

1. COMMENCEMENT

- 1.1 This Agreement constitutes a legal agreement between you and GoMatey Limited and governs the terms upon which:
- a. You are permitted to directly sell Products to Users via our Sites as a contracted Merchant Partner of us; and
 - b. We agree to offer the GoMatey Services to you.

2. DEFINITIONS

- 2.1 In these terms.
- a. *Active Area* means the defined area within which you are authorised to sell your Products to Users.
 - b. *Addendum* means any addendum to this Agreement setting forth any additional rules.
 - c. *Agreement* means this Agreement.
 - d. *Customer* means any User from whom you have accepted an order for any Products.
 - e. *Delivery Fee* means a fee charged by a Driver to a Customer for their provision of their delivery services.
 - f. *Driver* means an individual that has entered into an agreement with us as an independent contractor to provide a service whereby they pick up and drop off any item or items from a Merchant Partner (or any other person) pursuant to the particulars of a User's request through our Sites.
 - g. *GoMatey Fee* means the fee charged to you in consideration of our provision of the GoMatey Services as per clause 10.
 - h. *GoMatey Services* has the meaning set out in clause 6.1.
 - i. *GoMatey, us, we, our* means GoMatey Limited, a private limited liability company in New Zealand with company number [number] and registered address of [address].
 - j. *Merchant Partner* means any third party that sells Products to Users via our Sites.
 - k. *Products* means any items you make available for purchase on our Sites.
 - l. *Sale Proceeds* means the funds a Customer pays to us on your behalf when they purchase your Products.
 - m. *Sites* means www.GoMatey.com or any mobile application we release through which Users are able to order your Products.
 - n. *Term* means the duration specified in clause 3.
 - o. *User* means any user of our Sites that is authorised to request your Products.
 - p. *You* means you, an individual.

3. TERM

- 3.1 This Agreement shall commence on the date it is signed by you and shall continue for a period of one year at which point it will automatically renew for successive one year periods unless terminated under clause 24.

4. CONDITIONS PRECEDENT

- 4.1 We agree to provide you with the GoMatey Services provided that you meet the following conditions:
- a. If you are to supply food items, you must hold all relevant licences or permits required to operate a food business in the region or district in which you operate.
 - b. If you are to supply alcoholic products via our Sites, you must hold all relevant licences or permits to sell, supply and deliver alcoholic products in the region or district in which you operate.
 - c. You must have completed all onboarding requirements that we require of you prior to you listing your Products for sale on our Sites.
- 4.2 We reserve the right to require you to provide evidence that you satisfy all conditions outlined in clause 4.1.
- 4.3 Should you fail to satisfy any conditions outlined in clause 4.1, you will have no right to use the GoMatey Services and this Agreement shall have no effect. Should you fail to satisfy all relevant conditions within ninety (90) days of this Agreement, it will automatically terminate.

5. YOUR RELATIONSHIP WITH GOMATEY LIMITED

- 5.1 Subject to clause 11.1, nothing in this Agreement creates any partnership, joint venture, joint enterprise or agency relationship among the parties. No party (or its employees) has any rights whatsoever to make any decisions on behalf of the other party unless otherwise agreed in writing.

6. GOMATEY SERVICES

- 6.1 During the Term of this Agreement, we will:
- a. Grant you a licence to use our Sites and technologies during the Term.
 - b. Define an Active Area within which you can sell your Products to Users and provide lead generation to you by allowing you to make your Products available for purchase by Users of our Sites that are located within that Active Area.
 - c. Make our Sites available to our Users so that they can purchase your Products from you.
 - d. Issue receipts and/or invoices to Customers on your behalf for Products sold by you via the Sites.
 - e. Facilitate the collection of payments from Customers on your behalf and process said payments to you.

