

TERMS & CONDITIONS OF SALE (MARKETPLACE “FOODOMARKET”)

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Preamble

Foodomarket Inc. d/b/a Foodomarket (“FOODOMARKET”) operates a B2B marketplace available at foodomarket.com (the “Platform”). These Terms & Conditions of Sale (“T&CS”) govern every order of products (“Products”) placed by a professional purchaser (“Buyer”) with a professional seller (“Vendor”) via the Platform.

1 – Purpose and Scope

- 1.1 These T&CS set forth the rights and duties of Buyer, Vendor and FOODOMARKET for sales concluded through the Platform.
- 1.2 Validation of an order constitutes full acceptance of these T&CS, to the exclusion of Buyer’s own purchase terms.

2 – Definitions

In these Terms, the following words shall have the meanings set out below:

- “**Platform**” means the online marketplace operated by FOODOMARKET.
- “**Buyer**” means any business customer purchasing Products via the Platform.
- “**Vendor**” means any seller offering Products through the Platform.
- “**Products**” means goods listed for sale by Vendors on the Platform.
- “**Personal Information**” means any information relating to an identified or identifiable natural person, as defined under applicable U.S. federal and state privacy laws (including the New York SHIELD Act).

3 – Account Creation & Verification (KYC)

3.1 To access the Platform and place orders, the Buyer must create an account by providing accurate and complete information, including its business name, Employer Identification Number (EIN), resale certificate (if applicable), and a valid professional email address.

3.2 FOODOMARKET reserves the right to request additional documents for identity and business verification (Know Your Customer – “KYC”) in accordance with applicable U.S. laws and regulations.

3.3 FOODOMARKET may suspend or terminate any account containing inaccurate or incomplete information, or in case of suspected fraud, credit risk, or violation of these Terms.

4 – Pre-contractual Information & Listing

4.1 Each Product listing on the Platform is provided by the Vendor, including price in U.S. Dollars (exclusive of tax), availability, specifications, and photos.

4.2 Unless the Buyer applies specific filters, search results and offers are ranked by category and total delivered price (lowest first).

4.3 Availability and updating of information

a. Availability – Stock-outs – Partial Deliveries

The availability information displayed on the Platform is provided under the sole responsibility of the Vendor. FOODOMARKET does not guarantee the actual availability of the Products.

The Vendor undertakes to update the availability information as promptly as possible, based on its own stock data.

In the event of total or partial unavailability of a Product after the order has been placed, the Order shall remain valid for the Products actually delivered.

The Buyer may neither cancel the Order as a whole nor refuse the Products delivered, even where the delivered quantities differ from those initially ordered.

Products not delivered shall, at the Vendor's option:

- be reimbursed; or
- be delivered at a later date;

without any fees or penalties for the Vendor and without any indemnity or compensation payable to the Buyer.

b. Prices – Notice of Price Updates

Any price change must be notified to FOODOMARKET before 12:00 p.m. on a Business Day.

The new prices shall apply to all orders scheduled for delivery from the day following such notification, subject to the provisions below.

Orders already validated before the modification:

- For orders already validated by FOODOMARKET before notification of a new price, only the Products whose price has changed may be subject to partial cancellation by the Buyer.
- Procedure in such cases: FOODOMARKET shall contact the Buyer before the deadline for accepting Orders for next-day delivery, in order to allow the Buyer to:
 - confirm the Products concerned at the new price; or
 - request cancellation of only those Products affected by the price change.

c. Notifications Outside Business Days

Any notification transmitted on a day that is not a Business Day shall be deemed received at 09:00 a.m. on the first following Business Day.

d. Consequences of Non-Compliance with the Notice Requirement

- (i) The order shall be deemed concluded on the basis of the latest information validly communicated.
- (ii) In the event of an error or failure to update the price, FOODOMARKET may charge the Vendor the management fees strictly necessary to carry out the interventions made indispensable by the pricing error (e.g., correction, contacting the Buyer, handling the dispute). Such fees do not constitute a penalty, but solely the recovery of the actual costs incurred.
- (iii) In the event of repeated errors relating to availability, FOODOMARKET may temporarily suspend the display of the relevant Product in order to preserve the quality of the service, without any fee or charge being applied in relation to stock-outs.

