



## General Terms of Service

Last updated: Jan. 1<sup>st</sup>, 2021

### 1) Legal Agreement

- a) These General Terms of Service (“General Terms”) are a legal agreement between you (“you,” “your”) and Piece Count Take Offs LLC. (“Pieccounttakeoffs.com,” “PIECECOUNTTAKEOFFS,” “PCTO,” “we,” “our,” or “us”) and govern your use of Pieccounttakeoffs.com’s services as described in section #6 herein effectively known within these General Terms of Service as “Services”. If you are using the Services on behalf of a business, that business accepts these terms. By using any of the Services you agree to these General Terms and any policies referenced within (“Policies”), including terms that limit our liability (see Section 18) and require individual arbitration for any potential legal dispute (see Section 21). You also agree to any additional terms specific to Services you use (“Additional Terms”), such as those listed below, which become part of your agreement with us. You should read all of our terms carefully.

### 2) Payment Terms:

- a) Payment for services are due immediately upon the 100% delivery of all services ordered.
- b) Payment for services is accepted by any of the following methods:
  - 2.b.i) By Credit Card via the payment portal link on each digital invoice and powered by Squareup.com online merchant services with whom Pieccounttakeoffs has partnered with to provide such payment processing services.
  - 2.b.ii) By Company check or Bank Cashier’s Check made payable to “Piece Count Takeoffs”, and mailed 1<sup>st</sup> Class to: 6003 S. 64<sup>th</sup> WEST Ave, Tulsa, OK 74107.
  - 2.b.iii) By ACH direct deposit from client’s bank to Piece Count Takeoff’s bank account.
- c) Pieccounttakeoffs.com is responsible for all fees billed by Squareup.com for the use of their payment processing services.
- d) All charges will be made known to customer and agreed upon prior to PCTO commencing with any requested or offered service.

### 3) Privacy:

- a) We will obtain your contact information; personal name, company name, company address, email, and phone number for the purposes of establishing a working relationship with you and the company you may represent. Contact information you provide for this purpose will remain exclusively private to Pieccounttakeoffs, and will not be shared, revealed, sold, or in any other way made known to anyone outside of the management of Pieccounttakeoffs.com. This information will be used exclusively for the following reasons:
  - 3.a.i) In efforts to communicate with you regarding the services you have requested.
  - 3.a.ii) In effort to communicate with you and change in pricing for future services.
  - 3.a.iii) In effort to communicate with you any special offers we may be extending.

- 3.a.iv) In effort to communicate with you any new services we may be adding from time to time.
- 3.a.v) To deliver invoices for services requested and rendered.
- 3.a.vi) To provide an online payment platform for all payments owed to us.
- 3.a.vii) To inquire about the timely or delayed payment of services rendered.
- 3.a.viii) To pursue legal action toward you or your company for nonpayment of services rendered.
- b) Project Plans and Construction Documents such as architectural and structural floor plans, design details and specifications for the means and methods for construction of the project on which Piececounttakeoffs.com services are requested shall remain the exclusive property of the creators of such documents. Our obtaining, viewing, reviewing, reading and analysis of such documents is for the sole and exclusive purpose of performing the services requested by the customer and only these requested services. Construction project documents provided to us will never be shared, copied, sold, given or in any other way knowingly be revealed to anyone other than the Piececounttakeoffs staff.

#### **4) Revisions and Notices:**

- a) We may amend these General Terms, any Additional Terms, or our Policies, at any time without notice by posting the revised version on our website or communicating it to you through the Services (each a "Revised Version"). The Revised Version will be effective as of the time it is posted but will not apply retroactively. Your continued use of the Services after the posting of a Revised Version constitutes your acceptance of such Revised Version. Any Dispute (as defined in Section 20) that arose before the changes will be governed by the General Terms, Additional Terms or Policies in place when the Dispute arose.

#### **5) SERVICES**

- a) The use of the word "SERVICES" within these General Terms of Service will include all of the following:
  - 5.a.i) Take Off item counts.
  - 5.a.ii) Reports of Take Off item counts.
  - 5.a.iii) Placement Plans for Take Off items.
  - 5.a.iv) Review of project plans for missing information or discrepancies.
  - 5.a.v) Reports and Spreadsheets for "Request For Information".
  - 5.a.vi) Wall Type analysis.
  - 5.a.vii) Accuracy of Take Off items contained within the project plans.
  
  - 5.a.viii) Use of payment transactions through Squareup.com.
  
  - 5.a.ix) Transfer of third party property digital files by you to PIECECOUNTTAKEOFFS via Dropbox.com.
  
  - 5.a.x) Transfer of digital files from PIECECOUNTTAKEOFFS to you via Dropbox.com.
  
  - 5.a.xi) Storage of your personal contact and account information via Wix.com.