- f. Manage any issues with the processing of payments from the Customer to us or from us to you.
- g. Manage Customer complaints and refunds as outlined in our Terms of Trade.
- h. Aggregate information about the number of Products you have sold to Customers via our Sites and any information relating to refunds given to Customers where the refunds were wholly or partially met from deductions to payments owed to you where the Customers are entitled to a refund as per our Terms of Trade.
- i. Provide any other services as outlined in this Agreement or any Addendum or as otherwise agreed in writing between us.

6.2 We may immediately restrict or withhold your access to the GoMatey Services immediately if:

- a. You commit a material breach of this Agreement.
- b. We are investigating a serious complaint about you from a User or Driver.
- c. You have carried out actions that we have reasonable cause to believe could detrimentally impact the reputation, goodwill, brand or marks of us.

7. YOUR ACKNOWLEDGEMENTS AND AGREEMENTS

7.1 You acknowledge that:

- a. We are under no obligation to display your Products on our Sites to any Users.
- b. We may promote your Products in our marketing materials or on our Sites or social media channels.
- c. Your Products will only be displayed to Users located within your Active Area.
- d. We reserve the right to modify the Active Area at any time and for any reason.
- e. We provide no guarantee in relation to the size of the Active Area within which Users will be able to purchase your Products.
- f. We provide no guarantee that you will sell any Products whatsoever through our Sites.
- g. We retain full control over all elements of the user experience of our Sites including with respect to the search functionality and results provided to Users and the prioritisation and display of Products to Users and you have no right to require us to change any aspect of our Sites.
- h. Products that you sell will be delivered to Customers by Drivers who are independent of us and we owe no obligations to you in respect of them.

7.2 You agree that:

- a. You are operating as a business and therefore agree that the Consumer Guarantees Act 1993 has no application to this Agreement or the supply of the GoMatey Services to you.

- b. Both parties are in trade and acting in trade in relation to the transactions contemplated by this Agreement and therefore sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply.
- c. We may request evidence that you are complying with all aspects of this Agreement (including by requesting documents in relation to any licences or insurances that you are required to hold or any Product information) and you are obliged to provide this evidence to us upon request.

8. APPROVED ITEMS

- 8.1 You must only sell Products via our Sites that have been approved by us. Such approvals are provided by us on a case by case basis and we have unfettered discretion to make such decisions.
- 8.2 We will not approve items that:
 - a. Weigh more than 25kg; or
 - b. Cannot reasonably be expected to fit inside a car.
- 8.3 We reserve the right to reasonably remove Products from our Sites if:
 - a. The Product you are selling has not been approved.
 - b. The Product you are selling has been approved in error.
 - c. We decide for any reason that the Product you are selling should have its approval revoked.
- 8.4 You must not include anything within packages to be delivered to Customers other than Products that have been approved by us in accordance with this clause.

9. QUANTITY, TYPE AND PRICE OF ITEMS AND PROVISION OF RELEVANT INFORMATION

- 9.1 You are responsible for:
 - a. The quantity and type of Products that you make available via our Sites subject to clause 8.
 - b. Maintaining stock of Products that you sell and notifying Users through our Sites if you run out of stock.
 - c. Setting the retail price (inclusive of GST) ("Retail Price") of each Product that you make available.
 - d. Determining the criteria that apply to each of your Products (such as quality, portion sizes, ingredients or any other criteria that you deem relevant) and ensuring that the Products that you provide to Customers meet this criteria.
 - e. Ensuring that the descriptions of your Products are accurate and in no way misleading (including any photographs of your Products that you have chosen to make available).
 - f. Ensuring that the Products are handled appropriately and are appropriate for sale via our Sites, including ensuring that they have been handled safely during preparation

and in accordance with any relevant laws and are packaged appropriately for safe delivery.

- 9.2 You acknowledge that we may at any time ask you to provide certain additional information relating to particular products that you sell including but not limited to:
- a. Stock Keeping Units (SKUs).
 - b. Item size.
 - c. Ingredients.
 - d. Nutritional information.
 - e. Packaging information.
 - f. Methods of preparation.
- 9.3 If you fail to provide any information that we have requested about a particular Product, we reserve the right to refuse to sell that Product via our Sites until the additional information is received.

