



## **MULA CAR INTERNATIONAL SDN.BHD (1196291-H)**

No. 956 & 957, Jalan Bagan Ajam, Residensi Zamrud, 13050 Butterworth, Penang  
Tel : 03- 7661 6262

Version 1.0 – 28 May 2020

### **MULA EATS MERCHANT Terms & Conditions**

***IMPORTANT – By downloading/ accessing/ using this Application or signing up or agreeing to be signed up for a Merchant account for the Application, you are acknowledging that you have carefully read, understood, accepted and agreed without any limitation or qualification to be bound by these Terms of Use, and any future amendments and additions to the Terms of Use as published from time to time on this Application or otherwise sent to you in writing. You further agree to the representations made by yourself below. If you do not agree to be bound by these Terms of Use, please do not download, use or access our Application (including without limitation signing up or agreeing to be signed up for an account on our Application).***

#### **DEFINATION & INTERPRETATION**

**“Agreement”** means a reference to this Terms and Conditions, the Privacy Policy, and any order form and payment instructions provided to Merchant.

**“Customer”** means the individual or person who use the Mula Eats Platform to order and received the food and beverage from the Merchant.

**“Delivery Services”** means the food and beverage delivery services provided by Mula Rider upon Merchant and Mula Rider received and accepted the order from Customer via the Mula Eats Platform.

**“Food and Beverage Information”** means any information including but not limited to the pictures, ingredients and prices provided by the Merchant in respect of the food and beverage offered in MEP.

**“Merchant”** means the individuals, businesses and/or companies including but not limited to hawkers/stalls, restaurants, cafes, and food courts who/which offer for sale of food and beverage by using the Mula Eats Platform to promote and advertise their business.

**“Mula Eats Platform (MEP)”** means the mobile application or our website <https://mula2u.com/mula-eats/> on Mula Eats that connects Mula Eats, the Customers, the Merchants and the Mula Riders on or through which the delivery services is make available.

**“Mula Rider”** means delivery operator and/or dispatcher who being matched with delivery order designated by Customer in the Mula Eats Platform.



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### **AGREEMENT**

- A. Mula Eats Sdn Bhd is a company principally engaged in online marketplace connection, using web-based technology that connects the Users, the Merchants and/or other businesses and independent Rider and carry on the business as a going concern under the name of “Mula Eats” together with its registered trademark.
- B. Mula Eats makes every endeavour to ensure that the information on the Platforms is accurate. The completeness and accuracy of the information provided by Mula Eats is the sole responsibility of the Merchant.
- C. Food and beverage offered in the MEP is not being offered for sale by Mula Eats but by the respective Merchant thereof. Mula Eats assumes no responsibility with regards to the performance and food and beverage quality.
- D. Mula Eats is NOT the owner/operator of the food and beverage for Delivery Services including but not limited to hawkers/stalls, restaurants, cafes, and food courts.
- E. Mula Eats cannot and does not control the content contained in Food and Beverage Information and the condition, legality and/or suitability of any food and beverage AND IS NOT RESPONSIBLE FOR AND DISCLAIMS any and all liability related to any and all food and beverage on the MEP.
- F. Mula Eats will not entertain any complaints, disputes and queries and the same are to be directly to the respective Merchant. Mula Eats strongly suggests Merchant phoning, mailing and faxing or E-mailing such Customer for information and to confirm information contained therein.

#### **1. Commencement of Services**

The **Merchant** shall provide all required information to **MULA EATS** as per requested, and **MULA EATS** shall upon processing all documents and the listing on the online platform, inform the **Merchant** of the commencement of the services in writing.

#### **2. MULA EATS's rights and obligations**

**MULA EATS** will, in a timely manner:

- I) Display **Merchant's** logo; a listing of the **Merchant** Stores; and a menu of **Merchant** Products on the **MULA EATS** Platform;
- II) Accept **MEP** Orders from Customers;
- III) Forward each **MEP** Order to the relevant **Merchant** Store; and
- IV) Forward each **MEP** Order to a Dasher, so that the Dasher can pick up the applicable **Merchant** Product(s) from the **Merchant** Store to deliver to the Customer.
- V) Pay the **Merchant** in accord with the Parties' agreements, deducting applicable Promotion Fees, marketing fees, subscription fees and Activation Fees.
- VI) **MULA EATS** reserves the right, at its sole discretion, to change and/or to modify the Terms and Conditions at any time and without providing any notice of such changes. The Merchant agree that continued use of MEP constitutes the acceptance of the modified Terms and Conditions.