5 – Order Process

5.1 The Buyer confirms acceptance of these Terms by checking the acceptance box and clicking “Confirm Order” on the Platform.

Orders placed through the Platform are binding, unless the Vendor rejects the order within six (6) Business Hours via the Platform.

Notwithstanding the foregoing, the Buyer may cancel their order as long as the daily deadline for the Vendor to accept orders for next-day delivery has not passed.

This deadline is displayed on the Platform and varies depending on the Vendor.

5.2 Each Order shall specify at least:

- the reference and description of the Products;
- the agreed price excluding tax;
- the terms and deadline for payment;
- the place and date (or time slot) of delivery or, where applicable, collection

5.3 Records of orders maintained by the Platform constitute *prima facie* evidence of transactions

under the U.S. Electronic Signatures in Global and National Commerce Act (E-Sign Act, 15 U.S.C. § 7001) and the Uniform Commercial Code (UCC).

5.4 The Buyer guarantees the accuracy and completeness of the information provided when placing the order, in particular the delivery address and billing details. Any delay, additional cost, or inability to deliver resulting from incorrect or incomplete information shall be the sole responsibility of the Buyer, who shall bear all related costs.

5.5 In accordance with Article 8 hereof, no cancellation is possible after confirmation of the Order, except with the written agreement of the Vendor. Due to the variable availability of the Products, the Buyer acknowledges that the order may be fulfilled by partial or deferred deliveries, which constitutes a normal method of performance of the Contract. Partial or deferred delivery shall not justify total or partial cancellation of the Order, nor withholding of payment, as the Buyer remains obliged to accept delivery of the Products available or remaining to be delivered, subject to their conformity upon delivery.

6 – Price, Invoicing, Payment & Authorizations

6.1 Price

Product prices are invoiced in U.S. Dollars (exclusive of tax) on the day the Order is validated by the Buyer. Applicable sales taxes shall be calculated and shown separately according to the Buyer's shipping address and applicable state law.

6.2 Additional Charges

Delivery fees and, where applicable, any additional costs duly accepted by the Buyer are displayed separately prior to Order validation and added to the net amount. Unless otherwise expressly agreed, deliveries are made under Incoterm DAP – Buyer's Address (Incoterms® 2020).

6.3 Invoicing

The Vendor issues invoices in U.S. Dollars (USD) upon dispatch or collection of the Products. Invoices must include all mandatory information required under applicable United States federal and New York State laws and regulations. FOODOMARKET shall ensure the digital archiving and integrity of invoices in accordance with applicable U.S. federal and New York State record-keeping obligations.

6.4 Payment Terms – Due Date

Unless specifically agreed otherwise:

- payment is due upfront upon validation of the Order;
- where net payment terms have been allowed, the maximum due date is thirty (30) days following the end of the month of invoice ("Net 30 EOM").

The Vendor retains title to the Products until full and final payment of the corresponding invoice (see Retention of Title clause below). Any conflicting clauses in the Buyer's terms shall be deemed unenforceable.

Failure to pay any invoice when due may result in suspension or cancellation of the corresponding Order, without prejudice to any damages.

6.5 Assignment of Claims – Buyer's Acceptance

This clause applies solely to orders for which the Buyer selects payment through the Foodomarket platform (“Eligible Orders”).

For each Eligible Order, the Buyer acknowledges and agrees that, upon issuance of the corresponding invoice, all rights, title, and interest in and to the associated accounts receivable (including the full invoiced amount, whether net or gross of taxes) are automatically assigned by the Seller to Foodomarket as security and in consideration for advance payment.

The Buyer is therefore informed that:

- Foodomarket becomes the sole creditor of the Buyer with respect to the invoiced amount of any Eligible Order;
- only payment made through the Foodomarket platform shall discharge the Buyer's payment obligations;
- Foodomarket is authorized to take any collection actions relating to the assigned receivables.

This assignment is deemed accepted by the Buyer upon confirmation of each Eligible Order. The Buyer acknowledges having received notice of such assignment at the time of order validation.

6.6 Early Payment

DiscountNo early payment discount is granted unless expressly agreed in writing.