10. GOMATEY FEE

- 10.1 In exchange for our provision of the GoMatey Services, you agree to pay us a fee for each order placed with you by a User via our Sites (hereinafter referred to as the GoMatey Fee).
- 10.2 The GoMatey Fee is to be charged as a percentage of the Sale Proceeds as communicated from time to time to you ("GoMatey Fee Percentage"). This fee is calculated by multiplying the Retail Price of the Products sold by you via our Sites by the GoMatey Fee Percentage that is currently in effect.
- 10.3 The GoMatey Fee is GST inclusive unless stated otherwise or otherwise agreed in writing.
- 10.4 Any changes in the GoMatey Fee will be notified to you as per the notice requirements of this Agreement and will take effect fourteen (14) days after said notice has been provided. Continuing to sell your Products via our Sites after this fourteen (14) day notice period has lapsed constitutes agreement by you to the modified GoMatey Fee.
- 10.5 If we notify you of any upcoming changes to our GoMatey Fee calculation, you have the right to cancel this Agreement immediately by providing notice in writing.

11. COLLECTION OF SALE PROCEEDS AND PAYMENTS TO YOU

- 11.1 You appoint us as your Sale Proceeds collection agent solely for the purpose of accepting payments from Customers on your behalf when they purchase your Products through our Sites.
- 11.2 Once payment has been made by the Customer to us for Products purchased from you, that payment will be considered the same as payment made directly from the Customer to you.
- 11.3 We will remit to you the Sale Proceeds earned by you less:
- a. The GoMatey Fee.

- b. The cost of any refunds given to Customers on your behalf in accordance with our Terms of Trade.
 - c. Any other amount that we are entitled to deduct from the Sale Proceeds in accordance with the terms of this Agreement or that we are required to deduct by law.
- 11.4 We will remit funds to you on a weekly basis unless otherwise agreed in writing.
- 11.5 In exceptional circumstances, we, acting reasonably, may temporarily or permanently suspend or cancel a payment to you. Exceptional circumstances include but are not limited to breach of this Agreement, any legal or regulatory risk, any potential breach of law associated with making the payment to you, if there an actual or expected initiation of insolvency or bankruptcy proceedings against you, or if you fail to provide any documentation or information required to facilitate this Agreement as required in clause 7.1(k).
- 11.6 Where there has been an error in our payment to you, we reserve the right to seek reimbursement from you to correct the error. We may do this by:
- a. Deducting the applicable amount from the Sale Proceeds prior to remitting the funds to you.
 - b. Seeking reimbursement from you by any other lawful means.
- 11.7 It is your responsibility to ensure that any bank account details provided to us are accurate and remain up to date.

12. TAXES

- 12.1 You represent and warrant that:
- a. You are a New Zealand resident for New Zealand income tax purposes.
 - b. You are registered for GST, and will remain registered for GST, at all times during the Term.
- 12.2 You acknowledge that:
- a. You are the supplier of all Products sold by you for GST purposes and are responsible for meeting all tax obligations (including GST) that arise in your performance of this Agreement.
 - b. We supply you solely with the GoMatey Services for the purposes of GST and the only consideration we receive for the GoMatey Services is the GoMatey Fee.
 - c. We provide you with a licence to use the GoMatey services for no consideration.
- 12.3 The parties agree that for the purposes of the financial arrangement rules in the Income Tax Act 2007:
- a. The GoMatey Fee and other amounts payable under this Agreement is the value of our performance of our obligations under this Agreement and is the lowest value that would be agreed between the parties as at the date of this Agreement.
 - b. Both parties will calculate their taxable income for the relevant period on the basis that the GoMatey Fee and other amounts payable under this Agreement do not include any capitalised interest and will file their respective tax returns accordingly.

