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 Foodpanda Malaysia Sdn. Bhd. (“**Foodpanda**”) and the vendor named on the Vendor Registration Form ("**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 act as its agent and 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.my (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 on behalf of 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, provide delivery services to customers in Malaysia. Thereto, Foodpanda receives the order of the customer online via the Foodpanda Platform, transmits it via a printer / tablet / Vendor app 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 and such other fees as agreed upon between the Parties as per the Vendor Registration Form (collectively referred to as the “**Services**”).

WHEREAS in addition to the Platform, 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 all contracts that are concluded by Foodpanda in its function as agent on behalf of the Vendor with customers via Foodpanda's Platform will be based on the Terms of Use with the customers as found on the Platform.

1. **Foodpanda Rights and Obligations** 
   1. In order to perform the Services, Foodpanda shall:
      1. have full right to remove or amend certain items from the Listing Information (hereinafter defined) 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;
      2. 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 provided by the Vendor;
      3. not be obliged to, but may, provide and /or install one or more of the following: a printer; mobile/phone; tablet; vendor app at the Vendor’s premises;
      4. in the event of Foodpanda performing the delivery services:
         1. effect such deliveries in accordance with the delivery time indicated on the Platform;
         2. ensure that the delivery time stated on the Platform complies with the delivery time required;
         3. ensure that Foodpanda delivery personnel shall be at the Vendor’s premises to collect the order at the time stated when the order was transmitted to the Vendor;
         4. ensure that all Orders will be delivered in a condition that a customer would reasonably expect for that type of Order, provided that Vendor complies with the obligation in clause 2.1.6;
         5. have the right to charge the customer a delivery fee (“**Foodpanda Delivery Fee**”), and determine a minimum order value, at its own discretion;
      5. transfer to the Vendor, the Vendor Revenue for such orders minus the Agency Fee and such other applicable fees in accordance with clause 7 of these Terms;
      6. inform the Vendor in writing of any changes implemented to the procedures by Foodpanda at least 2 days prior to the intended change taking place, and the Vendor shall as such comply with all such changes.
      7. have the right to alter, at its sole discretion, any services related to delivery, including delivery areas and operational timing, without prior notice to Vendor;
      8. have the right to refuse the onboarding of customers in the event of customer verification measures being implemented by Foodpanda (such as SMS verification of the customer when first registering on the Platform) and Foodpanda is not satisfied of the outcome of the verification. Additionally, Foodpanda has the right to block customers from ordering from a Vendor in the event it is discovered or reasonably suspected that a customer is or may be abusing any promotions or in any other case of fraud-like attempts by the customer 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** 
   1. The Vendor shall:
      1. ensure that it makes personnel available to receive the appropriate training from Foodpanda in order for the Vendor to operate Foodpanda’s Vendor App and all applicable devices and systems as may be provided by Foodpanda as part of Foodpanda’s vendor onboarding process;
      2. provide Foodpanda with all the Listing Information as agreed on with Foodpanda, 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**”) to be made available for display on the Platform. The Vendor shall provide the Listing Information to Foodpanda on the same day as the date of execution of this Agreement. Should the Vendor change any of the Listing Information provided to Foodpanda before it begins accepting orders from the Platform, the Vendor shall pay to Foodpanda a fee of MYR15. Should the Vendor wish to change any of the Listing Information after the Vendor begins accepting orders from customers via the Platform, it shall inform Foodpanda in writing of any such suggested changes at least 2 business days before the intended change(s) take(s) place, together with an updated list of the latest Items reflecting such changes. Such changes shall not occur more than once per calendar month, barring exceptional circumstances;
      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 made available to the Vendor;
      4. provide Foodpanda, its employees, agents, consultants and subcontractors, with access to the Vendor's premises and other facilities as reasonably required by Foodpanda to perform the Services;
