

Terms and Conditions of Business
Firefly Payroll Limited

1. **Interpretation**
- 1.1 In these terms and conditions (**Conditions**) the following terms have the following meanings:
Act: the Data Protection Act 1998.
Contract: the Contract incorporating these Conditions and the Service Level Agreement between the Client and Firefly for the supply of the Services.
Client: the person, firm or company who purchases Services from Firefly.
Data: all documents, information and data provided by the Client to Firefly relating to, or in connection with, the Services.
Deliverables: all documents and materials to be supplied by Firefly in relation to, or in connection with, the Services.
Firefly: Firefly Payroll Limited (company number: 05989468) whose registered office is at Unit 3 Downs Court Yalding Hill Yalding Maidstone Kent ME18 6AL.
Services: the services to be provided by Firefly under the Contract as set out in the Service Level Agreement, together with any other services which Firefly provides, or agrees to provide, to the Client.
Service Level Agreement: the service level agreement attached to these Conditions.
2. **Application of conditions**
- 2.1 The Client's acceptance of a quotation for Services by Firefly, constitutes an offer by the Client to purchase the Services on these Conditions. No offer placed by the Client shall be accepted by Firefly other than:
(a) on receipt by Firefly of a copy of the Service Level Agreement executed by the Client; or
(b) (if earlier) by Firefly starting to provide the Services,
when a contract for the supply and purchase of the Services on these Conditions will be established. These Conditions shall apply to and be incorporated into the Contract to the exclusion of all other terms and conditions.
- 2.2 Quotations are given by Firefly on the basis that no Contract shall come into existence except in accordance with condition 2.1. Any quotation is valid for a period of 30 days from its date, provided that Firefly has not previously withdrawn it.
3. **Commencement, duration and trial period**
- 3.1 The Services supplied under the Contract shall be provided by Firefly from the date of acceptance by Firefly of the Client's offer in accordance with condition 2.1.
- 3.2 The Client shall be entitled to terminate the Contract by giving Firefly not less than 90 days written notice.
4. **Firefly's obligations**
- 4.1 Firefly shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Client, in material accordance with the Service Level Agreement.
- 4.2 Firefly shall use reasonable endeavours to meet any performance dates specified in the Service Level Agreement but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
5. **Client's obligations**
- 5.1 The Client shall:
(a) co-operate with Firefly and ensure that all of its employees co-operate, in all matters relating to the Services;
(b) provide to Firefly, in a timely manner, such Data and other information as Firefly may require and ensure that it is accurate in all respects;
(c) comply at all times with its obligations and duties as set out in the Service Level Agreement;
(d) inform Firefly of all security requirements that apply to the Data;
(e) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of the Data;
(f) immediately notify Firefly in writing of any errors or problems with the Data.
- 5.2 If Firefly's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, Firefly shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 5.3 The Client shall be liable to pay to Firefly, on demand, all reasonable costs, charges or losses sustained or incurred by Firefly (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to Firefly confirming such costs, charges and losses to the Client in writing.
6. **Charges and payment**
- 6.1 In consideration of the provision of the Services by Firefly, the Client shall pay the charges as set out in Firefly's quotation. The Client shall pay each invoice submitted to it by Firefly, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by Firefly.
- 6.2 Unless otherwise stated all prices are exclusive of VAT, which shall be charged by Firefly to the Client at the applicable rate.
- 6.3 Time for payment by the Client of all charges shall be of the essence.
- 6.4 Firefly shall be entitled to charge additional sums that are deemed reasonably necessary by Firefly as a result of, or in connection with, any failure by the Client to comply with its obligations under the Contract.
- 6.5 The parties agree that Firefly may review and increase its charges provided that such charges cannot be increased more than once in any 12 month period. Firefly will give the Client written notice of any such increase.
- 6.6 Without prejudice to any other right or remedy that it may have, if the Client fails to pay Firefly any sum on the due date, Firefly may:
(a) charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate of the Bank of England from time to time, accruing on a daily basis until payment is made;
(b) suspend all Services until payment has been made in full;
(c) terminate the Contract.
