**Terms and Conditions**

These terms and conditions (“**Terms**”), together with the Vendor Registration Form to which these Terms are attached ("**Vendor Registration Form**"”) form the agreement ("**Agreement**") between Rocket Food Limited (“**Foodpanda**”) and the vendor named on the Vendor Registration Form ("**Vendor**”) for the items ("**Products**”) defined by the Vendor.

Foodpanda and the Vendor shall collectively be referred to as “**Parties**” and individually as “**Party**”, as the case may be.

WHEREAS Foodpanda acts as an independent contractor of the Vendor who, through this agreement, grants Foodpanda full authority to conclude and negotiate contracts with customers in the name and for the account of the Vendor, as well as for the offers of the Vendor, made via Foodpanda's online platform www.foodpanda.hk (the “**Website**”) and a mobile application (“Foodpanda App”) (where applicable). The Website and Foodpanda App are collectively referred to as the “Platform”. It is understood that Foodpanda does not act for the customers.

WHEREAS Foodpanda, as part of the Foodpanda Platform, shall provide an online marketplace for the Vendor, via which customers can order prepared food items, groceries and such other items and products which may be offered on the Platform directly from the Vendor (the “Items”) and where applicable, delivery services to customers in Hong Kong. Thereto, Foodpanda receives the Order placed by the customer via the Foodpanda platform, transmits it via a printer / handset / tablet / Vendor App (defined below) installed by Foodpanda or, in exceptional circumstances, by phone, to the Vendor and receives the payment of the customer for orders placed by the customer on the Foodpanda Platform (“**Order**”). The payment for the Order is accepted by Foodpanda in the name and for the account of the Vendor and transmitted to the Vendor, after deducting the Agency Fees as agreed upon by the Parties on the Vendor Registration Form. These shall be referred to as the “**Services**”.

WHEREAS in addition to the online marketplace, the Parties shall also agree on who shall deliver the Items from the Vendor to the Customer once an order is placed via the Foodpanda platform. Such choice shall be indicated on the Vendor Registration Form.

WHEREAS in the event of a Vendor Delivery option being selected in the Vendor Registration Form, Foodpanda shall charge the customer the Delivery Charge on behalf of the Vendor.

WHEREAS all contracts that are concluded by Foodpanda in its function as commercial agent on behalf of the Vendor with customers on the Foodpanda Platform will be based on the General Terms and Conditions with the customers as found on the Website.

**1.** **Foodpanda Rights and Obligations**

1.1 In order to perform the Services, Foodpanda shall:

1.1.1 help set up Foodpanda’s proprietary mobile application for the Vendor’s use (“Vendor App”);

1.1.2 every time Foodpanda receives an Order, forward such order to the Vendor via the Vendor App and accept the customer's payment online or in cash (save for pick up orders which shall be paid by the customer via online payment only);

1.1.3 transfer to the Vendor, the monies for such Order minus the Agency Fee and Delivery Charges, and such other additional fees as may be applicable, stated on the Vendor Registration Form in accordance with clause 6 of these Terms;

1.1.4 in the event of delivery performed by Foodpanda (“Foodpanda Delivery”): when the order is ready to be collected, arrange for a delivery rider to collect the order from the Vendor and deliver it to the customer;

1.1.5 have the right to change the Delivery Charges to customers without notice to Vendor;

1.1.6 have the right to influence the prices for the Items offered by the Vendor on a case-by-case basis by offering discounts at Foodpanda’s sole cost, whereas Foodpanda will not increase the prices as agreed on with the Vendor;

1.1.7 where applicable, ensure full compliance with the regulations and guidelines of the relevant local authority with regard to the delivery of Halal food;

1.1.8 have full right to remove or amend certain information on the Vendor’s page on the Foodpanda Platform including: Items; ingredients, nutrition and allergen information (if applicable and required by law); minimum order values; promotions; discounts; opening hours; times of delivery and areas of delivery (if applicable) (“**Listing Information**”) at its sole discretion, provided that no new or untrue information shall be made available, and shall not be required to inform Vendor of such changes;

