

# Cookaborough - Terms of Use (Cooks)

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### Introduction

Cookaborough Pty Ltd ("*Cookaborough*") is a Melbourne-based company that operates a technology platform designed to take care of all the complicated, time-consuming tasks of running a *Food Business*, by providing *You*, the *Food Business*, with a software solution designed to help you start, run and grow your ready-made meals business and serve your customers. At *Cookaborough*, we believe that a Ready-made meals business operating under a batch model is a smart and efficient way to operate a stand-alone food business or adjacently to an existing food business, it is more than an income, it's about connecting with your community, sharing your passion for food and giving people access to wholesome, affordable meals.

### Offering Menus and Meals

*Cooks* offer *Meals* for purchase by *Customers* by creating, scheduling and publishing a *Menu* via the *Platform*. The *Meals* offered in the *Food Business's Menu* are at the discretion of the *Food Business* and the *Menu* can be made up of one or more *Meals* (i.e. *Meals* can be batched together to form a *Menu*). The *Menu* must include the relevant details of the *Offer* including:

- *Meal Price* as determined by the *Food Business*;
- *Delivery/ Pick-Up* specifications (including any *Delivery Fee*) as determined by the *Food Business*;
- allergen information for each *Meal* forming part of the *Menu* as calculated by the *Platform* based on inputs by the *Food Business*;
- how long the *Offer of Meals* is open for acceptance by *Customers* as determined by the *Cook*.

*Customers* can then choose which *Meals* from the *Menu* they would like to purchase and place an order with the *Food Business* via the *Platform*, making payment at the time of placing the Order. After the *Menu* closes, *Food Businesses* will receive a combined order from all *Customers* identifying how many of each particular *Meal* from the *Menu* have been ordered, and the relevant *Pick-Up/ Delivery* details for each *Customer*.

*Food Businesses* can have one or more active *Menus* at any time on the *Platform*, but there is no guarantee that any particular *Offer* will be accepted by *Customers*. It is important to note that by making an *Offer* on the *Platform* *You* acknowledge that *You* (in *Your* own right, not on *Our* behalf) are offering to enter into a legally binding agreement with any *Customer* who accepts the *Offer* (in whole or in part) via the *Platform*.

If circumstances change *You* can withdraw any *Offer* at any time before the *Offer* is accepted by a *Customer*. After an *Offer* has been accepted *You* must provide the *Meal* on the terms and conditions agreed with the *Customer* otherwise *You* will have to refund the *Meal Price* (together with any *Delivery Fee*) to the *Customer* and pay to *Cookaborough* a fixed fee of **[2.5% of the Meal Price]** to compensate *Cookaborough* for the bank charges and out of pocket expenses associated with the cancelled transaction.

## Pick-Up and Delivery

If it is agreed between *You* and a *Customer* that a *Meal* will be collected by the *Customer* (including by a representative of the *Customer*), it is *Your* responsibility to specify the *Pick-Up* location in the *Offer* in sufficient detail (and with any relevant instructions) to make it easy for a person not familiar with the relevant address or building to collect the *Meal*.

When *You* agree with a *Customer* that a *Meal* will be delivered (either by *You* or a *Delivery Person*), you must ensure that *Delivery* is performed in accordance with the instructions provided at the time of purchase.

It is *Your* responsibility to ensure that that the *Meal* is delivered within the stipulated window of time. When delivering a *Meal* *You* agree to not damage the *Customer's* property, act courteously, respect the *Customer's* neighbours, and do not cause any excessive noise. *You* are also responsible for *Your* own safety, including but not limited to, to any injury or damage to *Yourself* or any property, such as tripping over or spilling food.

If a *Meal* is offered as a *Hot Meal*, it is *Your* responsibility to ensure that it remains at proper eating temperature until delivered or *Picked-Up* (within the stipulated window of time), which must be at or above 70 degrees Celsius.