      5. comply with all local Laws and Regulations and obtain and maintain all necessary licenses, permissions and consents (including, without limitation, any food and beverage and / or health and safety legislation and / or regulations) which may be required in order to perform its obligations under this Agreement;
      6. upon accepting an Order, prepare and fulfil such Order without delay, pack it in accordance with Foodpanda standards and requirements as communicated from time to time, and at no less than the common standard of the Vendor, and transfer it to the Foodpanda delivery person or to its own delivery person, as applicable; together with the required cutlery;
      7. in the event of Vendor Delivery:
         1. provide Foodpanda with a realistic estimated delivery time at the same time as providing the Listing 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 the type of Order/Items, 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.
      8. 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;
      9. 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;
      10. as far as possible, ensure that it has available at all times sufficient capacity (including staff, Items and equipment) to process all Orders received through Foodpanda in accordance with the average delivery time provided to the customers;
      11. immediately inform Foodpanda of any Items that are not available at any given time and shall do so by accessing the Vendor App or the backend if available to Vendor, or by phone, if the Vendor App or backend access is not possible;
      12. ensure that all portions provided to its indirect customers availing of Foodpanda services shall be of the same size and quality as the portions provided by the Vendor to its direct customers;
      13. ensure that the prices, and minimum order values, offered to customers by Vendor, and set by Foodpanda are consistently identical to the prices offered to customers by the Vendor when placing orders by phone, Platform or any other platform which is operated by the Vendor. In particular, if the Vendor wishes to offer any lower prices through any promotions or discounts for orders received by phone, website, mobile app or any other platform which it operates, it shall inform Foodpanda at least 7 days in advance. The Vendor shall clearly explain the conditions of the promotions or discounts and Foodpanda shall have the right to provide the Vendor’s promotions or discounts on its platform;
      14. perform its obligations under this Agreement at all times in a competent, professional, and business-like manner, within established industry standards, practices, and principles, and within the time deadlines set forth herein;
      15. make payment of MYR600 to Foodpanda should the Vendor lose, misplace, damage or allow damage to be caused to the printer /mobile phone / tablet or such other device(s) provided by Foodpanda to the Vendor. The Vendor will not have to make payment of this fee of MYR600 for a lost printer / mobile phone / tablet or such other device(s) if it provides a police report on the theft of said device(s) to Foodpanda;
      16. make payment of MYR3 per billing cycle to Foodpanda should it fulfill less than 15 Orders per billing cycle; and
      17. make payment of a monthly fee of MYR 13 to Foodpanda for data transmission charges related the order transmission device provided by Foodpanda to the Vendor (“**Data Transmission Charges**”). Foodpanda may at its sole discretion revise such Data Transmission Charges should the mobile service provider engaged by Foodpanda revises its fees.
3. **Customer Recovery Charge** 
   1. The Vendor agrees to pay to Foodpanda Customer Recovery Charges for the issues listed in the table below.
   2. The Vendor shall be obliged to pay to Foodpanda the Customer Recovery Charges only if:
      1. the Vendor exceeds the threshold set for both the “Total number of issues” and “% of Total orders” for the invoiced period; and
      2. the total number of issues represent more than 3% of the total order volume for the invoiced period.
   3. The contents of the table below may be amended from time to time at Foodpanda’s sole discretion. Foodpanda shall inform the Vendor of such amendments in writing 14 days before the effective date of such amendments.
   4. The Vendor shall be granted a grace period of 6 weeks (“**Grace Period**”) during which the Vendor may implement measures to address all its issues and/or operational problems. The Customer Recovery Charges (if any) for the Grace Period will be reflected in the invoice issued by Foodpanda to the Vendor. However, the Vendor shall not have to pay for these Customer Recovery Charges during the Grace Period. After the Grace Period is over (i.e. 7th week onwards), the Vendor shall make payment of the Customer Recovery Charges to Foodpanda as reflected in the invoice issued by Foodpanda to the Vendor.