1.1.9 have the right to increase or reduce the prices of the Items offered by the Vendor to match the prices of those same Items as may be listed by the Vendor on other online food delivery platforms without prior notice to the Vendor;

1.1.10 not be obliged to, but may, provide and /or install one or more devices for the Vendor including but not limited to: a printer; mobile/phone; tablet; Vendor App (“Devices”);

1.1.11 in the event of Foodpanda performing the delivery services (“Foodpanda Delivery”), Foodpanda shall use reasonable efforts:

1.1.11.1 when the Order is ready to be collected, arrange for Foodpanda’s delivery rider (“Foodpanda Delivery Rider”) to collect the Order from the Vendor and deliver it to the customer;

1.1.11.2 to perform such deliveries in accordance with the delivery time indicated on the Foodpanda Platform;

1.1.11.3 to ensure that the delivery time stated on the Website complies with the delivery time actually required;

1.1.11.4 to ensure that the Foodpanda Delivery Rider shall be at the Vendor premises to collect the Order in and around the time indicated in the Vendor App when the Order was transmitted to the Vendor;

1.1.11.5 ensure that all Orders will be delivered in a state that a reasonable customer would expect for that type of Item, provided only if Vendor complies with their obligation in clause 2.1.6;

1.1.11.6 have the right to charge the customer a delivery fee (“**Foodpanda Delivery Fee**”), and determine a minimum order value, at its own discretion;

1.1.12 to inform the Vendor, in its sole discretion, of any material changes to Foodpanda’s procedures or operations which would substantially impact the Vendor at least 2 days prior to the implementation of the intended change, and the Vendor shall agree to all such changes.

1.1.13 have the right, in its sole discretion, not to make any Items available for sale on the Foodpanda Platform which may be prohibited by any laws or regulations;

1.1.14 have the right, in its sole discretion, to refuse to provide any kind of service to customers if Foodpanda is not fully satisfied with the outcome of any kind of customer verification procedures or n measures implemented by Foodpanda (e.g. customer fails SMS verification when first registering on the Platform). Additionally, Foodpanda has the right to block customers from placing an order on the Platform if it is discovered that the customer is abusing any promotions, committing or attempting to commit fraud or whether as a customer, or on the account of Foodpanda or the Vendor. Foodpanda shall not require any consent from Vendor in order to effect the provisions of this clause.

**2** **Vendor Rights and Obligations**

2.1 The Vendor shall:

2.1.1 ensure that it shall make available as many of their personnel as required to receive the mandatory training from Foodpanda in order for the Vendor to learn how to operate the Vendor App and all such applicable devices and systems as may be provided by Foodpanda as part of Foodpanda’s vendor onboarding process;

2.1.2 provide Foodpanda with all Listing Information as shall be mutually agreed between the Parties , including: Items; ingredients, nutritional information and allergen information (if applicable and required by law); minimum order values; promotions; discounts; opening hours; times of delivery and areas of delivery (if applicable) (“**Listing Information**”) to be made available for display on the Platform. Should the Vendor wish to change any of the Listing Information, it shall write to Foodpanda requesting for such changes at least 2 business days before the intended change(s) take(s) place, together with an updated copy of the Listing Information reflecting such changes. Such changes shall not occur more than once per month, barring exceptional circumstances;

2.1.3 provide Foodpanda with a clear acceptance or rejection of all orders provided by Foodpanda, no later than 2 minutes from the time the Order was transmitted to the Vendor;

2.1.4 provide Foodpanda, its employees, agents, consultants and subcontractors, with access to the Vendor's premises and such other facilities as reasonably required by Foodpanda to perform the Services;

2.1.5 comply with all applicable local laws and regulations and obtain and maintain all necessary licenses, certifications, permissions and consents (including, without limitation, any food and beverage and / or health and safety legislation and / or regulations) (“**Licences**”) which may be required in order to perform its obligations under this Agreement and to provide copies of all applicable Licences to Foodpanda prior to the Vendor being onboarded on the Platform;