## **6) Your Content**

- a) You will not upload or provide Content or otherwise post, transmit, distribute, or disseminate through the Services any material that: (a) is false, misleading, unlawful, obscene, indecent, lewd, pornographic, defamatory, libelous, threatening, harassing, hateful, abusive, or inflammatory; (b) encourages conduct that would be considered a criminal offense or gives rise to civil liability; (c) breaches any duty toward or rights of any person or entity, including rights of publicity, privacy or trademark; (d) contains corrupted data or any other harmful, disruptive, or destructive files; (e) advertises products or services competitive with PieceCountTakeOffs.com services, as determined by us in our sole discretion; or (f) in our sole judgment, is objectionable, restricts or inhibits any person or entity from using or enjoying any portion of the Services, or which may expose Square, its affiliates or its customers to harm or liability of any nature.

## **7) Copyright and Trademark Infringement**

- a) We respect the copyright and trademark rights of others and ask you to do the same. We respond to all valid notices of such copyright and trademark infringement, and our policy is to suspend or terminate the access privileges of those who infringe the copyrights and trademarks of others.

## **8) Security**

- a) We have implemented technical and organizational measures designed to secure your personal information from accidental loss and from unauthorized access, use, alteration, or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information for improper purposes. You provide your personal information at your own risk.
- b) You are responsible for safeguarding your password and for restricting access to the Services from your compatible mobile devices and computer(s). You will immediately notify us of any unauthorized use of your password or PieceCountTakeOffs Account or any other breach of security. Notwithstanding Sections 17 and 18, in the event of any dispute between two or more parties as to account ownership, we will be the sole arbiter of such dispute in our sole discretion. Our decision (which may include termination or suspension of any PieceCountTakeOffs Account subject to dispute) will be final and binding on all parties.

## **9) Communications**

- a) You consent to accept and receive communications from us, including e-mail, text messages, calls, and push notifications to the cellular telephone number you provide to us. These communications may be generated by automatic telephone dialing systems which will deliver prerecorded messages, including for the purposes of secondary authentication, receipts, reminders and other notifications. Standard message and data rates applied by your cell phone carrier may apply to the text messages we send you. You may opt-out of receiving communications by simply notifying us via email. You acknowledge that opting out of receiving communications may impact your use of the Services.

## **10) Termination**

- a) We may terminate or amend these General Terms or any Additional Terms, at any time for any reason. We will take reasonable steps to notify you of termination by email or at the next time you attempt to access your Square Account.

## **11) Indemnity**

- a) You will indemnify, defend, and hold us and our processors (and our respective employees, directors, agents, affiliates and representatives) harmless from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a person or entity that arises out of or relates to: (a) any actual or alleged breach of your representations, warranties, or obligations set forth in these General Terms or any Additional Terms; (b) your wrongful or improper use of the Services; (c) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (d) your violation of any law, rule or regulation of the United States or any other country; and (e) any other party's access and/or use of the Services with your unique name, password or other appropriate security code.

## **12) Representations and Warranties**

- a) You represent and warrant to us that: (a) you are at least eighteen (18) years of age; (b) you are eligible to register and use the Services and have the right, power, and ability to enter into and perform under these General Terms; (c) any information you provide in connection with the Services, including your business name, accurately and truthfully represents your business or personal identity under which you sell goods and services; (d) you and all transactions initiated by you will comply with all federal, state, and local laws, rules, and regulations applicable to you and/or your business, including the Health Insurance Portability and Accountability Act ("HIPAA"); (e) you will not use the Services, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the operation of the Services; and (f) your use of the Services will be in compliance with these General Terms and applicable Additional Terms.

## **13) No Warranties**

- a) THE USE OF "PIECECOUNTTAKEOFFS" IN SECTIONS 17 AND 18 MEANS PIECECOUNTTAKEOFFS, ITS PROCESSORS, ITS SUPPLIERS, AND ITS LICENSORS (AND THEIR RESPECTIVE SUBSIDIARIES, AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES).
- b) THE SERVICES ARE PROVIDED "AS IS" WITHOUT REPRESENTATION OR WARRANTY, WHETHER IT IS EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE FOREGOING, PIECECOUNTTAKEOFFS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.
- c) PIECECOUNTTAKEOFFS DOES NOT WARRANT OR GUARANTEE THAT THE SERVICES ARE ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICES WILL MEET YOUR

REQUIREMENTS; THAT THE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED, ERROR-FREE, WITHOUT DEFECT OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

- d) PIECECOUNTTAKEOFFS does not warrant, endorse, guarantee, or assume responsibility for any product or services advertised or offered by a third party. PIECECOUNTTAKEOFFS does not have control of, or liability for, goods or services that are paid for using the Services.