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The Merchant should check these Terms and Conditions each time the Merchant access the MEP. Any changes and modification shall be effective upon the time of posting hereof.

#### **3. The Merchant's rights and obligations**

**Merchant** will, in a timely manner:

- I) Provide **MULA EATS** with the **Merchant's** in-store or take-out menu, including the price of each item on such menu;
- II) Monitor **Merchant's** menu and store information on the **MULA EATS MEP**, promptly make updates via the **Merchant** portal to reflect the most up-to-date products, pricing and other information or immediately notify **MULA EATS** of any errors or changes in writing;
- III) Accept all **MEP** Orders placed by **MULA EATS** from **Merchant's** then-current menu;
- IV) Confirm all **MEP** Orders from **MULA EATS**;
- V) Prepare the **Merchant** Products for each **MEP** Order for pickup by a **MULA EATS** Rider at the designated time;
- VI) Process **MEP** Orders in the order in which they are received;
- VII) Notify **MULA EATS** of any changes to the pricing, availability, description, or other characteristics of the **Merchant** Products;
- VIII) Notify **MULA EATS** of its days and hours of operation, and remain open for business on **MULA EATS** the same days and hours of operation as **Merchant's** in-store business; notify **MULA EATS** of any changes to **Merchant's** hours of operations on holidays; and notify **MULA EATS** if **Merchant** closes earlier than **Merchant's** standard hours of operation or plans to close earlier than **Merchant's** standard hours of operation;
- IX) Notify all **Merchant** store staff members of the **Merchant's** obligations as hereof, and to ensure the compliance and adherence hereof immediately upon execution of this Agreement by signing the registration form or accepting this T&C by clicking agree button on the application ; and
- X) Provide the same utensils, napkins, bags and other materials that **Merchant** would typically provide in a standard take-out or delivery order.
- XI) On an ongoing basis, review and confirm the transactions, fees and charges on orders via the **Merchant** Portal, and promptly communicate to **MULA EATS** any inaccuracies.
- XII) Ensure the packaged food for Delivery Services by Mula Rider is in good condition. In the event that the food is damaged during delivery process, the Merchant shall re-prepare the food for delivery. Cost of food re-preparation will be reimbursed to the Merchant. MULA EATS is not liable for any food quality problems for the items delivered
- XIII) Ensure the food and beverage meet minimum quality standards regarding safety, cleanliness, and do not present the Customer with hygienic issue.

#### **4. Food and Beverage Information**

The Merchant represents and covenants that the Food and Beverage Information shall at all times be true, accurate and not misleading. The Merchant is at all times responsible for a correct and up-to-date statement of the Food and Beverage Information, including additional availability of food and beverage for certain periods or any extraordinary (material adverse) events or situations (eg. inavailability of certain ingredient of the food and beverage). The Merchant shall update the Food and Beverage Information on a daily basis (or such more frequent basis as may ne required) and may at any time change via the MEP.

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### **5. Fees, Charges and Settlement**

The **Merchant** shall pay all fees and charges as stated in the form attached above or under this Agreement. For the avoidance of doubt, the **Merchant** shall NOT charge any additional charge or any fee whatsoever and howsoever to the Customer. **MULA EATS** shall have the right to set off any amount owing by the **Merchant** prior to the payout, with notification to the **Merchant**. **MULA EATS** shall issue any payout to the **Merchant** on a monthly weekly basis based on the reconciled statement. In the event of any discrepancies, **MULA EATS**'s statement extracted from the platform system shall be the final and conclusive one.

- a) All payments and remittances under this Agreement shall be effected through such settlement arrangement as agreed below:

The **Merchant** shall on its own accord to access to the system every Monday to check and/or opt to withdraw the preceding weekly entitled amount. If the **Merchant** chooses to withdraw the amount after the deduction of the revenue share and other charges, and will be remitted on a weekly basis.