2.1.6 upon accepting an Order, prepare and fulfil such Order without delay, pack it in accordance with Foodpanda’s standards and requirements as communicated to the Vendor from time to time, and at the minimum, at no less than the usual standards of the Vendor, and transfer it to the Foodpanda Delivery Rider or to its own delivery personas applicable; together with the required cutlery;

2.1.7 in the exceptional case of the Vendor providing Foodpanda with a rejection as per clause 2.1.3, the Vendor shall clearly state the reason(s) for such rejection no later than 2 minutes from the time the Order was made available to the Vendor;

2.1.8 be solely responsible and liable for any and all customer queries, claims and/or complaints in respect of the contents and quality of the Items and Orders and any consequential effects thereof;

2.1.9 ensure that it has available at all times sufficient capacity (including staff, Items, Devices and equipment) to process and prepare all Orders in accordance with the approximate delivery time provided to the customers;

2.1.10 immediately inform Foodpanda of any Items that are not available at any given time by: accessing the Vendor App or the backend if available to the Vendor, or by phone, if the Vendor App or backend access is not possible;

2.1.11 ensure that the quality of the Order including but not limited to quality of Items and portion sizes provided to Foodpanda’s customers shall meet the same standards and requirements the Vendor would provide to its own customers in the ordinary course of the Vendor’s business;

2.1.12 ensure that the prices of the Items, and minimum order values of the Orders, offered to Foodpanda’s customers on the Vendor’s page on the Platform are consistently identical to the prices offered to customers who purchase Items from the Vendor through any other means or avenue that is not part of the Platform. In particular, if the Vendor wishes to offer the Items at any prices below the prices offered through the Platform, whether through promotions, discounts, for orders received by phone, website, mobile app or any other platform which it operates or is a part of (“Vendor Promotions”), the Vendor shall inform Foodpanda in writing at least 7 days in advance of the launch of such Vendor Promotions. The Vendor shall clearly explain the terms and conditions of the Vendor Promotions and Foodpanda shall have the right to provide the Vendor Promotions or the equivalent of such Vendor Promotions on the Platform;

2.1.13 shall perform its obligations under this Agreement at all times in a competent, professional, and business-like manner, within established industry standards, adopt best practices and principles, and within the time requirements and deadlines set forth herein;

2.1.14 shall, if it had obtained any Device(s) from Foodpanda, restrict its data usage of the Device to 2GB, failing which the Vendor agrees that a fixed fee of HKD 30 for every extra 1GB used (“Data Surcharge”) shall be automatically applied to the invoice and set off the Data Surcharge against the Vendor Revenue ;

2.1.15 shall be liable to reimburse Foodpanda for the cost of any of the Devices provided by Foodpanda to the Vendor should such Devices become damaged or destroyed, whether in whole or in part, due to the fault of the Vendor;

2.1.16 shall inform Foodpanda immediately should it witness any behavior or conduct of any Foodpanda Delivery Rider which does not conform with Foodpanda standards and requirements or any applicable laws or regulations including but not limited to: not using an appropriate thermal bag for prepared food, not using an appropriate delivery carrier as such Items may reasonably require, behaving in an unprofessional manner, not handling the Items with care, or causing any intentional delays in the picking up of the Items; and

2.1.17 Insofar as, while placing the order, the customer chooses to pick up the order on his or her own in lieu of delivery, the clauses in this Agreement shall apply subject to the provision that there will be no delivery of the order to the customer. A delivery fee shall not be charged in this case. In the event of pick-up by the customer, the Restaurant shall be required to make the Goods available for pick-up by the end customer at the end of the preparation time indicated in clause 2.1.3 hereof. It shall be the Restaurant's responsibility to ensure that the order is handed over to the right customer. Foodpanda shall not be liable if the order is not received by the customer or not received in a timely manner. Disputes arising in this regard between the customer and the Restaurant shall not affect Foodpanda's responsibility. In the event of pick-up by the end customer, all applicable contractual and other provisions shall be interpreted consistently with this clause.

