

PAY NOW TERMS AND CONDITIONS

Last Update: July 2021

Definitions and interpretation

1.1 In this Agreement:

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 Customer Application Form- Card, 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.

Application Form means the Pay Now Customer Application Form that you need to complete to use our Payment Facility on our Website or App.

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

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

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

Merchant means an online or in-store merchant with which we or our Affiliate has an agreement with us for goods or services to be purchased by you using our Payment Facility.

Nominated Value means \$1,000 or such other amount nominated by us and displayed on our Website or App.

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

Payment Source means any or all of the following payment sources:

- (a) your Bank card issued by Visa or MasterCard or American Express;
- (b) any other payment source approved by us.

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

Purchase Order means a request submitted by you to us, to use the Payment Facility to pay for goods or services offered by a Merchant available through 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.

Terms and Conditions means these terms and conditions.

Visa or MasterCard means any Bank card issued by Visa or MasterCard but excludes Pre-paid Cards.

American Express means any Bank card issued by American Express but excludes Pre-paid Cards.

Website means 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 Customer 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.

1.2 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.

2. Agreement

2.1 This Agreement is a contract between you and us.

2.2 This Agreement comprises the Payment Application Form, these Terms and Conditions and the Policies.

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

3. Payment Facility

3.1 We agree to provide you with our Payment Facility for you to purchase goods and services offered on-line or in-store by Merchants in accordance with this Agreement.

3.2 You acknowledge and agree that we do not have any control over and are not responsible or liable for the goods and services purchased from Merchants.

3.3 We do not warrant or guarantee:

- (a) that the price for the Purchase Order represents the fair and true value for the goods and services purchased from the Merchant;
- (b) the suitability or reliability of our Payment Facility or of the content on our Website;
- (c) continuous, uninterrupted or secure access to our Payment Facility;
- (d) the amount of time needed to complete processing of Purchase Orders or payment transactions;
- (e) that the Merchant you are dealing with will complete the transaction; or

(f) the identity of any Merchant.

3.4 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 Payment Facility.

4. Entitlement to use our Payment Facility

4.1 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 Source; and
- (f) meet our verification of identity requirements.

4.2 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.

5. Assessment and checks

5.1 By completing the Application Form and clicking to accept these Terms and Conditions you authorise us to:

- (a) conduct our assessment as to whether or not you have the means to fulfil your obligations under this Agreement;
- (b) verify your identity; and
- (c) conduct a pre-authorisation of your Payment Source up to the Nominated Value. No funds are received by us during the pre-authorisation process.

5.2 In pursuance of clause 5.1:

- (a) You acknowledge and agree that:
 - (i) we can rely upon the information you provide to us;
 - (ii) the identity that you use to apply for a Customer Account is your true identity; and
 - (iii) your use of your Customer Account and our Payment Facility is for the intended purpose.
- (b) You must provide any information or documents requested by us or a Merchant 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 capability to make payments under this Agreement including ordering a credit report, performing other repayment capability checks and verifying information you provide against third party databases. These third parties include Lateral Payment Solutions Pty Ltd, Data Zoo Pty Limited as trustee for Data Zoo Trust (Datazoo) and Illion Australia Pty Ltd.
- (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 Customer 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.

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

6. Your Customer Account

6.1 Once the things in clause 5.1 have been completed to our satisfaction, we will open your Customer Account which will allow you to use our Payment Facility.

6.2 You may only make Purchase Orders using our Payment Facility if you have a Customer Account.

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

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

6.5 You agree that if anyone else uses your Customer Account to make a Purchase Order, that person will be deemed to be you for the purposes of this Agreement and that will not affect your obligations under this Agreement notwithstanding that:

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

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

6.6 You must:

- (a) not use your Customer Account for any unlawful, fraudulent or improper activity;
- (b) immediately notify us if you believe that your Customer 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 Customer Account, including authorising us to disclose information to third parties such as Lateral Payment Solutions Pty Ltd, Visa, MasterCard, American Express or their affiliates for the purpose of identifying fraud and unlawful behaviour;
- (d) pay any taxes that may apply to your Customer Account or use of our Payment Facility;
- (e) not in any way damage or cause harm to our Payment Facility, Website or App; and
- (f) not open or use more than one Customer Account.

6.7 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 Customer Account.

7. In-store purchases

7.1 If you wish to make an in-store purchase using our Payment Facility, you must allow the App to use

either:

- (a) your mobile device's camera to scan the Merchant's QR Code; or
- (b) the near-field communication device on your electronic device (such as your mobile phone) (**NFC Device**) to scan the Merchant's NFC Device.

7.2 The Purchase Order will be completed once the QR Code or near-field communication is scanned by your electronic device. Payment will then be deducted from your Payment Source for that Purchase Order.

7.3 Your electronic device must only be used for Purchase Orders by you as the holder of the Customer Account.

7.4 You are responsible for keeping your electronic device secure at all times from theft, fraud, misuse or unauthorised use.