- 6.7 All sums payable to Firefly under the Contract shall become due immediately on its termination, despite any other provision.
- 6.8 Firefly may, without prejudice to any other rights it may have, set off any liability of the Client to Firefly against any liability of Firefly to the Client.
7. **Intellectual property rights and confidentiality**
- 7.1 As between the Client and Firefly, all intellectual property rights and all other rights in the Deliverables and/or any computer software shall be owned by Firefly.
- 7.2 The Client shall keep in strict confidence all technical or commercial know-how, processes or initiatives which are of a confidential nature and have been disclosed to the Client by Firefly, and any other confidential information concerning Firefly's business or its products which the Client may obtain.
8. **Limitation of liability - THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**
- 8.1 This condition 8 sets out the entire financial liability of Firefly (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Client in respect of:
(a) any breach of the Contract;
(b) any use made by the Client of the Services, the Deliverables or any part of them; and
(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 Nothing in these Conditions limits or excludes the liability of Firefly:
(a) for death or personal injury resulting from negligence; or
(b) for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by Firefly.
- 8.4 Subject to condition 8.2 and condition 8.3, Firefly shall not be liable for:
(i) loss of profits;
(ii) loss of business;
(iii) depletion of goodwill and/or similar losses;
(iv) loss of anticipated savings;
(v) loss of corruption of data or information;
(vi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;
(vii) any losses or expenses incurred by employees or former employees of the Client.
- (b) Firefly's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the level of insurance cover that Firefly has in place from time to time.
9. **Data protection**
- 9.1 The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of Firefly in connection with the Services.
- 9.2 The Client and Firefly acknowledged that for the purposes of the Act the Client is a data controller and Firefly is acting as a data processor in respect of any personal data. The Client agrees to indemnify and keep indemnified (on demand), and defend at its own expense, Firefly against all costs, claims, damages or expenses incurred by Firefly or for which Firefly may become liable due to:
(a) any failure by the Client to comply with any of its obligations under the Act;
(b) in connection with any claim or request made against Firefly by any employee or former employee of the Client in connection with the Act.
10. **Termination**
- 10.1 Without prejudice to any other rights or remedies which Firefly may have, Firefly may terminate the Contract without liability to the Client if:
(a) the Client commits a breach of any of the terms of the Contract; or
(b) the Client becomes insolvent, or commits an act of bankruptcy, or a winding up order is made against it, or the Client makes any arrangements with its creditors, or any execution or distress is levied upon any of the Client's property, or the Client is unable to pay its debts as they fall due, or a petition is filed or a resolution is passed for the Client's insolvency, or any appointment is made to the Court for the appointment of an administrator, or any judgment against the Client shall remain unsatisfied for 14 days.
- 10.2 On termination of the Contract for any reason:
(a) the Client shall immediately pay to Firefly all of Firefly's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Firefly may submit an invoice, which shall be payable immediately on receipt; and
(b) the accrued rights of Firefly and liabilities of the Client as at termination shall not be affected.
- 10.3 On termination of the Contract and subject to all of Firefly's outstanding invoices being paid in full, Firefly will provide reasonable assistance to the Client (at the Client's cost) for a period of one month beginning with the termination date of the Contract, to facilitate a transfer of services to a third party.
11. **Notices**
- 11.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery to the other party.
- 11.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address of the other party, or, if sent by pre-paid first-class post or recorded delivery, on the second business day after posting.
12. **Miscellaneous**
- 12.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 12.2 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties.
- 12.3 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.4 Firefly shall have no liability to you under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including the default of suppliers or subcontractors.
- 12.5 This Contract may only be amended or varied in writing signed by a duly authorised representative of Firefly.
- 12.6 Firefly may at any time assign, transfer, charge, mortgage, sub-contract or deal in any other manner with all or any of its rights under the Contract and may sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party. The Client may not assign or deal in any manner with the Contract without the prior written consent of Firefly.
- 12.7 The Client acknowledges that, in entering into the Contract it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract). Nothing in these Conditions shall limit or exclude any liability for fraud.
- 12.8 If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.
- 12.9 The validity, construction and performance of the Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts.