

## **TERMS OF USE**

**(last updated 8 December 2020)**

If you use Lunchonline then the following terms of use will apply.

By registering as an Account Holder, a Provider or an Organisation (as defined below) you accept these terms and agree to abide by them.

We may amend or add to these terms from time to time. Any changes will be effective as soon as they are posted on this Website and your continued use of Lunchonline will represent your agreement to be bound by the terms as last updated.

### **1. Definitions**

In these terms, the following expressions have the meanings set out:

**“Account Holder”** means a user of Lunchonline that has registered as an Account Holder;

**“item(s)”** means any food or other goods that may be bought through Lunchonline;

**“Lunchonline”** means the Services as provided through the Website;

**“Member”** means a person who is linked to an Account Holder and on whose behalf an Account Holder makes orders. A Member must live at the same residence as the Account Holder unless we expressly agree otherwise;

**“Organisation”** means any school or other institution that has registered as an Organisation and where a group of Members gather and receive delivery of their orders;

**“Provider”** means a lunch provider that has been registered as a Provider and who makes and assembles the orders and makes arrangements for its delivery;

**“Services”** means the provision of an electronic vehicle that links Organisations and Providers to enable Account Holders to order and receive lunch items from a Provider;

**“terms”** means these terms of use, as updated from time to time, and in respect of Providers includes any terms contained in the relevant application form;

**“user”, “users”** means any party using Lunchonline (including, but not limited to, Account Holders, Members, Providers and Organisations);

**“Website”** means any Lunchonline website through which the Services are offered;

**“we”, “us”** and **“our”** are a reference to Lunchonline Limited and its successors and assigns;  
and

**“you”** and **“your”** are a reference to you.

## **2. Terms for Account Holders**

2.1 The terms of this clause 2 apply specifically to you if you are an Account Holder.

### *Becoming an Account Holder*

2.2 There is no charge for registering as an Account Holder.

2.3 You may only register as an Account Holder if you are resident in New Zealand and are at least 18 years old. By registering as an Account Holder, you warrant that you can form a legally binding contract.

2.4 When registering as an Account Holder you must:

- (a) be linked to at least one Member and specify which Organisation each Member is linked to; and
- (b) provide complete, accurate and current personal information for both you and any Members. We may phone or mail you to verify these details.

2.5 Any changes to your personal information (or that of Members linked to you) must be updated to ensure it is kept current at all times.

2.6 You must not register as an Account Holder under multiple identities or persons (whether false or not). Account Holders who have registered under multiple identities will have all of their identities disabled and their Luncheonline accounts closed.

2.7 We reserve the right to decline to register you as an Account Holder or to terminate your registration for any reason. This right shall include the right to decline or terminate the registration of any of your Members. In such situations we will not be required to provide you with a reason. Without limiting the foregoing, examples of situations where we may terminate your registration (or that of your Members) include if:

- (a) a serious complaint or multiple complaints are received about you from other users of Luncheonline;
- (b) you breach any of these terms; or
- (c) we, at our sole discretion, deem your behaviour to be unacceptable.

2.8 You are responsible for keeping your login information, including your email address and password, secret and secure. Without limiting the foregoing, you agree:

- (a) not to permit any other person to use your Account Holder name or the name of any of your Members or your Luncheonline account; and
- (b) not to disclose, or provide to any other person, your password, email address, date of birth or any other information in connection with your Luncheonline account that may allow them to gain access to your Luncheonline account.

### *Lunchonline Accounts*

- 2.9 Following registration as an Account Holder we will establish a credit account for you. All orders you make on Lunchonline will be paid from this account.
- 2.10 Each payment to your Lunchonline account must be for a minimum sum of \$10. This may change without notification.
- 2.11 Subject to Clauses 2.12 and 2.13 below, if you wish to close your Lunchonline account, select the “close account” option from the menu. This will close your Lunchonline account immediately and refund the balance of your Lunchonline account, less a \$5 processing fee. No refund will be made if your account balance is below \$5. Promotional giveaways of Lunchonline (including any free credits gifted to the Account Holder’s Lunchonline account) will not be refunded.
- 2.12 If your Lunchonline account is removed following a breach of these terms and we suffer any losses or costs as a direct or indirect result of such breach, we may set-off any such losses or costs with the balance held in your Lunchonline account.
- 2.13 All refunds will be made at the end of each school term.
- 2.14 If you have not transacted on to the Website for a period of 18 months, any unused balance on your Lunchonline account is forfeited to us and your registration will be terminated and your Lunchonline account closed.

### *Making an Order*

- 2.15 When making an order for any of your Members, you will only be able to order from those Providers approved by your Member’s Organisation.
- 2.16 If a Provider specifies a cut-off time, you must make your order prior to that cut-off time. An order cannot be cancelled after the Provider’s cut off time.
- 2.17 An order will only be accepted if you have sufficient funds in your Lunchonline account.
- 2.18 Delivery of your order will be arranged between your Provider and your Organisation. It is your Organisation’s responsibility to notify you (or your Members) of what these arrangements are.
- 2.19 If your ordered lunch is not delivered in accordance with the arrangements made by the Organisation, or if it is not of an acceptable quality, you should discuss this fully with the Provider. If not fully satisfied, then you should notify the Organisation. We will from time to time receive feedback on Provider performance from Organisations.
- 2.20 Lunchonline and/or the Provider accept no liability for the incorrect supply of food which may cause an unfavourable medical reaction in the consumer. An example of this happening may be the supply of a gluten product when a gluten free product was

ordered. While every effort is made to ensure the food items delivered are exactly as ordered, Lunchonline and/or the Provider do not control the complete delivery channel, and therefore unable to guarantee each order is correct. Lunchonline strongly suggest that Account Holders ordering for their children who have food allergies or sensitive medical conditions, make sure that the child can determine whether the delivered products is medically acceptable. If the child cannot determine this, both Lunchonline and the Provider recommend not ordering.

### **3. Terms for Providers**

3.1 The terms of this clause 3 apply specifically to you if you are a Provider.

#### *Becoming a Provider*

3.2 To register as a Provider you need to complete an "Application to Become a Provider" form.

3.3 By completing the application form you represent and warrant that:

- (a) You are located in New Zealand and hold all current statutory licences required for your food premises; and
- (b) you have the power and authority to enter into these terms as a Provider and that, upon acceptance of your application and registration as a Provider, these terms will constitute the legal, valid and binding obligations of you.

3.4 When completing your application form you must provide complete, accurate and current information. Before we agree to register you we may ask you to provide us with any additional information we consider relevant. Any changes to your information must be updated to ensure it is kept current at all times. We may phone or mail you to verify these details.

3.5 We reserve the right to decline to register you as a Provider for any reason. In such situations we will not be required to provide you with a reason.

3.6 If your application is accepted we will register you as a Provider and ask you to provide us with a menu listing which will include your cut-off time for receiving lunch orders from Account Holders. The menu listing will be notified to every Organisation within the area specified on your application form.

3.7 You are responsible for keeping your login information, including your email address and password, secret and secure.

#### *Organisations and Menus*

3.8 When you are registered as a Provider you must select on our website those Organisations that you are willing to be linked to and supply lunch items to.

3.9 Selecting an Organisation on our Website is not a confirmation that you will be able to supply lunch items to Members at such Organisations. You acknowledge that it is at the sole discretion of each Organisation whether to:

- (a) accept you and/or retain you as a Provider for their Organisation; and
- (b) exclude any of the items on your menu listing from those items being offered to Account Holders,

and that the Organisation may exercise this discretion from time to time. Where this discretion is exercised by the Organisation, you agree to comply with that Organisation's wishes.

- 3.10 You will keep your menu listings current, accurate and include all relevant information. In particular, you will ensure that any items that are not available are removed from your menu listings.
- 3.11 Your menu listings may use photographs, other material or descriptive words. You must ensure you hold the copyright or are otherwise licensed to use any images you use in your menu listings.
- 3.12 You agree not to permit any other person or entity to sell or provide any items to Account Holders and/or their Members using your Provider name and/or under your menu listings.

#### *Delivery*

- 3.13 It is your responsibility to be aware of, understand and comply with, the requirements for delivery of lunches at each Organisation that selects you as a Provider.
- 3.14 You undertake to fulfil all lunch orders which are made by Account Holders who have Members linked to Organisations that have selected you as a Provider and deliver them in compliance with the delivery requirements of that Organisation. This provision will not apply where an Account Holder has not placed their lunch order prior to the specified cut-off time.

#### *Fees*

- 3.15 The fees and payment terms applicable to you as a registered Provider are contained in your application form. You agree to pay all such fees in accordance with the terms of your application form.