2.1.18 in the event of Vendor Delivery:

1. provide Foodpanda with a realistic estimated delivery time at the same time as providing the Menu Information;
2. deliver to the customer all accepted orders within the time indicated at acceptance by Vendor;
3. immediately inform Foodpanda of any delay in delivering the order according to the estimated delivery time;
4. deliver the order in a state that a customer would expect for that type of food, with the appropriate packaging; and
5. inform Foodpanda about any cancelled, fake or any non-fulfilled orders within 48 hours from acceptance of the order.

**3** **Customer Recovery Charge**

3.1 The Vendor agrees to pay to Foodpanda a Customer Recovery Charge for the issues listed in the table below.

3.2 The Vendor shall be obliged to pay to Foodpanda Customer Recovery Charge only if the Vendor exceeds the thresholds set for both the “Total number of issues” and “% of Total orders” for the invoiced period as set out in the Table below in clause 3.5. Further, Foodpanda may remove the Vendor from the Website should the Vendor have high levels of non-compliant performance.

3.3 The contents of the Table below may be amended from time to time in Foodpanda’s sole discretion. Foodpanda shall inform the Vendor of such amendments in writing 14 days before the effective date of such amendments.

3.4 The Vendor shall be granted a grace period of 1 monthly billing cycles or 2 bi-weekly billing cycles (being 4 weeks) (“Grace Period”) during which the Vendor will not be penalised or subject to Customer Recovery Charge and shall use the Grace Period to implement measures to address all its issues and/or operational problems. The Customer Recovery Charge (if any) for the Grace Period will be reflected in the invoice issued by Foodpanda to the Vendor but Vendor shall not have to pay for these Customer Recovery Charge during the Grace Period. After the Grace Period is over (i.e. from the 1st monthly billing cycle/2nd bi-weekly billing cycle or 5th week onwards), the Vendor shall make payment of the Customer Recovery Charge to Foodpanda as reflected in the invoice issued by Foodpanda to the Vendor.

3.5 Customer Recovery Charge (Table)

|  |  |  |  |
| --- | --- | --- | --- |
| **Issue type** | **Total number of occurrences during invoiced period** | **% of Total orders in invoiced period** | **Customer Recovery Charge per Order** |
| Missing Items | 5 | 5% | HKD 10 |
| Vendor delay (of between 10-30 minutes) | 5 | 5% | HKD 10 |
| Vendor delay (of more than 30 minutes) | 1 | 1% | HKD 20 |
| Cancellations | 5 | 5% | HKD 10 |

3.6 Customer Recovery Charge for Vendor delays (referred to in clause 3.5) shall be imposed after the set preparation time is exceeded. Should the Foodpanda Delivery Rider be delayed, the time shall be calculated from when the Foodpanda Delivery Rider arrives at the Vendor’s premises.

3.7 Should any of the Items need to be replaced (and then re-delivered) due to the fault of Foodpanda, Foodpanda shall reimburse the Vendor 70% of the cost of the Item.

**4** **Suspension**

4.1 Foodpanda shall have the right to temporarily suspend the Vendor from the Platform, without any liability, if:

4.1.1 the Vendor has failed to pay any Foodpanda invoices that have become due; OR

4.1.2 in Foodpanda’s reasonable opinion, the Vendor is in breach of any terms of this Agreement or may be negatively affecting Foodpanda’s business.

4.2 For the avoidance of doubt, any suspension shall not result in the termination of this Agreement, the provisions of which shall remain fully applicable.

**5 Indemnification from Third Party Claims**

5.1 Vendor will, at its expense, defend any of the following types of third party claims brought against Foodpanda, its directors, officers, or agents (collectively, “**Indemnitees**”):

5.1.1 any claim that, if true, would constitute a breach of this Agreement by the Vendor, its employees, agents or representatives;

5.1.2 any claim related to injury to or death of any person or damage to any property arising out of or related to the Vendor obligations arising out of this Agreement; or

5.1.3 any claim that otherwise arises from the negligence, acts, or failures to act, of Vendor, its employees, agents or representatives.

5.1.4 Vendor will indemnify and hold harmless the Indemnitees from any costs, losses, claims, damages and fees (including reasonable legal fees) incurred by any of them that are attributable to any such claim.