6.7 Late Payment Penalties

Late payments shall accrue interest at the lesser of (i) 1.5% per month or (ii) the maximum rate permitted by New York law. In addition, Buyer shall reimburse FOODOMARKET for reasonable costs of collection, including attorneys' fees.

6.8 Payment Authorizations and Storage of Payment Method

6.8.1 Payment Authorization

By registering a payment method (credit card, direct debit mandate, or any other accepted means), the Buyer expressly authorizes FOODOMARKET, acting on behalf of the Vendor through its authorized payment service provider (“PSP”), to collect the invoiced amount for each invoice issued, independently of the amount of the initial Order.

6.8.2 Extended Pre-Authorisation

Upon Order validation, the Buyer authorizes FOODOMARKET (via its PSP) to place a pre-authorization hold of up to one hundred and thirty per cent (130%) of the estimated net value of the Order.

This pre-authorization covers:

- any complementary deliveries or subsequent adjustments relating to the Order;
- any variation in quantity or price of the Products delivered.

The Buyer acknowledges that, if available funds are insufficient to authorize the 130% hold, FOODOMARKET may refuse the Order or delay execution until sufficient funds are available.

6.8.3 Payment per Invoice, Not per Order

A single Order may generate several invoices (supplements, re-deliveries, Orders placed outside the Platform when authorized). Each invoice, whether issued on the same day or subsequently, is collected through an individual payment transaction.

6.8.4 Secure Storage

Payment credentials are not stored by FOODOMARKET.

Credentials are tokenized and securely stored by the PSP in compliance with PCI-DSS requirements. Tokens are retained only until all invoices are settled.

6.8.5 Modification or Revocation

The Buyer may modify or replace the registered payment method at any time.

If no valid payment method is available, no new Order may be processed. FOODOMARKET reserves the right to suspend or terminate the Buyer's Account in case of repeated payment failures.

6.8.6 Invalid Payment Method

In case of failed collection, the Buyer must pay the outstanding invoice by bank transfer within two (2) business days and provide a new valid payment method.

6.9 Payment in Case of Dispute – No Set-Off

6.9.1 Payment Despite Dispute

Invoices remain payable on their due date even if the Buyer disputes the quantity, amount or conformity of the Products.

Any dispute will lead, where applicable, to a later adjustment as per Article 9.

6.9.2 Prohibition of Set-Off or Withholding

The Buyer may not apply any deduction, set-off, retention or withholding of any kind without FOODOMARKET's prior written consent.

6.9.3 Disputed Amounts – Payment Hold

When a dispute is validly initiated under Article 9, the corresponding invoice amount is collected by FOODOMARKET and held in a segregated account pending a final decision.

Resolution may result in:

- a) return or replacement of the Products by the Vendor;
- b) issuance of a partial or total credit note;
- c) validation of the Products by the Buyer.

6.10 Payment Facilities – Credit Services

- a) FOODOMARKET may offer instalment payment options through an authorized financial partner.
- b) By selecting such option, the Buyer accepts the partner's contractual terms and undertakes to comply with all repayment obligations.
- c) FOODOMARKET remains external to the financing agreement and is not responsible for credit decisions or credit limits applied by the partner.

6.11 Rebates and Discounts

Public prices include, where applicable, immediate discounts negotiated with the Vendor. No deferred rebate or period-end discount is considered acquired unless expressly agreed. Any additional commercial advantage must be subject to a dedicated written agreement.

7 – Delivery & Transfer of Risk

7.1 Unless otherwise agreed in a specific arrangement or where an Essential Delivery Condition applies pursuant to Article 9.1.1, the Products shall be delivered under the Incoterm DAP – Buyer's Address (Incoterms® 2020).

Under UCC § 2-509, risk of loss passes to the Buyer upon tender of delivery by the Vendor.

7.2 Any delay exceeding twenty-four (24) hours allows the Buyer to open a dispute pursuant to Article 9.

7.3 By default, the delivery times communicated by the Vendor are provided for indicative purposes only.

No delay, for any reason whatsoever, shall justify the cancellation of the Order nor entitle the Buyer to any indemnity, penalty or withholding, unless expressly agreed otherwise, and subject to Article 9.1.1.

