

MY LUNCH CLUB**CUSTOMER TERMS AND CONDITIONS****1. ACCEPTANCE**

- 1.1 These Terms are between My Lunch Club Pty Ltd trading as My Lunch Club ABN 94 616 799 010 its successors and assignees (referred to as **My Lunch Club**, “we”, “us” or “our”) and you, the person, organisation or entity that purchases Services from us (referred to as “you” or “your”), and collectively the Parties. These Terms apply to all sales made by us to you.
- 1.2 You have requested the Services, described on and able to be ordered via our Site. You accept these Terms by:
- ticking the online acceptance box;
 - confirming by email that you accept the Terms;
 - instructing us to proceed with the Services; or
 - making part or full payment for the Services, set out in our tax invoice to you (**Invoice**).
- 1.4 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details at the end of these Terms. Using or purchasing our Services indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order or use the Services if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you must not use or purchase our Services from us.
- 2. SERVICES**
- 2.1 We provide a fresh food school lunchbox, morning tea and afternoon tea (collectively called **Lunchboxes**) delivery service (the **Services**). In order to purchase a Lunchbox or Lunchboxes and use our Services, you must register for an account on our Site and create a username and password.
- 2.2 It is your responsibility to keep the details of your account, including user name and password, confidential. You are liable for all activity on your account, including any purchases made using your account details.
- 2.3 We agree to perform the Services with due care and skill.
- 2.4 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.

- 2.5 We may provide the Services to you using our employees, contractors and third party providers and they are included in these Terms.
- 2.6 Third parties who are not our employees or our direct contractors will be your responsibility. We are not responsible for the products or services provided by those third parties.
- 3. PRICE, INVOICING AND PAYMENT**
- 3.1 You agree to pay us the amounts set out on our Site. You may purchase individual Lunchboxes or you may purchase a number of Lunchboxes in a package, as set out on our Site. We charge a one-off payment to cover the cost of a My Lunch Club lunch bag, as set out on our Site. All amounts are stated in Australian dollars and amounts include Australian GST. Payment may be made by way of one of the payment methods as set out on the Site and/or our Invoices.
- 3.2 We require upfront payment in order for a Lunchbox to be delivered to a school or picked up by you. If we do not receive upfront payment, Lunchboxes are unable to be delivered and the Services cannot be performed.
- 3.3 Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion. The changes will apply to you for Services provided to you or Lunchboxes delivered after the date of the change, and in any event no earlier than the date that the amended or new Terms are provided to you. After a pricing change, you have the choice to continue using the Services, or to cease to use the Services without penalty.
- 4. YOUR OBLIGATIONS AND WARRANTIES**
- 4.1 You warrant that you will not employ, canvass, solicit, entice, induce or attempt to employ any employee or contractor that was employed by or contracted to us during the time that we provide Services to you or the 12-month period prior to that time.
- 4.2 You warrant that throughout the term of these Terms that:
- you will cooperate with us and provide us with information that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner;
 - you will inform us if your child has any allergies, medical conditions or other condition that require special meals, or if your child develops such a condition during the delivery of the Services;
 - the information you provide to us is true, correct and complete;
 - you will inform us if you have reasonable concerns relating to our provision of

Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns; and

- (e) you consent to the use of your name in relation to the Services in a way which may identify you.

5. LUNCHBOX DELIVERY AND PICKUP

5.1 Classroom delivery: My Lunch Club will deliver Lunchboxes to the nominated school daily or as required. My Lunch Club delivers to the school's nominated delivery address and Lunchboxes are then distributed as per the school's processes and procedures. We can provide you with information about your school's delivery process, if required.

5.2 Lunchboxes which are not picked up will be disposed of in accordance with the School's processes and procedures. We will not provide a refund if a Lunchbox is not picked up in time.

5.3 We deliver to Brisbane area schools. Please refer to the delivery information on the Site to check that your school is in our delivery area. If you are not in our delivery area, please contact us to discuss delivery and/or pickup options.

5.4 Title and risk

- (a) Once Lunchboxes are delivered to your nominated school, or you pickup a Lunchbox from our pickup address, responsibility for a Lunchbox passes to the school or to you. We are not responsible for the handling or delivery of a Lunchbox once a Lunchbox has been delivered or picked up.

6. CONFIDENTIAL INFORMATION

6.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than, where necessary, third party suppliers, or as required by law); to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you to provide better quality services to you and not for any other purpose.

6.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, to provide better quality services to you and not for any other purpose.

6.3 These obligations do not apply to Confidential Information that:

- (a) is authorised to be disclosed;

(b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;

(c) is received from a third party, except where there has been a breach of confidence; or

(d) must be disclosed by law or by a regulatory authority including under subpoena.

6.4 This clause will survive termination of these Terms.

7. FEEDBACK AND DISPUTE RESOLUTION

7.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.