#### **14) Limitations of Liability and Damages**

- a) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PIECECOUNTTAKEOFFS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, INABILITY TO USE, OR UNAVAILABILITY OF THE SERVICE. IN ALL CASES, PIECECOUNTTAKEOFFS WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE.
- b) UNDER NO CIRCUMSTANCES WILL PIECECOUNTTAKEOFFS BE RESPONSIBLE FOR ANY DAMAGE, LOSS, OR INJURY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR YOUR PIECECOUNTTAKEOFFS ACCOUNT, OR THE INFORMATION CONTAINED THEREIN.
- c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF PIECECOUNTTAKEOFFS IS LIMITED TO THE GREATER OF (A) THE AMOUNT OF FEES EARNED BY US IN CONNECTION WITH YOUR USE OF THE SERVICES DIRECTLY RELATED TO THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY, OR (B) \$100.
- d) THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF PIECECOUNTTAKEOFFS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

#### **15) Third Party Products**

- a) All third party hardware and other products included or used in connection with the Services are provided solely according to the warranty and other terms specified by the manufacturer, who is solely responsible for service and support for its product. For service, support, or warranty assistance, you should contact the manufacturer directly. PIECECOUNTTAKEOFFS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH THIRD PARTY PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

## **16) Disputes**

- a) "Disputes" are defined as any claim, controversy, or dispute between you and PIECECOUNTTAKEOFFS, its processors, suppliers or licensors (or their respective affiliates, agents, directors or employees), including any claims relating in any way to these General Terms, any Additional Terms, or the Services, or any other aspect of our relationship.

## **17) Binding Individual Arbitration**

- a) You and PIECECOUNTTAKEOFFS agree to arbitrate any and all Disputes by a neutral arbitrator who has the power to award the same damages and relief that a court can. ANY ARBITRATION UNDER THESE GENERAL TERMS WILL ONLY BE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, REPRESENTATIVE ACTIONS AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED. YOU WAIVE ANY RIGHT TO HAVE YOUR CASE DECIDED BY A JURY AND YOU WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS ACTION AGAINST PIECECOUNTTAKEOFFS. If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed, and the remaining arbitration terms will be enforced (but in no case will there be a class or representative arbitration). All Disputes will be resolved finally and exclusively by binding individual arbitration with a single arbitrator administered by the American Arbitration Association (<https://www.adr.org>) according to this Section and the applicable arbitration rules for that forum. Consumer claimants (individuals whose transaction is intended for personal, family, or household use) may elect to pursue their claims in their local small-claims court rather than through arbitration so long as their matter remains in small claims court and proceeds only on an individual (non-class or non-representative) basis. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, fully applies. If you are a consumer bringing a claim relating to personal, household, or family use, any arbitration hearing will occur within the county where you reside. Otherwise, any arbitration hearing will occur in Tulsa, Oklahoma, or another mutually agreeable location. The arbitrator's award will be binding on the parties and may be entered as a judgment in any court of competent jurisdiction. We will pay the arbitration fees due to the American Arbitration Association for individual arbitration brought in accordance with this section. If you prevail on any claim for which you are legally entitled to attorney's fees, you may seek to recover those fees from the arbitrator. For any claim where you are seeking relief, we will not seek to have you pay our attorney's fees, even if fees might otherwise be awarded, unless the arbitrator determines that your claim was frivolous. For purposes of this arbitration provision, references to you and PIECECOUNTTAKEOFFS also include respective subsidiaries, affiliates, agents, employees, predecessors, successors and assigns as well as authorized users or beneficiaries of the Services. Subject to and without waiver of the arbitration provisions above, you agree that any judicial proceedings (other than small claims actions in consumer cases) will be brought in and you hereby consent to the exclusive jurisdiction and venue in the state courts in the City and County of Tulsa, Oklahoma.

## **18) Governing Law**

- a) These General Terms and any Dispute will be governed by Oklahoma law and/or applicable federal law (including the Federal Arbitration Act) as applied to agreements entered into

and to be performed entirely within Oklahoma, without regard to its choice of law or conflicts of law principles.

**19) Limitation on Time to Initiate a Dispute**

- a) Any action or proceeding by you relating to any Dispute must commence within one month after the cause of action accrues.

**20) Assignment**

- a) These General Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you and any attempted transfer or assignment will be null and void.

**21) Other Provisions**

- a) These General Terms, and any applicable Additional Terms or Policies, are a complete statement of the agreement between you and PIECECOUNTTAKEOFFS regarding the Services. In the event of a conflict between these General Terms and any other PIECECOUNTTAKEOFFS agreement or Policy, these General Terms will prevail and control the subject matter of such conflict. If any provision of these General Terms or any Additional Term is invalid or unenforceable under applicable law, then it will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. These General Terms do not limit any rights that we may have under trade secret, copyright, patent, or other laws. No waiver of any term of these General Terms will be deemed a further or continuing waiver of such term or any other term.
- b) Changes by RFI's, Addendums, or Requests made by anyone other than PCTO staff effecting completed items included in takeoffs are subject to revision charges at the rate of \$50 / Hour.

**22) Acceptance**

- a) The following undersigned persons have read these General Terms & Conditions and agrees to all written herein as it is stated herein without exception.
- b) The company written below for which the person is employed also understands that these General Terms and Conditions are in full effect by the person signing below on their behalf.

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Signature - Name / Company Representative Date

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Print - Name / Company Representative

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Company Name

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Street Address City State Zip