a Customer, you should resolve the dispute directly with the Customer. You agree that the outcome of your disputes with Customers will not affect our rights and remedies under this Agreement.

## **21. Changes to this Agreement**

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- 21.1 Except for changes to the Customer Discount and the Merchant Discount which must be changed in accordance with clauses 11 and 10 respectively, we may change this Agreement at any time which includes making changes to our Policies.
- 21.2 Please check this Agreement to ensure you are aware of any changes.
- 21.3 We will endeavour to highlight any significant changes to you where possible via our Website or App.
- 21.4 Each time you place a Payment Request you will be asked to agree to the then current terms of this Agreement. Please read this Agreement as well as our Policies carefully each time you agree to this Agreement when accepting a Sale. If you do not agree with the changes, you may close your Merchant Account but this Agreement prior to the changes will continue to apply to all Payment Requests you have previously placed.

## **22. Limitation of Liability**

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- 22.1 It is an essential pre-condition to you using our Payment Facility and Website or App that you agree and accept that we are not legally responsible for any liability, loss or damage you might suffer related to your use of our Payment Facility and Website or App, whether from our errors or from third parties. This includes your use or reliance on our Payment Facility or any information on our Website or App.
- 22.2 Your use of our Payment Facility, Website or App is entirely at your own risk, for which we shall not be liable.
- 22.3 It shall be your own responsibility to ensure that any products, services or information available through our

Payment Facility and Website or App meet your specific, personal requirements. You acknowledge that such information and materials may contain inaccuracies or errors and we expressly exclude liability for any such inaccuracies or errors to the fullest extent permitted by law.

- 22.4 Access to our Payment Facility or our Website or App may occasionally be unavailable or limited due to a number of reasons such as hardware or software failure or defects, overloading of system capacity, disruptive human activity, interruption of power systems, legal or regulatory restrictions and other causes outside of our control.
- 22.5 To the extent permitted by law, we will not be liable for any loss or damage which you may incur as a result of our Payment Facility or our Website or App being unavailable.

## **23. Competition and Consumer Act**

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- 23.1 For the purposes of Schedule 2 of the Australian Consumer Law, in particular Sections 51 to 53, 64 and 64A of Part 3-2, Division 1, Subdivision A of the *Competition and Consumer Act 2010 (Cth)*, our liability for any breach of a term of this Agreement is limited to: the supplying of the goods or services to you again; the replacement of the goods; or the payment of the cost of having the goods or services supplied to you again.

## **24. Disclaimer**

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- 24.1 To the fullest extent permitted by law, we absolutely disclaim all warranties, expressed or implied, including implied warranties of merchantability and fitness for any particular purpose. We give no warranty that the Payment Facility, Website or App will be free of errors, or that defects will be corrected, or that our Payment Facility and Website or its server is free of viruses or any other harmful components.
- 24.2 Whilst we, at all times endeavour to have the most accurate, reliable and up-to-date information on our Payment Facility and Website or App, we do not warrant or make any representations regarding the use or the result of the use of any document, product, service, link or information in our Payment Facility and Website or as to their correctness, suitability, accuracy, reliability, or otherwise.
- 24.3 To the fullest extent permitted by law, we will not be liable to you for any loss, damage or costs incurred that is indirect or consequential, any loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity other than in respect of any such losses incurred by us directly in respect of this Agreement.
- 24.4 You acknowledge that any consumer-related claims you may have in respect of the goods or services sole to Customer will be a matter between you and the Customer, subject to any obligation on us to process refunds and cancel future payments in accordance with this Agreement and our agreement with the Merchant.
- 24.5 To the extent permitted by law, a party's liability to the other party under or in connection with this Agreement is reduced to the extent, if any, to which the other party's acts or omissions cause or contribute to its own loss or damage.
- 24.6 The parties will take all reasonable steps to mitigate any loss incurred by them under this Agreement.

## **25. Intellectual Property and Restrictions of Use**

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- 25.1 The Payment Facility and Website contain material which is owned by or licensed to us. This material

includes the design, layout, look, appearance, trademarks and graphics. You are not permitted to imitate the Payment Facility or reproduce the documents, information or materials on the Website or App for the purposes of sale or the use by any third party. In particular you are not permitted to republish, upload, transmit electronically or otherwise or distribute any of the materials, documents or products that may be available for download from time to time on the Website or App.

25.2 We expressly reserve all intellectual property rights in all documents, information and materials on the Payment Facility and the Website or App.

## **26. Disputes between you and us**

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26.1 We handle complaints in accordance with the Australian consumer protection legislation such as the *Competition and Consumer Act 2010 (Cth)*.

26.2 In this regard, we will acknowledge receipt of your complaint within 5 Business Days and will aim to resolve disputes with you within 20 Business Days.