7.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree that the complainant will notify the respondent, in writing, the nature of the dispute and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute and if the Parties cannot agree how to resolve a dispute at the initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on a mediator, the complainant may ask the Law Society of Queensland to appoint a mediator and the mediator will appoint a time and place for mediation. The Parties must attend the mediation in good faith.

7.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

8. TERMINATION

8.1 My Lunch Club may terminate these Terms by providing five (5) Business Days' notice.

8.2 Either Party may terminate these Terms if there has been a material breach of these Terms, subject to following the dispute resolution procedure.

8.3 We may terminate these Terms immediately, at our sole discretion, if:

- (a) you commit a non-remediable breach of these Terms;
- (b) you commit a remediable breach of these Terms and do not remedy the breach within 10 days after receiving notice of the breach;
- (c) we consider that a request for the Service is inappropriate, improper or unlawful;
- (d) you fail to provide us with clear or timely instructions to enable us to provide the Services;
- (e) we consider that our working relationship has broken down including a loss of confidence and trust;

- (f) you act in a way which we reasonably believe will bring us or our Site into disrepute;
- (g) you provide us with incorrect payment details or any other incorrect information; or
- (h) for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe.
- 8.4 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 9. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 9.1 Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 9.2 **Goods and services:** If you are a consumer as defined in the ACL, the following notice applies to you: "Our goods and services come with warranties and guarantees (**Consumer Guarantees**). You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. You are also entitled to have the services remedied if they are not rendered with due care and skill or they are not fit for purpose and the failure does not amount to a major failure.
- 9.3 Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for the Services is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- 9.4 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out on the Site where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 9.5 **Warranties:** Except for your Statutory Rights, we exclude all express and implied warranties representations and guarantees and all material and work is provided to you without warranties, representations and guarantees of any kind, either express or implied. We expressly exclude all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 9.6 **Availability:** To the extent permitted by law, we exclude all liability for:
- (a) the Services being unavailable; and
- (b) any Claims (whether direct, indirect, incidental, special, consequential and/or incidental), for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Services, or the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- (c) All Lunchbox purchases made with us are subject to availability. We do our best to keep in stock our full range of Lunchbox options and to keep the Site up to date with availability. Where appropriate, we will contact you to discuss suitable alternative options.
- (d) If there is a considerable delay in dispatching your order, or if for any reason we cannot supply a Lunchbox you have ordered, we will contact you using the contact details provided when you placed an order or registered for an account. You can choose a refund or store credit in this situation.
- 9.7 We aim to prepare our Lunchboxes in a nut-free environment however during production and the purchase of supplies, nut traces may be present.
- 9.8 Lunchboxes contain gluten, dairy, soy bean, tree nuts, sulphites and seeds. Please contact us using the contact details below if you have any questions about the suitability of our Lunchboxes for your child.
- 9.9 My Lunch Club cannot guarantee that any food or beverage contained in a Lunchbox is gluten free or free of allergens suitable for your child's dietary requirements. Gluten free options are available however My Lunch Club cannot guarantee that Lunchboxes will be completely gluten free.
- 9.10 **Limitation:** To the extent permitted by law, our total liability arising out of or in connection with the Services, however arising, including under contract, tort including negligence, in equity, under statute or otherwise, is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates. Our total liability to you for all

damages in connection with the Services will not exceed the price paid by you under these Terms for the 12 month period prior to the act which gave rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made.

9.11 This clause will survive termination of these Terms.

10. REFUNDS

10.1 If you wish to seek a refund for a Lunchbox or our Services, please contact us and we will explain the requirements to you.

10.2 If you wish to seek a refund, we will in our sole discretion determine whether we can provide a refund or an exchange, to the extent permissible by law.

11. INDEMNITY

11.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) your breach of these Terms;
- (c) any misuse of the Services, the Site or the Materials by you, your employees, contractors or agents; and
- (d) your breach of any law or third party rights.

11.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

11.3 This clause will survive termination of these Terms.

12. GENERAL

12.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

12.2 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

12.3 **GST:** If and when applicable, GST payable on the Price or Prices will be set out on our Invoices. You agree to pay the GST amount at the same time as you pay for a Lunchbox.

12.4 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.

12.5 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 Business Days' notice in writing.

12.6 **Notice:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to you at the address listed in your online account. Our address is set out at the end of these Terms. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

12.7 **Jurisdiction & Applicable Law:** These terms are governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.

12.8 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.

13. DEFINITIONS

13.1 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Queensland, Australia.

13.2 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving

- a third party or a party to this Agreement or otherwise.
- 13.3 **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 13.4 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any

replacement or other relevant legislation and regulations.

- 13.5 **Price** is the price or prices for our Lunchboxes and the Services.
- 13.6 **Site** means our website at www.mylunchclub.com.au.
- 13.7 **Terms** means these terms and conditions.

Contact details:

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