13. RATINGS AND USER CONTENT

- 13.1 After a Customer receives their Product from you, they may be prompted by our Site to provide a rating of that Product or to provide any other additional feedback related to you or that Product.
- 13.2 We reserve the right to use, share and display any feedback provided by our Users without your approval.
- 13.3 The content that Users may provide is subject to our Terms of Use. We may review and monitor user content that is submitted to our Sites and we reserve the right to remove any content that is inappropriate or unlawful. Where required, we may refer such content to any relevant Government authorities.

14. FRANCHISES

- 14.1 Where your business is part of a franchise system:
 - a. We require that each franchisee individually agrees to be bound by this Agreement.
 - b. You warrant that entering into this Agreement does not conflict with your franchise or other arrangements and that you will at all times comply with the requirements of the said franchise agreement.

15. BUSINESS CHANGES YOU MUST NOTIFY US ABOUT

- 15.1 You must notify us as soon as reasonably possible if:
 - a. The location from which you operate your business changes.
 - b. You intend to open an additional location (including a virtual storefront) or close an existing location.
 - c. There is a change in ownership of your business.
 - d. There are any changes or modifications to the status of any licences, permits or registrations that you are required to hold to provide your Products within the region or district in which you operate.

16. INSURANCE

- 16.1 Each party must obtain and maintain the following insurance policies during the Term and for one year thereafter:
 - a. Commercial General Liability Insurance – At least \$1,000,000.00 combined single limit per occurrence for bodily injury, death and property damage liability, and \$2,000,000.00 in aggregate.
 - b. Workers' compensation insurance – As required by New Zealand Law.
- 16.2 The above insurance policies must be provided by reputable insurance companies licenced by the Reserve Bank of New Zealand under the Insurance (Prudential Supervision) Act 2010.

17. INTELLECTUAL PROPERTY

- 17.1 We (and where applicable, our licensors) own all proprietary and intellectual property rights relating to the GoMatey Services (including all information, data, text, graphics, artwork, photographs, names, logos, icons, sound recordings, videos, design).
- 17.2 By making any of our intellectual property available to you we are in no way limiting our rights (and where applicable, our licensors rights) in relation to them. The only rights that you have in our intellectual property are as outlined in this Agreement.
- 17.3 Without limiting any other part of this Agreement, you must not:
- a. Copy, modify, distribute, sell or lease any part of our intellectual property.
 - b. Interfere with our Sites or technologies in a manner that is prohibited in our Terms of Use.
 - c. Improperly use any of our intellectual property for any use that has not been authorised by us in writing.

18. LICENCES

- 18.1 Subject to your compliance with the terms of this Agreement, we grant you a non-exclusive, royalty-free, non-transferable, non-sublicensable and non-assignable licence to use our Sites and technologies for the Term of this Agreement. You may only use our Sites and technologies for the purposes of meeting your obligations under this Agreement.
- 18.2 Each party:
- a. Grants the other the right to use their marks subject to the terms of this Agreement.
 - b. Will only use the other's marks for the purpose of performing their obligations under this Agreement.
 - c. Will only use the other's marks in the forms and formats specified or approved by the owner of those marks.
 - d. Will not purport to claim ownership of the other's marks or attempt to register any interest in them.
 - e. Will not use the other's marks for any other purpose unless expressly agreed in writing by the other party.
 - f. Will not bring any claim against the other for the use of the other's marks under the terms of this Agreement.
- 18.3 You may provide descriptions, images or other materials to us to display on our Sites ("Marketing Materials"). You represent and warrant that you own all rights in the Marketing Materials and you grant us a licence to use the Marketing Materials for all purposes authorised under this Agreement including promotional purposes.
- 18.4 You agree and acknowledge that:
- a. We may create our own marketing or promotional materials that incorporate your Marketing Materials.
 - b. We may remove your Marketing Materials from our Sites if we believe that they are inappropriate or infringe on the rights of any third party.