**6** **Fees, Payment and Collection of Funds**

6.1 The Vendor grants Foodpanda authority to receive any funds in the name, and for the account of the Vendor paid by the customers, whether by online means or in cash.

6.2 In the event of cash payment by the customer at delivery, the Party making the delivery shall be responsible for collecting the cash payment, and reconciling with the other Party in accordance with the provisions of clause 6.

6.3 The Vendor acknowledges and agrees that Foodpanda shall not receive any funds in cash from the sale of groceries or such other Items as decided by Foodpanda in its sole discretion.

6.4 In the event of online payments received from Orders on the Platform, Foodpanda shall collect money and reconcile in accordance with the provisions of clause 6.

6.5 Save for the provisions of clause 9, the Vendor shall pay Foodpanda the Agency Fees as outlined in the Vendor Registration Form.

6.6 The Parties agree and accept that the Vendor Revenue and the Agency Fees will be calculated and payable in the amount agreed to on the Vendor Registration Form and that no other fees or charges shall apply between the Parties or towards the customers, except as provided for in this Agreement. Vendor specifically accepts that, if applicable, Foodpanda may set-off the Agency Fee against the Vendor Revenue.

6.7 The Parties agree and accept that within five (5) business days from the end of every month, starting from the Commencement Date (defined below) (each a "**Payment Period**"), Foodpanda will issue a monthly order statement (“**Order Statement**”) to the Vendor for the Orders received during the previous month indicating the Vendor Revenue and any other sums due to the Vendor , as well as an invoice for the Agency Fee. Foodpanda shall clearly outline the total sum to be paid to Vendor after any applicable set-off (“**Transfer Amounts**”), or the total sum to be paid by Vendor to Foodpanda, as the case may be.

6.8 Foodpanda's payment partner, or Foodpanda, as the case may be, shall remit the Transfer Amounts to the Vendor’s bank account listed on the Vendor Registration Form, within 15 business days of acceptance of the Order Statement by the Vendor.

**7** **Commencement of Services**

The Vendor shall only be listed on the Platform after the receipt of all information requested by Foodpanda to the full satisfaction of Foodpanda, including, but not limited to the Listing Information; a logo and approved images. The Services shall commence from the date the Vendor goes live on the Platform (“**Commencement Date**”), unless stated otherwise in the Vendor Registration Form.

**8** **Marketing Materials and Intellectual Property**

8.1 “Intellectual Property” shall mean any registered or unregistered trademarks, designs, logos, insignia and images. The Vendor agrees that its name, address, a brief slogan and one or more images of the Vendor, including any logos or insignia, may be published online by Foodpanda including on the Platform, and any of Foodpanda’s partner and affiliate platforms, so that the Vendor can be identified as a Foodpanda partner vendor on such platforms.

8.2 The Vendor furthermore permits Foodpanda, at Foodpanda's cost, to advertise the Vendor on the Platform, Facebook, Google and any other social media or relevant offline and online marketing channels and specifically authorizes Foodpanda unlimited use to its intellectual property, including its logo, in doing so.

8.3 The Vendor, where practicable, is to promote, advertise, display and distribute official Foodpanda marketing materials such as, *inter alia*, business cards of Foodpanda, and links to the Platform, on a variety of online and offline tools, such as the Vendor website (if available) and any social media accounts of the Vendor, via a certificate picture and an “order now” button. The Vendor shall display marketing materials for the purposes of advertising and promoting the Foodpanda brand, image and Platform provided to Vendor or as approved by Foodpanda (“Foodpanda Marketing Materials”) at the Vendor’s brick-and-mortar outlets. Foodpanda shall provide Foodpanda Marketing Materials, and Vendor shall not design, create or produce any marketing materials in relation to Foodpanda including any material referencing the name, image, logo or insignia of Foodpanda, without the consent of Foodpanda. The Vendor shall not bear any cost in respect of these Foodpanda Marketing Materials.

8.4 Foodpanda may provide Vendor with offline marketing materials, such as stickers, and Vendor obliges itself to display such offline marketing materials as instructed by Foodpanda.