However, where the Buyer has declared a delivery slot as an Essential Delivery Condition at the time the Order was placed, and where the Vendor has expressly confirmed its ability to meet that delivery slot pursuant to Article 9.1.1:

- that delivery slot becomes contractually binding; and
- failure to comply with it entitles the Buyer to refuse the relevant Products at no cost, which shall not be invoiced.

If the Vendor refuses to confirm the Essential Delivery Condition, the Order shall be suspended until the Buyer confirms that it wishes to proceed without this condition, or until the Order is cancelled pursuant to Article 9.1.1.

8 – No Right of Withdrawal

Transactions are B2B; no consumer withdrawal right applies.

9 – Receipt, Substitution & Disputes

9.1 Inspection, Proof of Delivery, and Acceptance

The Buyer undertakes to be present, or represented, at the time the Products are handed over. The Buyer shall inspect the conformity and apparent condition of the Products upon delivery. Any damage linked to transport (damage, missing items) must be mentioned on the delivery document and confirmed via the Platform within twenty-four (24) hours. Failing this, the Products shall be deemed compliant, except in the case of a proven latent defect.

By way of derogation, the Buyer may authorise, at the time of placing the Order, a delivery without the presence of a representative (“drop-off delivery”). In such case, delivery shall be deemed compliant as from the moment the goods are deposited at the location indicated by the Buyer, unless there is manifest damage, an obvious product error, or a visible defect noted by the Buyer. The Buyer must declare any such issue via the “Support” module within twenty-four (24) hours, supported by appropriate evidence.

Any transformation, handling, or reconditioning of the Products by the Buyer shall constitute an irrevocable waiver of any claim based on an apparent defect.

Partial delivery of an Order does not constitute non-compliance and shall not justify refusal of delivery.

The Buyer must accept delivery of the Products available at the time of delivery. Refusal is only possible where there is manifest damage or an obvious error that the Buyer can document at delivery.

Products unavailable at the time of the first delivery attempt may be delivered at a later date.

The Buyer expressly agrees that deferred delivery constitutes the normal mode of performance under the Contract and undertakes to accept delivery of the remaining Products on the date communicated by the Vendor or via the Platform, subject to a reasonable timeframe.

9.1.1 Essential Delivery Condition

For the purposes hereof, an Essential Delivery Condition refers to the explicit declaration made by the Buyer at the time of placing the Order, indicating that compliance with a specific delivery slot constitutes a determining factor of its contractual commitment.

This declaration is only binding on the Vendor if the Vendor expressly confirms, at the time of accepting the Order, that it is able to respect such delivery requirement.

Upon the Vendor's confirmation, the Essential Delivery Condition becomes contractually binding. If the Vendor fails to meet an Essential Delivery Condition, the Buyer is entitled to refuse the Products concerned at no cost, and such Products shall not be invoiced.

Where the Vendor refuses to confirm the Essential Delivery Condition, the Order shall be suspended until the Buyer confirms its willingness to proceed without that condition or until the Order is cancelled, as provided for herein.

9.2 Substitutions

- (a) Substitution is permitted only if the Buyer opted in at the time of order and the Vendor notified the substitution through the Platform prior to shipment.
- (b) The substitute Product must be of equal or higher quality, equivalent packaging, and equal or lower price for the same quantity.
- (c) In case of a non-compliant substitution or visible defect leading to refusal/return, the Vendor shall (i) issue a credit note for the corresponding amount within five (5) Business Days and (ii) arrange pickup or replacement at its own cost.

9.3 Buyer-Initiated Claim

The Buyer shall open any claim through the Platform within one (1) Days of delivery, specifying the issue type (shortage, damage, non-conformity, substitution) and attaching evidence per Section 9.1.

9.4 Vendor "Failover" Claim

If the Buyer has not opened a claim within the period in Section 9.3, the Vendor may, where appropriate, open the claim itself within twelve (12) Hours following the lapse of such period.

9.5 Vendor Response Obligation

The Vendor shall acknowledge and provide a reasoned response on the Platform within one (1) Business Day from claim opening, proposing corrective measures as appropriate: credit note, replacement, reshipment, or pickup/return.