- c. We are under no obligation to use your Marketing Materials for any particular purpose.
- d. You will not bring any claim against us for the use of your Marketing Materials in accordance with the terms of this Agreement.

19. CONFIDENTIALITY

- 19.1 You will keep confidential all information imparted to you by us that is intended to be confidential, including but not limited to:
 - a. The terms of this Agreement.
 - b. Our intellectual property.
 - c. Any data gathered through User activity of our Sites.
 - d. Any information that we declare to be confidential.
- 19.2 We will keep confidential all information that you provide to us that you declare to be confidential.
- 19.3 Both parties:
 - a. May only use the other party's confidential information to the extent it is necessary to perform their obligations under this Agreement.
 - b. Must ensure that any third party who receives confidential information of another party under this Agreement maintains the confidentiality of that information.
 - c. Must not authorise any other party to use any materials of which that party is a licensee, not an owner.
 - d. Agree to destroy the confidential information of the other party except where that party needs to retain the information to perform their obligations under this Agreement or as required by law.
- 19.4 Nothing in this clause prevents a party using or disclosing the other party's confidential information to the extent that:
 - a. Such disclosure has been authorised by the other party in writing.
 - b. Disclosure is required by law.
 - c. Disclosure to a third party legal, tax or financial advisor is required in connection with this Agreement.

20. PRIVACY

- 20.1 You agree that any personal information of any Users that is made available to you in performing your obligations under this Agreement shall:
 - a. Only be used for the performance of your obligations under this Agreement.
 - b. Not be used for any other purpose, including contacting any Users or Customers directly.

c. Be kept confidential.

20.2 You warrant and agree that:

- a. You will in all ways comply with the Privacy Act 2020 when handling personal information of Users.
- b. You will notify us immediately if you become aware of any security breaches that result in the personal information of your Customers being disclosed without authorisation or otherwise misused.
- c. You will not merge any personal information obtained through your performance of your obligations under this Agreement with any other database in which you store personal information of individuals for any other purpose.
- d. You will comply with any requests for information by us in the event that we are investigating or responding to any non-compliance with the Privacy Act 2020.

21. LIMITATION OF LIABILITY

21.1 For the removal of doubt, nothing in this clause or this Agreement purports to override any rights that a party may have under New Zealand Law.

21.2 Subject to clause 21.1, in no event shall any party be liable to the other for any claim for any incidental, punitive, special, exemplary, consequential or other indirect damages of any type or kind.

21.3 Subject to clause 21.1, either party's total cumulative liability to the other of every kind to the other under this Agreement will not exceed \$100,000.00.

21.4 The limitations and exclusion provisions above apply regardless of the success or effectiveness of other remedies.

22. INDEMNIFICATION

22.1 To the maximum extent permitted by law, both parties agree to indemnify and hold harmless the other for any loss suffered or incurred under this Agreement as a direct or indirect result of the other's actions when performing their obligations under this Agreement.

23. REPRESENTATIONS AND WARRANTIES

23.1 Each party represents and warrants that:

- a. It has full power to enter into this Agreement and has obtained all relevant authorisations.
- b. It is compliant with all laws and regulations required to operate its business.
- c. It is not a party to, and will not enter into, any agreement that would prevent it from complying with this Agreement.
- d. It is able to pay its debts as and when they fall due.
- e. It will comply with all laws in the performance of their obligations under this Agreement.

- 23.2 You represent and warrant that:
- a. The name of your restaurant or store that is to be listed on our Sites is validly registered and you are the holder of that said name registration.
 - b. All information you provide to us is accurate, complete and up to date and if any of the information we require under this Agreement changes you will notify us at the first reasonable instance.