8.5 All intellectual property rights in the marketing materials mentioned in clauses 8.3 and 8.4, and otherwise arising out of the Services shall remain the exclusive property of Foodpanda.

8.6 It is hereby clarified that Vendor does not have any rights whatsoever to use or avail of any Intellectual Property rights of Foodpanda, including any domains or similar domain names.

8.7 It is agreed that neither Party shall obtain any other rights to the Intellectual Property of the other Party, except as catered for in these Terms.

8.8 The Vendor represents, warrants and undertakes that the use by Foodpanda of the Intellectual Property of the Vendor, including the name, logo and/or image of the Vendor, and/or other marketing materials in accordance with Clause 8 of this Agreement shall not infringe the intellectual property rights of any third party.

**9 Preferred Partnership**

9.1 In return for the Preferred Partnership Rate agreed to on the Vendor Registration Form (if applicable), subject to Clauses 9.2 and 9.3 below, the Vendor agrees that throughout the duration of this Agreement, it shall work on a Preferred Partnership basis with Foodpanda by not entering into any agreements with any or select third parties that provide services that are similar or identical to the Services ("Third Parties").

9.2 Should the Vendor not opt to work on a Preferred Partnership basis with Foodpanda, the Non-Preferred Partnership Rate agreed to on the Vendor Registration Form shall apply.

9.3 In the event of the Vendor opting to shift from the Preferred Partnership Rate to the Non-Preferred Partnership Rate, or vice versa, it shall inform Foodpanda of such decision with at least ninety (90) days’ notice and the Non-Preferred Partnership Rate shall apply with effect from the first day of the following month following the end of notice.

9.4 Should the Vendor opt not to work on a Preferred Partnership basis with Foodpanda and fail to inform Foodpanda of such decision with at least ninety (90) days’ notice, the Vendor agrees that the Non-Preferred Partnership Rate shall apply with effect from the date that the Vendor begins working with any Third Parties.

**10** **Partnering Platforms**

Foodpanda may display the Listing Information on any other platform owned by, operated by, or affiliated with Foodpanda, and the terms of this Agreement apply for such platforms as well.

**11** **Confidentiality & Data Protection**

11.1 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 products 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 in 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.

11.2 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.

11.3 In the event of Vendor Delivery, Foodpanda may provide Vendor with certain personal data belonging to Foodpanda’s customers ("Customer Data"). Such Customer Data may include, among others: name, surname, address, e-mail address and telephone number or other information provided by Foodpanda’s customers to Foodpanda which may be considered to be required for the performance of the Services. Vendor hereby undertakes to only use the Customer Data for the purposes of this Agreement and in accordance with the provisions of applicable Data Protection legislation, and shall not retain, store or process, in any manner whatsoever, any part of the Customer Data, unless legally required to do so.

**12** **No Partnership**

Nothing in this Agreement is intended to, or shall be deemed to establish any corporate partnership or joint venture between the Parties.

**13** **Amendments**

13.1 Foodpanda shall have the right to amend any clause of this Agreement, provided that it shall inform Vendor of such amendments in writing by sending the full copy of the updated Terms and any changes being made to any part of the Vendor Registration Form, together with the effective date of such amendments, which shall not be shorter than fourteen days (14) days from the date of notification.

13.2 In the event of Vendor disagreeing with such amendments he shall have the right to terminate this Agreement in accordance with the provisions of clause 19.1 (a).

13.3 It is specifically agreed that all amendments shall be effective between the Parties with effect from the date notified by Foodpanda in accordance with clause 13.1, without the need for any additional signatures or documentation, unless objected to in accordance with clause 13.2.

**14** **Force Majeure**

14.1 For the purposes of this Agreement, "**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.

14.2 Neither Party shall be liable to the other Party as a direct result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.

14.3 If a Force Majeure Event prevents either Party from performing its obligations under this Agreement for a period of more than four weeks, either Party shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the other Party.

**15** **Third Parties**

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce its terms.