|  |  |  |  |
| --- | --- | --- | --- |
| **Issue type** | **Total number of issues occurring during invoiced period** | **% of Total Orders in invoiced period** | **Customer Recovery Charge per Order** |
| Wrong dishes | **3** | 3% | MYR 3.5 |
| Missing Items | **3** | 3% | MYR 3.5 |
| Vendor delay (of between 10-30 minutes) | **3** | 3% | MYR 3.5 |
| Vendor delay (of more than 30 minutes) | **0** | 0% | MYR 3.5 |
| Cancellations | **3** | 3% | MYR 3.5 |

1. **Redelivery Fees**
   1. Foodpanda may be required to perform a second delivery (or a redelivery) for the same Order from a customer as a result of issues arising due to either Foodpanda's riders’ error or Vendor’s error, for instance, spillage of the Items or missing items in the orders. The Vendor would therefore have to prepare a second set of the same Items to fulfill the same Order by the customer.
   2. The cost of the first set of the Items and the delivery fee will be borne by the customer. Foodpanda performs the second delivery and absorbs the cost of the second delivery on behalf of the Vendor. **Foodpanda will pay to the Vendor 40% of the cost of the second set of Items**.
   3. For the avoidance of doubt, the Vendor will only have to pay to Foodpanda one set of Agency Fees for this Order.
2. **Suspension**
   1. Foodpanda shall have the right to temporarily suspend the Vendor from the Platform, without liquidated damages, if:
      1. the Vendor has failed to pay any Foodpanda invoices that have become due; OR
      2. in its reasonable opinion, the Vendor is in breach of any terms of this Agreement or may be negatively affecting Foodpanda’s business.

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

1. **Indemnification from Third Party Claims**
   1. Vendor will, at its own expense, defend any of the following types of third party claims brought against Foodpanda, its directors, officers, or agents (collectively, “**Indemnitees**”):
      1. any claim that, if true, would constitute a breach of this Agreement by the Vendor, its employees, agents or representatives;
      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
      3. any claim that otherwise arises from the negligence, acts, or failures to act, of Vendor, its employees, agents or representatives.
      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.
2. **Fees, Payment and Collection of Funds**
   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.
   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 7.
   3. In the event of online payments, Vendor shall collect money and reconcile in accordance with the provisions of clause 7.
   4. 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 and Data Transmission Charges against the Vendor Revenue.
   5. The Parties agree and accept that within five (5) business days of the 7th, 15th, 22nd, the last day of the month, starting from the Commencement Date (each a "**Payment Period**"), Foodpanda will issue an ordering statement (“**Order Statement**”) to the Vendor for the orders received during the previous period 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 transferred to Vendor after any applicable set-off (“**Transfer Amounts**”), or the total sum to be paid by Vendor, as the case may be.
   6. Foodpanda's payment partner, or Foodpanda, as the case may be, shall transfer the Transfer Amounts to the Vendor’s bank account listed on the Vendor Registration Form, within 3 business days of acceptance of the Order Statement by the Vendor
   7. In addition to the above-mentioned invoice, Foodpanda shall also issue the Vendor with an outline of the Customer Recovery Charges due by Vendor to Foodpanda (“**Notification of Customer Recovery Charges**”).
   8. The Vendor shall have the right to appeal the Order Statement and Notification of Customer Recovery Charges in accordance with the below:
      1. Vendor shall object in writing within 7 business days of the issuing date of the relevant Order Statement or Notification of Customer Recovery Charges and shall clearly state all the reasons for the appeal, including any supporting documentation;
      2. Foodpanda shall review the objection within 5 business days and:
         1. if agreed with, shall adjust the Order Statement or Notification of Customer Recovery Charges accordingly;
         2. if Foodpanda disagrees with the Vendor, it shall inform Vendor of such and the Parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through negotiations between a director of each of the Parties with authority to settle the relevant dispute.
      3. If the dispute cannot be settled amicably within 14 days of receipt of the appeal will entitle either Party to apply the provisions of clause 26.2.
3. **Commencement of Services**

The Vendor shall only be listed on the Platform after the receipt of all information requested by Foodpanda, including, but not limited to the Listing Information; a logo and approved images. Foodpanda shall inform the Vendor, in writing, of the starting date of the Services (“**Commencement Date**”), which notification shall be annexed to this Agreement.