- b) Sales and Service Tax (SST)

In line with the implementation of SST in Malaysia effective from 1<sup>st</sup> September 2018, MULA EATS will charge 6% SST on customer if the restaurant is a SST registered restaurant. SST collected will be returned to merchant during payment period.

### **6. Marketing and Advertisement**

**MULA EATS** may provide marketing materials to the **Merchant** for display and identification purposes, such as stickers, brochures, buntings. The **Merchant** does not possess any rights to use any intellectual property rights of **MULA EATS**, including any domains or similar domains names. **MULA EATS** may advertise the **Merchant**'s logo, slogans or any other marketing language of the **Merchant** on the platform or any other affiliates or partner's platform, to which it specially authorized **MULA EATS** unlimited right, royalty free to use its intellectual property relating to the service.

### **7. Absolute Prohibition**

Mula Eats strives to provide the best possible Delivery Services to all the Merchant and the Customer, but will not tolerate any unlawful activity or abuse or harmful to others on the MEP.

Food and Beverage Information and any advertisement of the food and beverage by the Merchant shall be legal, decent, honest and truthful and shall comply with the requirements of the current legislation in force in their respective countries. The following contents shall not be allowed:-

- i) Content which jeopardise public security or national defence
- ii) Content which present information or events in such a way that alarms or misleads all or any part of the public
- iii) Content which tend to bring the Government into hatred or contempt, or which excite disaffection against the Government
- iv) Content which denigrate or satirise any racial or religious group, bring any or religion into hatred or resentment, promote religious deviations or occult practices such as Satanism

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- v) Content which are pornographic or otherwise obscene, propagate permissiveness or promiscuity, depict or propagate gross exploitation of violence, nudity, sex or horror

### **8. Representations and Warranties; Disclaimer**

- I) Each party represents and warrants that it has the full right, power, and authority to enter into and perform its obligations under this Agreement without breaching any obligation to any third party.
- II) Each party represents and warrants that it will comply with
  - (i) all applicable laws and regulations in its performance of this Agreement, including without limitation
  - (ii) all applicable data protection and privacy laws, and
  - (iii) all applicable laws related to third party intellectual property and other proprietary rights.
- III) **Merchant** further represents, warrants and agrees that
  - (i) it will comply with all applicable laws, rules, standards and regulations relating to licenses, health, food packaging and accessory items (including but not limited to foodware, plasticware, and other disposable restaurant supplies), and food safety and sanitation,
  - (ii) it has informed **MULA EATS** of any required consumer-facing warnings, charges, opt-in requirements, and instructions associated with **Merchant** Product(s) and it will inform **MULA EATS** of any such warnings, charges, opt-ins, and instructions that become required in the future,
  - (iii) it will disclose common allergens in any **Merchant's** menu items listed on the **MULA EATS MEP**,
  - (iv) it will not include any age-restricted products (including but not limited to alcohol and tobacco) in **Merchant's** menus on the **MULA EATS MEP** or request delivery of any age-restricted products through the **MULA EATS** Platform without first entering into a separate agreement with **MULA EATS** memorializing the promotion, sale and delivery of such products in compliance with the laws of the applicable state in which such products will be sold,
  - (v) it will not disclose any information related to a **MULA EATS** Rider or a consumer to a third party (except as required to comply with law or pursuant to a court order)
- IV) EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE EXTENT PERMITTED BY APPLICABLE LAW, **MULA EATS** HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE **MULA EATS** PLATFORM, THE DELIVERY API, EQUIPMENT OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF **MERCHANTABILITY**, TITLE, SATISFACTORY QUALITY OR RESULTS, OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. **Merchant** acknowledges that the operation of the Platform may from time to time encounter technical or other problems and may not necessarily continue uninterrupted or without technical or other errors and **MULA EATS** shall not be responsible to **Merchant** or others for any such interruptions, errors, or problems or an outright discontinuance of the Platform nor for any guarantee of results with respect to the **MULA EATS** services or Platform. Both Parties acknowledge that neither party has any expectation or has received any assurances for future business or that any investment by a party will be recovered

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or recouped or that such party will obtain any anticipated amount of profits by virtue of this Agreement.