**16** **Notices**

16.1 All notices under this Agreement shall be in writing, addressed to the agreed contact person/address as per this Agreement, and be deemed duly given:

16.1.1 On the same day when delivered, if delivered by hand during normal business hours of the recipient;

16.1.2 On the same day when sent, if transmitted by fax or e-mail to the contact person on the Vendor Registration Form or any approved substitute thereof, and a confirmation of receipt or delivery is provided;

16.1.3 On the third business day following mailing, if sent by post.

**17** **Assignment**

17.1 Foodpanda may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

17.2 The Vendor shall not, without the prior written consent of Foodpanda, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Agreement.

**18** **Waiver**

A waiver of any right under this Agreement or law is only effective if it is in writing and shall not be deemed to be a 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.

**19** **Term and Termination**

19.1 This Agreement shall commence on the Effective Date and will continue for an indefinite period, unless terminated earlier in accordance with this clause 19.1. This Agreement may be terminated: (a) by either Party for convenience upon giving the other Party not less than 90 days' prior written notice (for Vendors working with Foodpanda on a Preferred Partnership Rate basis) (b) by either Party for convenience upon giving the other Party not less than 30 days’ prior written notice (for Vendors working with Foodpanda on a non-exclusive basis) (c) with immediate effect upon the provision of written notice by either party in the event of material breach of this Agreement by the other party; or (d) at any time by mutual written agreement between the Parties.

19.2 Vendors who fail to provide the requisite notice period provided in clause 19.1(a) and 19.1(b) shall immediately pay to Foodpanda (as liquidated damages and not as a penalty or as damages for any breach of this Agreement) an amount equivalent to the Vendor Revenue for the preceding three months (for clause 19.1(a)) or one month (for clause 19.1(b)).

19.3 Foodpanda shall have the right to terminate this Agreement with immediate effect and without any liability, in the event of a breach of clause 2.1.13, where Vendor has failed to remedy the breach within a maximum period of 2 business days from notification.

19.4 Upon termination of this Agreement, for whatsoever reason:

19.4.1 Foodpanda shall remove the Vendor from the Platform;

19.4.2 the Vendor is obliged to immediately return all Foodpanda property in its possession, including and in particular the Devices and any other assets loaned to the Vendor by Foodpanda;

19.4.3 the Vendor must immediately remove any reference to Foodpanda and / or any of Foodpanda's intellectual property from the Vendor’s premises, website and / or marketing materials;

19.4.4 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry; and

19.4.5 clauses which expressly or by implication survive termination shall continue in full force and effect.

**20** **Limitation of Liability**

20.1 Nothing in this Agreement shall limit or exclude either Party’s liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors

20.2 Subject to clause 20.1:

20.2.1 Neither Party shall be liable to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss or damages arising under or in connection with this Agreement; and

20.2.2 Foodpanda's total liability to the Vendor in respect of all other losses arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Agency Fees paid in the preceding year at the time of the event giving rise to such liability.

20.3 This clause shall survive termination of this Agreement.

**21** **Conflicting Terms**

21.1 To the extent that any of these Terms conflict with the terms stated on Vendor Registration Form (including, without limitation, any additional terms which may be detailed on the Vendor Registration Form), the terms of Vendor Registration Form shall prevail.

21.2 This Agreement is written in the English language, which shall be the sole language of interpretation in the event of any translations.

**22** **Entire Agreement**

This Agreement sets forth the entire agreement and understanding between the Parties or any of them in relation to the subject matter of this Agreement and supersedes and cancels in all respects all previous agreements, letters of intent, correspondence, understandings, agreements and undertakings (if any) between the Parties with respect to this subject matter hereof, whether written or oral.

**23** **Severability**

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

**24** **Governing Law and Jurisdiction**

24.1 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the laws of the HKSAR.

24.2 Each Party agrees that any dispute arising out of this Agreement shall be subject to the non-exclusive jurisdiction of the courts of the HKSAR who shall settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**25** **Authorised Signatories**

The Vendor acknowledges that Foodpanda’s approval and agreement to be bound by the terms and conditions under this Agreement shall only constitute to be legally binding when signed by at least two duly authorised representatives of Foodpanda on this Agreement.