## **27. Confidentiality and publicity**

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27.1 In this clause, "Confidential Information" means the existence and contents of this Agreement, including the amount of the Merchant Discount and any information in respect of our business, operations or affairs.

27.2 You must keep our Confidential Information confidential and must:

- (a) not publish or disclose the Confidential Information to any person except with our prior written consent, to your legal advisors or as permitted under this clause;
- (b) not use the Confidential Information for any purpose, except where strictly necessary for the performance of your obligations under this Agreement; and
- (c) comply with all applicable privacy laws.

27.3 Except where required by law, you must not issue any promotional material or make any public comment on or in connection with this Agreement or that includes our name or any variant of our name without our prior written consent.

27.4 You acknowledge that monetary damages alone would not be a sufficient remedy for a default by you under this clause and, in addition to any other legal remedy, we are entitled to any interim, interlocutory or permanent injunction to prevent default under and compel specific performance of this clause.

## **28. Notices**

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28.1 Unless otherwise stated in this Agreement, you agree and consent to receive all communications from us in electronic form.

28.2 Except as explicitly stated otherwise, any notices to us should be given by mail to:

28.3 If you wish to contact us for any other reason, you can do so via the Website or App or using the details below:

Email: info@payo.com.au  
Phone: 1800 733 669  
Address: Suite 2G  
Level 2

199 George Street  
Brisbane QLD 4000

- 28.4 Where a notice is served personally, service of the notice is taken to be effected when delivered. Where a notice is sent by post, service of the notice is taken to be effected on the fourth day after the date of postage.
- 28.5 Where a notice is sent by electronic mail, or through other electronic means, service of the notice is taken to be effected on the day after the day on which it is sent, unless we receive notification that delivery has failed.
- 28.6 You consent to us using the contact details you have provided to us to:
- (a) contact you on an ongoing basis for marketing purposes whether by email, SMS, phone or otherwise (unless you have notified us that you do not wish to receive such communication); and/or
  - (b) contact you in relation to your Merchant Account or our Payment Facility or Payment Request or Sale.

## **29. Indemnity**

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- 29.1 You must indemnify us and any of our Affiliates to the extent they are involved in the provision of the Payment Facility against any liability for loss, costs (including reasonable legal fees), expense or damage they suffer or incur:
- (a) in relation to any claim or demand arising out of your breach of this Agreement; and
  - (b) in relation to your use of our Payment Facility and your Merchant Account,
- except to the extent it is contributed to by the negligent act or omission, or default of us, our Affiliates or others under the control of us or our Affiliates.
- 29.2 This clause survives termination of this Agreement.

## **30. Waiver**

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- (a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A party does not waive its rights under this Agreement because it grants an extension of time to the other party.
- (b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (c) Waiver of a power or right is not effective unless it is in writing.
- (d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given. Waiver of a power or right will not affect the party's right to exercise such power or right in respect of a subsequent breach of this Agreement.

## **31. Miscellaneous**

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- 31.1 This Agreement is governed by the laws in force in Queensland, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Queensland, Australia.
- 31.2 This Agreement represents the whole agreement between you and us concerning your use and access to our Payment Facility, Website or App. No other term is to be included in this Agreement except where it is required to be included by any legislation of the Commonwealth or any State or Territory. All implied terms except those implied by statute and which cannot be expressly excluded are hereby expressly excluded.
- 31.3 You must not assign or otherwise dispose of your rights, entitlements and interest in this Agreement without our consent.
- 31.4 We may assign or otherwise dispose of the Website, App, Payment Facility or this Agreement to any person without your consent.
- 31.5 This Agreement is not intended to create a partnership, joint venture or relationship of principal and agent or trust between the parties.
- 31.6 Each party acknowledges that it has not entered into this Agreement in reliance on, or as a result of any representation, promise, statement, conduct or inducement to it by or on behalf of any other party other than as expressly set out in this Agreement.
- 31.7 If any provision of this Agreement is held invalid, unenforceable, illegal or void, for any reason, such provision will be deemed deleted. The remainder of the Agreement will remain in full force and effect. If any provision of this Agreement is held invalid, unenforceable, illegal or void, for any reason in one jurisdiction, but not in another jurisdiction, such provision which will be deemed deleted only in the jurisdiction in which it is invalid, unenforceable, illegal or void. The remainder of the Agreement will remain in full force and effect.
- 31.8 Each party acknowledges that it has not entered into this Agreement in reliance on, or as a result of any representation, promise, statement, conduct or inducement to it by or on behalf of any other party other than as expressly set out in this Agreement.
- 31.9 The rights, powers and remedies provided in this Agreement are in addition to those provided by law.