24. TERMINATION

- 24.1 Either party may terminate this Agreement:
- a. Immediately should the other party materially breach the terms of this Agreement.
 - b. Immediately should the other party cease to do business or becomes insolvent, liquidated or bankrupt.
- 24.2 You may terminate this Agreement:
- a. At any time and for any reason by providing fourteen (14) days' written notice to us.
 - b. Immediately by written notice in the event that this Agreement has been modified, we revoke our approval of the Products you sell, or there is a change to our GoMatey Fee and that update detrimentally affects your rights under this Agreement and the notice is provided within fourteen (14) days of the modifications.
- 24.3 We may terminate this Agreement for any legitimate business, legal or regulatory reason by giving you fourteen (14) days' prior written notice.
- 24.4 Clauses which, by their nature, are intended to survive termination of these this Agreement (including clauses 10, 11, 12.2, 12.3, 17, 18, 19, 20, 21, 22, 27, 28 and 29) are to continue in force even after termination.

25. ASSIGNMENT

- 25.1 We reserve the right to assign or transfer this Agreement or any of our rights or obligations under it to a third party without obtaining your prior consent.
- 25.2 You cannot assign or transfer any of your interests in relation to this Agreement without our prior written consent.

26. CHANGES TO THESE TERMS, SUPPLEMENTAL TERMS AND ADDENDA

- 26.1 We reserve the right to modify the terms contained in this Agreement or to issue supplemental terms or addenda at any time.
- a. In the event that such changes to this Agreement, supplemental terms or addenda are immaterial, they will immediately come into effect.
 - b. In the event that such changes to this Agreement, supplemental terms or addenda are material, we will provide you with fourteen (14) days' notice prior to said supplemental terms or addenda beginning effect. You will be deemed to have consented to the modifications made if you continue to offer your Products on our Sites after the modifications have come into effect.

26.2 If we notify you of any upcoming material changes as outlined in clause 26.1(b), you have the right to cancel this Agreement immediately by providing notice as per the notice requirements of this Agreement.

27. NOTICES

27.1 Any notice under this agreement shall be in writing (including via email) and shall be deemed to be received when:

- a. If delivered physically, the date that the notice is delivered to the address of the recipient.
- b. If sent via email, when the email is successfully delivered.

28. DISPUTE RESOLUTION

28.1 Should any dispute arise, the parties will in the first instance try to resolve said dispute between themselves in good faith.

28.2 Should said dispute fail to be resolved within ten (10) working days, the parties shall refer the dispute to a mediator.

28.3 Neither party may initiate or commence court proceedings relating to a dispute unless it has attempted to negotiate a resolution, provided that application may still be made to the courts for interlocutory relief or to recover a debt payable.

29. GENERAL

29.1 Each party is solely responsible for:

- a. All expenses incurred in connection with its performance of its obligations under this Agreement.
- b. Its employees and contractors used in connection with this Agreement.

29.2 All rights (including intellectual property rights) not granted under this Agreement by either party are expressly reserved unless otherwise agreed in writing.

29.3 This Agreement, and any dispute relating to this Agreement, are to be governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with this Agreement.

29.4 For us to waive a right under this Agreement, the waiver must be in writing.

29.5 Neither party may release any public statement or press release about the other party unless they have received prior written consent of the other party.

29.6 If any part or provision of this Agreement is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability, or invalidity. If a modification is not possible, the part or provision must be treated for all purposes as severed from this Agreement. The remainder of the terms of the Agreement will be binding on you.

29.7 This Agreement sets out everything agreed by us relating to your provision of the Merchant Services and supersedes and cancels anything discussed, exchanged, or agreed prior to

you agreeing to these terms. The parties have not relied on any representation, warranty or agreement relating to the your provision of the Delivery Services that is not expressly set out in the terms of this Agreement, and no such representation, warranty or agreement has any effect from the date you agreed to these Terms.

ACCEPTANCE OF MERCHANT AGREEMENT

By registering your store on GoMatey you expressly acknowledge that you have read and understood this Agreement and its consequences and that you have had the opportunity to seek independent legal advice.