1. **Marketing Materials and Intellectual Property**
   1. 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 on the Platform , mobile application, Foodpanda partner and affiliate platforms, so that Foodpanda can be identified as an agent of the Vendor on such online platforms.
   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 authorized Foodpanda unlimited use to its intellectual property in doing so.
   3. The Vendor, where practicable, is to 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 availed of by Vendor, via a certificate picture and an “order now” button. Foodpanda shall provide such material or images to produce such material, and Vendor shall not produce any marketing materials including reference to Foodpanda, without the consent of Foodpanda. The Vendor shall not bear any cost in respect of these marketing materials.
   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.
   5. Al intellectual property rights in the marketing materials mentioned in clauses 9.3 and 9.4, and otherwise arising out of the Services shall remain the exclusive property of Foodpanda.
   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.
2. **Preferred Partnership (if applicable)**
   1. If applicable, in return for the Preferred Partnership Rate agreed to on the Vendor Registration Form, subject to Clauses 10.2 and 10.3 below, the Vendor agrees that throughout the duration of this Agreement, it shall not enter into any agreements with any or select third parties that provide services that are similar or identical to the Services (“**Third Parties**”).
   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.
   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 days (90) notice and the Non-Preferred Partnership Rate shall apply with effect from the first day of the following month following the end of notice.
   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.
3. **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.

1. **Warranties**

The Vendor represents, warrants and undertakes that the use by Foodpanda of the name, logo and /or image of the Vendor on the Platform and / or other marketing materials in accordance with clause 9 of these Terms shall not infringe the intellectual property rights of any third party.

1. **Confidentiality & Data Protection**
   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.
   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.
   3. In the event of Vendor Delivery, Foodpanda may provide Vendor with certain personal data belonging to Foodpanda’s customers ("Cu**stomer 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.
   4. This clause shall survive termination of this Agreement.
2. **No Partnership**

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

1. **Amendments**
   1. Foodpanda shall have the right to amend any section 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 section of the Vendor Registration Form, together with the effective date of such amendments, which shall not be shorter than fourteen days (14) days from date of notification.
   2. In the event of Vendor disagreeing with such amendments, the Vendor shall have the right to terminate this Agreement in accordance with the provisions of clause 21.1 (a).
   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 15.1, without the need for any additional signatures or documentation, unless objected to in accordance with clause 15.2.
2. **Force Majeure**
   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.
   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.
   3. If a Force Majeure Event prevents either Party from performing its obligations under this Agreement for 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.
3. **Third Parties**

A person who is not a party to this Agreement shall not have any rights to enforce its terms.

1. **Notices**
   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:
      1. On the same day when delivered, if delivered by hand during normal business hours of the recipient;
      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;
      3. On the third business day following mailing, if sent by post.
2. **Assignment**
   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.
   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.
3. **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.

1. **Term and Termination**
   1. This Agreement shall commence on the Commencement Date and will continue for an indefinite period, unless terminated earlier in accordance with this clause 21.1. This Agreement may be terminated: (a) by either Party for convenience upon giving the other Party not less than 14 days' prior written notice (b) 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 (c) at any time by mutual written agreement between the Parties.
   2. Vendors who fail to provide the requisite notice period provided in clause 20.1(a) and 20.1(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 20.1(a)) or one month (for clause 20.1(b)).
   3. Foodpanda shall have the right to terminate this Agreement, with immediate effect and without any liability, in the event of a breach of section 2.1.13, where Vendor has failed to remedy the breach within a maximum period of 2 business days from notification.
   4. Upon termination of this Agreement, for whatsoever reason:
      1. Foodpanda shall remove the Vendor from the Platform;
      2. the Vendor is obliged to immediately return all Foodpanda property in its possession, including in particular the assets loaned by Foodpanda;
      3. the Vendor must immediately remove any reference to Foodpanda and / or any of Foodpanda's intellectual property from its premises, Platform and / or marketing materials;
      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
      5. clauses which expressly or by implication survive termination shall continue in full force and effect.
2. **Limitation of Liability**
   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
   2. Subject to clause 22.1:
      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
      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.
   3. This clause shall survive termination of this Agreement.
3. **Conflicting Terms**
   1. To the extent that any of these Terms conflict with the terms stated on Vendor Registration Form (including, without limitation, any Special Conditions detailed on Vendor Registration Form), the terms of Vendor Registration Form shall prevail.
   2. This Agreement is written in the English language, which shall be the sole language of interpretation in the event of any translations.
4. **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.