8. Closing your Customer Account

8.1 You may close your Customer Account by contacting us via the Website or App provided:

- (a) you have paid all amounts owing to us; and
- (b) no disputes or refunds are in progress.

8.2 We may close your Customer Account at any time and if we do so, this Agreement will continue to apply to any Purchase Orders accepted prior to such closure until all amounts owing are received in full.

8.3 We may also limit your access to our Payment Facility or suspend your Customer Account if we suspect that there is any unlawful, fraudulent or improper activity on your Customer Account.

8.4 Except as otherwise stated, this Agreement will terminate once your Customer Account is closed but you will remain responsible for all outstanding obligations relating to the Customer Account even after it has been closed.

9. Purchase Orders

9.1 We may refuse to pay for a Purchase Order, refuse to provide the Payment Facility to you or cancel an approved Purchase Order before the goods or services are delivered or supplied, if we believe it is necessary to protect the integrity of our systems or the Payment Facility, prevent fraud, limit the risk of money laundering or terrorism financing or otherwise protect our legitimate interests.

10. Fees

10.1 Fees payable by you for the use of our Payment Facility are set out in Schedule 1.

11. Refunds

11.1 The provision of goods or services by the Merchant to you which is subject of a Purchase Order is a contract between you and the Merchant. We take no responsibility for the goods and services the subject of the Purchase Order. You acknowledge that the Payment Facility is a means for you to pay for the goods and services the subject of Purchase Order. All refunds and returns must be handled between you and the Merchant.

12. Disputes between you and a Merchant

12.1 If you have a dispute with a Merchant, you should resolve the dispute directly with the Merchant. You agree that the outcome of your disputes with Merchants will not affect our rights and remedies under this Agreement or your obligation to make any payments due to us.

13. Changes to this Agreement

- 13.1 We may change this Agreement at any time which includes making changes to our Policies.
- 13.2 Please check this Agreement to ensure you are aware of any changes.
- 13.3 We will endeavour to highlight any significant changes to you where possible via our Website or App.
- 13.4 Each time you place a Purchase Order 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 placing a Purchase Order. If you do not agree with the changes, you may close your Customer Account but this Agreement prior to the changes will continue to apply to all Purchase Orders you have previously placed.

14. Limitation of Liability

- 14.1 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, 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.
- 14.2 Your use of our Payment Facility, Website or App is entirely at your own risk, for which we shall not be liable.
- 14.3 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.
- 14.4 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.
- 14.5 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.

15. Competition and Consumer Act

- 15.1 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.
- 15.2 You must be over 18 years of age to use this website and to purchase any goods or services.

16. Disclaimer

- 16.1 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.
- 16.2 Whilst we at all times endeavour to have the most accurate, reliable and up-to-date information on our Payment Facility and Website, 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 App as to their correctness, suitability, accuracy, reliability, or otherwise.

- 16.3 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.
- 16.4 You acknowledge that any consumer-related claims you may have in respect of the goods or services purchased from a Merchant will be a matter between you and the Merchant, subject to any obligation on us to process refunds and cancel future payments in accordance with this Agreement and our agreement with the Merchant.
- 16.5 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.
- 16.6 The parties will take all reasonable steps to mitigate any loss incurred by them in connection with this Agreement.

17. Intellectual Property and Restrictions of Use

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

18. Disputes between you and us

- 18.1 We handle complaints in accordance with the Australian consumer protection legislation such as the *Competition and Consumer Act 2010 (Cth)*.
- 18.2 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.

19. Notices

- 19.1 Unless otherwise stated in this Agreement, you agree and consent to receive all communications from us in electronic form.
- 19.2 Except as explicitly stated otherwise, any notices to us should be given by mail to:

Address: Suite 5GA
Level 5
199 George Street
Brisbane QLD 4000

- 19.3 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 777 290

- 19.4 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.

19.5 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.

19.6 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 Customer Account or our Payment Facility or Purchase Order you have purchased.

20. Indemnity

20.1 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 Customer 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.

20.2 This clause survives termination of this Agreement.

21. Waiver

- (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.

22. Miscellaneous

22.1 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.

22.2 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.

- 22.3 You must not assign or otherwise dispose of your rights, entitlements and interest in this Agreement without our consent.
- 22.4 We may assign or otherwise dispose of the Website, App, Payment Facility or this Agreement to any person without your consent.
- 22.5 This Agreement is not intended to create a partnership, joint venture or relationship of principal and agent or trust between the parties.
- 22.6 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.
- 22.7 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.
- 22.8 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.
- 22.9 The rights, powers and remedies provided in this Agreement are in addition to those provided by law.

Schedule 1 - Fees

You will be charged the following fees by us:

if you use Visa, MasterCard, or American Express Payment Service,

- Visa and MasterCard: 1.5%
- American Express: 1.75%

You authorise us to debit your Payment Source for any fees payable under this Agreement.