#### *Termination of registration*

- 3.16 You may terminate your registration as a Provider by providing us with 20 working days written notice.
- 3.17 We reserve the right to terminate your registration as a Provider immediately for any reason. In such situations we will not be required to provide you with a reason. Without limiting the foregoing, examples of situations where we may terminate your registration include if:
  - (a) a serious complaint or multiple complaints are received about you from other users of Lunchonline;

- (b) you breach any of these terms; or
- (c) we, at our sole discretion, deem your behaviour to be unacceptable.

3.18 However your registration is ended, you will be required to complete any orders that were made prior to the termination of your registration and these terms will continue to apply accordingly. Termination of your registration will not affect any rights and/or obligations that have accrued up to the date of termination.

#### **4. Terms for Organisations**

4.1 The terms in this clause 4 apply specifically to you if you are an Organisation.

##### *Becoming an Organisation*

- 4.2 There is no charge for registering as an Organisation.
- 4.3 By registering as an Organisation you represent and warrant that you have the power and authority to enter into these terms as an Organisation and that, upon your registration as an Organisation, these terms will constitute the legal, valid and binding obligations of you.
- 4.4 When registering as an Organisation you must provide complete, accurate and current information. Any changes to your information must be updated to ensure it is kept current at all times. We may phone or mail you to verify these details.
- 4.5 We reserve the right to decline to register you as an Organisation or to terminate your registration for any reason. In such situations we will not be required to provide you with a reason. Without limiting the foregoing, examples of situations where we may terminate your registration include if:
- (a) a serious complaint or multiple complaints are received about you from other users of Lunchonline;
  - (b) you breach any of these terms; or
  - (c) we, at our sole discretion, deem your behaviour to be unacceptable.
- 4.6 You are responsible for keeping your login information, including your email address and password, secret and secure.

##### *Providers and Menus*

4.7 Once you are registered as an Organisation our Website will indicate those Providers that are willing to deliver lunch items to your Organisation along with their menu listings. You will then, on the Website, need to indicate which Providers (along with the items from their menu listings) that you are willing to allow on to your Premises for the purpose of delivering lunches to the Members linked to you. You will be able, from time to time, to use the Website to change those Providers (and/or the lunch items on their menu listings) that you have approved or excluded.

- 4.8 You agree you will give access to the premises of your Organisation to those Providers that have been selected by you on the Website for the purposes of delivering lunch orders made by Account Holders. Unless otherwise agreed by us, if you accept a Provider and then later exclude them on the Website, you agree to continue to give them access to your premises for the purposes of delivering lunch orders that were made by Account Holders prior to such exclusion.
- 4.9 You must, when requested, notify Providers and Account Holders of your arrangements for the delivery of lunches. Such arrangements must be reasonable. If these arrangements change you will notify Providers and Account Holders of such changes.
- 4.10 You will, upon request, provide us with information and feedback on the performance of Providers. You agree to notify us if any Account Holders have made you aware of any grievance or dispute they are having with a Provider.

## **5. Terms for all Users**

- 5.1 The terms of this clause 5 will apply to all users of Lunchonline.

### *Restrictions on arrangements made outside of Lunchonline*

- 5.2 You agree that you will not, while registered as a user of Lunchonline and for a period of at least 4 months following the termination of your registration as a user, be a party to any arrangements (contractual or otherwise) for the supply of lunch items from a Provider (or a person or entity that has been a Provider) to an Account Holder (or a person or entity that has been an Account Holder) using an order service (whether electronic or not) that is the same or similar to the Services supplied by us. For the avoidance of doubt, this provision applies to Organisations that facilitate or allow such supplies to be made to Members (or a person that has been a Member).

### *Disputes*

- 5.3 You acknowledge that our function is to act as a collection agent for the Provider by providing our Website as a vehicle for Account Holders to place orders with those Providers. We are not otherwise involved with the purchase and delivery of the lunch items and the placement and/or fulfilment of such orders are a contractual arrangement directly between the Account Holder and the Provider and as such are conducted entirely at your own risk.
- 5.4 As we are not a party to any order or transaction between an Account Holder and a Provider, or to any arrangements between a Provider and an Organisation, you agree not to involve, or attempt to involve, us in any dispute or in the resolution of disputes that arise between you and any other user of Lunchonline.