### **9. Confidentiality**

A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its product and services which the receiving party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under this Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out this clause as though they were a party to this Agreement. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause shall survive termination of this Agreement.

### **10. Indemnity and Limitation of Liabilities**

The Merchant hereby irrevocably and unconditionally undertakes to indemnify Mula Eats in full and keep Mula Eats indemnified against loss, damages (consequential, direct or indirect), liabilities, fines, penalty, cost and expenses which Mula Eats may sustain or incur as a result of conduct in action, omission or act of negligence of the Customer whatsoever and howsoever.

Mula Eats shall not be liable to the Merchant in respect of any event of default for loss of profits goodwill or any type of special indirect or consequential loss (including loss of damage suffered by the Merchant as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Mula Eats has been advised of the possibility of the Merchant incurring the same.

The **Merchant** shall at its expense, defend and hold **MULA EATS** and its directors harmless from any claims. No parties shall be liable for the other for any indirect or consequential losses whether under law of contract or tort, whether such loss is reasonably foreseeable or has been previously advised thereof.

This clause shall not affect or applicable to any claim relating to any liability for death or personal injury caused by its negligence or negligence of its employees, agents or subcontractors.

### **11. Absolute Exclusions**

Notwithstanding anything to the contrary herein contained, the Merchant hereby covenants and agrees with Mula Eats and the Customer NOT to use or permit or suffer the use of the Delivery Services provided or any part thereof:-

- (a) for any illegal or immoral purpose;

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- (b) in any way connected with gambling/betting or drugging;
- (c) for any purpose or matter which would be or tend to cause nuisance or annoyance to Customer
- (d) for any purpose or matter which would or may emit, accumulate and/or disseminate any odour;
- (e) for the storage or otherwise any obnoxious goods or dangerous drugs or any articles of a specially combustible inflammable or dangerous nature; and
- (f) for any other purpose deemed by Mula Eats and the Merchant to be offensive and/or detrimental to the nature and character of the food and beverage delivery services

### **12. Force Majeure**

- I) For the purpose of this Terms and Conditions, "Force Majeure Event" means an event beyond the reasonable control of either party including but not limited to acts of God; war; riot; civil commotion or terrorist action.
- II) Neither Party shall be liable to the other Party as a direct result of any delay or failure to perform its obligations under this Terms and Conditions as a result of a Force Majeure Event.
- III) If a Force Majeure Event prevents either Party from performing its obligations under this Terms and Conditions for more than four weeks, either Party shall, without limiting its other rights or remedies, have the right to terminate this Terms and Conditions immediately by giving written notice to the other Party.

### **13. Waiver**

A waiver of any right under this Terms and Conditions or law is only effective if it is in writing and shall not be deemed to be waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **14. Termination**

The **Merchant** may terminate this Terms and Conditions for any reason at any time upon 14 days prior written notice. **MULA EATS** may terminate this Agreement or any promotion under this Agreement for any reason at any time upon written notice. Email shall suffice for written notice. Neither the **Merchant** nor **MULA EATS** will be required to pay any fee in connection with a termination by either party, or be liable to the other as a result of termination of this Agreement for any damages, for the loss of goodwill, prospective profits or anticipated income, or for any expenditures, investments, leases or commitments made by either the **Merchant** or **MULA EATS**.

### **15. Miscellaneous**

- I) The **Merchant** agrees that **MULA EATS** may list the menu items on any other online food delivery platform to which **MULA EATS** has entered into a formal partnership with, from time to time.