9.6 Payment Suspension and Escrow

Upon claim opening, FOODOMARKET may capture and hold the disputed invoice amount in a segregated escrow account with its payment processor until final resolution. As stated in Section 6 (Price, Invoicing, and Payment), the Buyer shall not withhold, deduct, or set off any amounts unilaterally. Funds are released upon:

- (a) restoration, replacement, or acceptance of the Products; or
- (b) issuance of a partial or full credit note; or
- (c) final determination under Section 9.7.

9.7 FOODOMARKET Neutral Determination (if no agreement)

If no agreement is reached within three (3) Business Days from claim opening, FOODOMARKET shall act, in good faith, as a neutral arbiter/expert to determine:

- (i) the resolution (credit note, refund, replacement delivery), and
- (ii) whether to release all or part of the payment held in escrow.

FOODOMARKET's determination shall be final and binding on the Parties as an expert determination.

9.8 Credit Notes and Set-Off

When the outcome favors the Buyer, the Vendor shall issue a credit note within five (5) Business Days and upload it to the Platform. FOODOMARKET is authorized to set off the credit amount against any sums otherwise payable to the Vendor, or, failing set-off, to request immediate reimbursement. Where funds have already been released to the Vendor, the Vendor shall promptly refund the undue amount.

FOODOMARKET reserves the right, on a purely commercial basis and without acknowledging any liability on the part of the Vendor, to grant the Buyer a full or partial refund, or any other financial compensation, in order to facilitate the resolution of a dispute. This intervention remains independent of the Vendor and does not affect the initial sale.

9.9 Evidence and Cooperation

Each Party shall promptly provide any documents reasonably requested for claim resolution, including signed POD, time-stamped photos, correspondence, and weight certificates, within twenty-four (24) hours of request. Failure to cooperate may lead FOODOMARKET to draw adverse inferences in its determination under Section 9.7.

9.10 Return Logistics

If return or replacement is agreed or determined under this Article, the Vendor shall arrange pickup at its cost within three (3) Business Days (unless otherwise agreed). The Buyer shall reasonably safeguard the Products pending pickup. Risk of loss in return transit remains with the Vendor.

10 – Statutory Warranties

Vendor remains liable for implied warranties under UCC §§ 2-312 to 2-315 and for latent defects.

11 – Limitation of Liability

11.1 FOODOMARKET, acting solely as a technical intermediary, shall only be liable for its own proven breaches. Its aggregate liability, irrespective of the cause or legal basis, shall in all cases be capped at the amount of the disputed Order, excluding VAT.

11.2 The following categories of damages are expressly excluded from any compensation, without limitation: loss of business, loss of profit, loss of revenue, loss of opportunity, loss of reputation, loss of customers, and any indirect or consequential damages.

11.3 FOODOMARKET's liability in relation to personal data shall only arise in the event of a

proven and attributable breach by FOODOMARKET of its applicable data protection obligations under the Contract or under applicable data protection laws.

12 – Force Majeure

Events beyond reasonable control (e.g., Act of God, labor dispute, pandemic) excuse performance under N.Y. law.

13 – Data Protection

Buyer data is processed in accordance with the California Consumer Privacy Act (CCPA) and any other applicable privacy law; see Privacy Policy.

14 – Intellectual Property

Platform content belongs to FOODOMARKET; Vendor grants FOODOMARKET a license to use Vendor Content for listing and promotion.

15 – Non-circumvention

Buyer shall not purchase directly from a Vendor introduced via the Platform for 12 months; penalty equals avoided commission +10 %.

16 – Suspension & Termination

FOODOMARKET may suspend an account for fraud, charge-backs or illicit content with written notice.

17 – Amendment

FOODOMARKET may amend these T&CS with 15 days' notice. Buyer may terminate before effective date; continued use = acceptance.

18 – Mediation & Jurisdiction

Parties will first attempt mediation via the American Arbitration Association (“AAA”). Failing settlement, NY State or Federal courts in New York County have exclusive jurisdiction; the parties waive jury trial.

19 – Severability

If any clause is invalid, the remaining provisions remain in force; the invalid clause is replaced by a valid one nearest in intent.