### *Our Liability*

- 5.5 You agree that we take no responsibility or liability for any failure or misconduct of any users of Lunchonline including, without limitation, users that have registered under false pretences or who attempt to defraud you.
- 5.6 We give no undertakings, representations, or warranties in relation to food sold or listed on menus on the Website, including:
- (a) as to the availability, nutritional value, appropriateness, description or quality of the items that are listed on the Website;
  - (b) as to the currency or accuracy of menu listings;
  - (c) that any item will meet your requirements or expectations; or
  - (d) about the ability of Providers to deliver those food items.
- 5.7. We give no undertakings, representations, or warranties in relation to the continued use and/or exclusion of Providers by Organisations and/or the reasonableness of access given to Providers to the premises of Organisations.
- 5.8 We do not provide any warranty in relation to Lunchonline, the Services and/or the Website other than those that are expressly provided in these terms. In particular, we do not warrant that the Services provided will be uninterrupted, timely, secure, or error free, or that any information provided on the Website is error-free or reliable.
- 5.9 We will use our reasonable endeavours to ensure the availability of the Website and Services, subject to any downtime required for maintenance. However, we take no responsibility for any system unavailability, or for any loss that is incurred as a result of the Website or the Services being unavailable. Further, we assume no responsibility for the corruption of any data or information held by us.
- 5.10 Responsibility for the content of menu listings and/or advertisements appearing on this Website is that of the Providers and advertisers respectively. The placement of a menu listing or advertisement on the Website does not constitute our recommendation or endorsement of any item on the menu or of the advertised product or service.
- 5.11 While we have systems in place to reduce the risk of credit card fraud, we are not responsible for protecting users from credit card fraud. Our fraud protection systems may from time to time block legitimate credit card payments to Lunchonline accounts. In these cases payment will need to be made by other means.
- 5.12 To the maximum extent permitted by law, we exclude all liability and responsibility to you under or in connection with Lunchonline, the Services, this Website and another user's acts or omissions, regardless of whether such liability arises in contract, tort, equity, breach of statutory duty or otherwise.



- 5.13 You agree to indemnify us and keep us indemnified from and against all actions, claims, costs, losses, proceedings, damages, liabilities, or demands suffered or incurred by us to any person arising out of or in connection with your failure to comply with these terms, your failure to complete a transaction, your use of Lunchonline's message boards or generally through your use of the Services.

*Intellectual Property Rights*

- 5.14 We (and our licensors) own all proprietary and intellectual property rights in the Services and the Website (including text, graphics, logos, icons and sound recordings) and the software and other material underlying and forming part of the Services and the Website. You may not, without our prior written permission, in any form or by any means:
- (a) Adapt, reproduce, copy, store, distribute, print, display, publish or create derivative works from any part of this Website; or
  - (b) Commercialise, copy, or on-sell any information, or items obtained from any part of this Website.

*Emails, Newsletters and Message Boards*

- 5.15 We may send you emails relating to your Lunchonline account, transactions and other activities on the Website, and for promoting and marketing other Lunchonline products and services to you. Lunchonline may also send regular electronic newsletters to Account Holders. Newsletters will contain clear and obvious instructions for how Account Holders can unsubscribe from the mailing list.
- 5.16 We provide Lunchonline Message Boards for all users of Lunchonline. The Message Boards may not be used to promote websites or any commercial or business activity. We are not responsible for any of the opinions expressed in the Message Boards.

*General*

- 5.17 You must not:
- (a) damage, interfere with or harm the Website or Services, or any network, or system underlying or connected to them, or attempt to do so; or
  - (b) use a robot, spider, scraper or other automated means to access the Website or information featured on it for any purpose.
- 5.18 If we do not exercise or enforce any right available to us under these terms, it does not constitute a waiver of those rights.
- 5.19 If any provision of these terms becomes or is held to be invalid, unenforceable or illegal for any reason, and in any respect, that provision shall be severed from the remaining terms, which shall continue in full force and effect.

- 5.20 These terms are governed by the laws of New Zealand. You submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 5.21 These terms supersede all previous conditions, understandings, commitments, agreements and representations whatsoever whether oral or written, and constitutes the entire agreement, between us and each user.
- 5.22 We collect personal information about you through your use of the Services and the Website, including:
- (a) your registration details; and
  - (b) information relating to your use of the Website and the content you access.

You agree that we may use this personal information to assist us to provide the Services to you, for internal research purposes, to verify your identity, for promoting and marketing other Lunchonline products and services to you, and for any other use that you authorise.

We will not sell or allow third parties to access your personal information without your consent or if otherwise required to comply with the law, or to enforce our terms, or protect the rights or property of us or other users.