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- II) The appointment of **MULA EATS** is not to be construed as an employee-employer relationship, nor a partnership or joint venture and shall purely be treated as an independent contractor basis. The **Merchant** agrees however that **MULA EATS** has the right to conclude any matter or issues in relation to or arising out of this appointment, with any third party as an agent of the **Merchant**.
- III) The Parties each represents that all necessary steps have been taken to empower the signatory and this Terms and Conditions shall constitute a valid and legally binding obligation.
- IV) The **Merchant** shall not transfer or assign any rights and obligations under this Terms and Conditions to any third party whether in whole/ part without **MULA EATS**'s prior written consent. **MULA EATS** shall be allowed to transfer, novate or assign this Agreement to its affiliates or related party with notification to the **Merchant**.
- V) Failure of either party at any time to require the performance by the other party of any provision herein will in no way affect the full right to require performance at any time thereafter; nor will the waiver by either party of a breach of any provision herein constitute a waiver of any succeeding breach of the same or any other such provision or the waiver of the provision itself.
- VI) Time wherever mentioned herein shall be of the essence.
- VII) This Terms and Conditions shall be governed by the laws of Malaysia and any claims, dispute or other matters in question arising out of or relating to this appointment shall first be amicably settled between the senior management of the Parties. In the event that no settlement or resolution between the Parties within 30 days from the date of the dispute notice, either Party may refer such dispute exclusively to the Courts of Malaysia.
- VIII) It is expressly understood and agreed by the parties that **MULA EATS** may solicit potential clients and may enter into collaborations with other party to perform its Services to any other party.
- IX) Parties agree that all forms, schedules or appendixes shall form part of this Agreement and shall be binding against the Parties.

**16. Customer Recovery Charge**

Issue Type	Total Issue in Invoiced period	Penalty	
		% of Total orders in Invoiced period	Fee per order
Wrong Dishes	3	3%	-
Missing Items	3	3%	-
Cancellation	3	3%	-
Closed without Informed	-	-	RM 10
Order prepared beyond stipulated preparation time (30 minutes)	-	-	RM 20

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### **17. Responsibility**

The Merchant has to ensure the packaged food for delivery is in good condition. In the event that the food is damaged during delivery process, the Merchant shall re-prepare the food for delivery. Cost of food reparation will be reimbursed to the Merchant. MULA EATS is not liable for any food quality problems for the items delivered. MULA EATS core duty is to assist in delivery services.

### **18. Customer Refund**

- I) MULA EATS may be required to refund the customer if issues arising due to either rider's or Merchant's error, for instance, spillage of the food items or missing items in the orders.
- II) **In this case, if the error is caused by the Merchant, the cost will be charged back to the merchant.**
- III) **If the error is caused by MULA Eats , the cost will be born by MULA EATS.**
- IV) For the avoidance of doubt, the Merchant will only have to pay to MULA EATS one set of Merchant Fees for this order.

### **19. Promotion / Campaign**

The Merchant shall conduct a promotion or campaign in order to increase awareness and sales revenue, and MULA EATS will provide support such as co-funding to the marketing campaign. The Merchant shall be under no obligation to participate in the marketing campaign.

### **20. Payment**

- I) Commission to be paid to MULA Eats : Amount is as per agreed in Registration form.
- II) Payment Cycle – Settlement on every Monday, payment to be made within 5 working days.

### **21. Customer Review and Feedback**

The Customer which has ordered the food and beverage from the Merchant will be asked by Mula Eats to comment on their food and beverage of the respective Merchant and to provide a score for certain aspects of their food and beverage.

Mula Eats reserves the right to post these comments and scores on the MEP. The Merchant acknowledges that Mula Eats is a company providing a platform for food and beverage ordering and delivering services (without any obligation to verify) and not a publisher of these comments.

Mula Eats undertake to use its best efforts to monitor and review the Customer reviews in respect of obscenities or the mention of an individual's name. Mula Eats reserves the right to refuse, edit or remove unfavourable reviews in the event that such reviews include obscenities or mention an individual's name.



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Mula Eats will not enter into any discussion, negotiation or correspondence with the Customer in respect of (the content of, or consequences of the publication or distribution of) the Customer reviews.

Mula Eats shall NOT have or be held responsible and disclaims any liability and responsibility for the content and consequences of (the publication or distribution of) any comments or reviews howsoever or whatsoever.

The Customer reviews are for exclusive use by Mula Eats and can be make available on such platforms as form time to time made available to Mula Eats. Mula Eats exclusively retains ownership of all rights, title and interest in and to (all intellectual property rights of) the Customer reviews and the Merchant is not entitled to (directly or indirectly) publish, market, promote, copy, scrape, (hyper-/deep) link to, the integrate, obtain, utilize, combine, share or otherwise use the Customer reviews without prior written approval of Mula Eats.