1. **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.

1. **Governing Law and Jurisdiction**
   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 Malaysia.
   2. Each Party agrees that any dispute arising out this Agreement shall be subject to the non-exclusive jurisdiction of the courts of Malaysia 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).
   3. Performance of this Agreement shall continue during arbitration proceedings or any other dispute resolution mechanism pursuant to clause 7.8. No payment due or payable by the Vendor, or amount to be transferred by Foodpanda shall be withheld on account of a pending Court dispute or other dispute resolution mechanism except to the extent that such payment is the subject of such dispute.
2. **Stamp duty**

For the purposes of stamp duty, this Agreement is an agreement for services to which the Stamp Duty (Remission) (no. 4) Order 2010 applies.

1. **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.

**Appendix A**

**Dish Image Dimension / Listing & Hero** - 4000 X 2925 pixels (72 dpi)

* + Assorted Dishes
  + Top View (90 degree) or Front View (0 degree) angle. Never use any other angle
  + Dish needs to be centered in the middle of the imagebillin
  + No Watermarks or Branding
  + No Close-Up Image
  + The images should be clicked from a distance
  + No Human Figures
  + No White Background
  + No Collage of Images
  + Images should not be Blurred
  + All images need to be taken in Landscape Format
  + All image format should be either - JPEG
  + All image should be name according to the Listing Information name

A screenshot of a social media post

Description automatically generated

**Appendix B**

**Customer Recovery Charge**

The Vendor will only be required to pay a Customer Recovery Charge when an order has negatively affected Foodpanda’s customer’s experience and for operational problems that are fully within the Vendor’s control.

`

For the avoidance of doubt, the Customer Recovery Charges will only apply for frequently recurring issues. The table below illustrates what is considered as a “frequently recurring issue” and the amount of the Customer Recovery Charge that will be invoiced once that threshold is reached. Both conditions of “Total Issues” and “% of Total orders” must be satisfied before Customer Recovery Charges can apply.

|  |  |  |  |
| --- | --- | --- | --- |
| **Issue Type** | **Total Issues in invoiced period** | **% of Total orders in invoiced period** | **Fee per order** |
| Wrong dishes | 3 | 3% | MYR3.5 |
| Missing Items | 3 | 3% | MYR3.5 |
| Vendor delay (10-30 mins) | 3 | 3% | MYR3.5 |
| Vendor delay (above 30 min) | 0 | 0% | MYR3.5 |
| Cancellations | 3 | 3% | MYR3.5 |

Table Notes:

* Customer Recovery Charges will only be applied if the limit for the issues is exceeded and, where applicable, these issues represent more than 3% of the total order volume for that period.
* If the Vendor reaches the issue limit on a given invoice, the Vendor will be charged fees for each order that presented an issue in that category.
* Please note that the above table may be amended from time to time at Foodpanda’s sole discretion and as shall be notified to the Vendor.

The Vendor shall be granted a grace period of **6 weeks** during which the Vendor may implement measures to address all its issues and/or operational problems. The Customer Recovery Charge (if any) for such period will be reflected in the Vendor’s invoice from Foodpanda, but no Customer Recovery Charge shall be charged by Foodpanda.