If a *Meal* is not delivered within the stipulated window of time, *You* may be required to provide a full refund to the *Customer* of the relevant *Meal Price*.

To the extent permitted by law, *Cookaborough* takes no responsibility and is not liable for any claim with respect to the failure by a *Customer* or *Collector* to *Pick-Up* a *Meal* nor for any claim with respect to the *Delivery* of a *Meal*, including where the *Meal* is lost or the *Delivery* is delayed.

*Meals* must be delivered or presented for *Pick-Up* in appropriate packaging, as determined by you, the *Food Business* adhering to food handling safety laws within your specific jurisdiction. It is *Your* responsibility to ensure that *Meals* offered by *You* are prepared in appropriate packaging and *Cookaborough* will not be liable for any loss or damage caused as a result of inappropriate packaging.

## Payment

*You* acknowledge that payments of the *Meal Price* and *Delivery Fees* will be processed via *Stripe Connect*, and *You* will be required to establish and link *Your* account through *Stripe Connect* during the onboarding process, including authorising *Stripe Connect* to forward payments directly to *You* and *Cookaborough* as per these Terms. *You* are responsible for maintaining your *Stripe Connect* account at all times.

In order to facilitate the *Platform*, *You* agree that, if required, *You* will be registered for *GST*, will provide us with your Australian Business Number and issue tax invoices for amounts charged to *Customers* via the *Platform*.

*You* are required to authorise *Stripe Connect* to deduct all *Fees* from amounts collected on your behalf in accordance with the *Fee List* and pay such *Fees* directly to *Cookaborough*. For the avoidance of doubt, fees set out in the *Fee List* are exclusive of *GST*.

In the event that *We* receive a complaint from a *Customer*, including where:

- (i) the *Customer* was dissatisfied with a *Meal* supplied by *You*; or
- (ii) the *Customer* (or any other person) became ill because of a *Meal* supplied by *You*,

and, on *Our* reasonable investigation, *We* decide that the *Customer's* complaint was justified, then, without limiting any other rights that *We* may have, *We* shall notify *You* of the complaint, may require you to refund all or part of the *Meal Price* and *Delivery Fee* (if applicable) to the *Customer* and failure to do so shall be a breach of these Terms and Conditions.

## Compliance with law

To qualify and continuing using the *Platform* as a *Food Business*, *You* must comply with all *Food Laws*. *We* may include in the *Platform* information regarding the process of registering as a *Food Business* and information on compliance with relevant *Food Laws* such as the process in obtaining a food safety and handling certification, however, *We* are under no obligation to ensure that *You* are in compliance with relevant *Food Laws*.

From time to time *We* may require you to provide evidence of compliance with the Food Laws in the form of current Food Safety Supervisor certificates and kitchen registration certificates. Cookaborough may also conduct quality assurance as it sees fit, and *You* agree to provide reasonable access and assistance to allow such quality checks to be performed.

*You* must notify the relevant local council of the operation of a food business activities at your *Food Premises* before providing any *Meal* to a *Customer* and must notify the local council (and *Us*) of any proposed change in those details before the change occurs. *You* must also meet and/or facilitate any ongoing council requirements for preparing *Meals* at your *Food Premises* such as periodic inspections. While preparing *Meals*, *You* must handle all food or ingredients in accordance with all *Food Laws*. If *We* request an inspection of *Your Food Premises*, *You* must permit *Us* (or a person on our behalf) to inspect *Your Food Premises* within 48 hours of the time of *Our* request.

## Insurance

The Company maintains the *Insurance Policy* in respect of the *Services* provided on the *Platform*. The *Insurance Policy* covers both *Cookaborough* and *Food Businesses* using the *Platform* for instances of third-party personal injury and third-party property damage and advertising liability directly relating to events or circumstances arising from providing the *Services*. Any services or meals provided outside of the *Platform* and not in accordance with these *Terms* will not be covered by the *Insurance Policy*. Should you fail to meet (and maintain) the minimum requirements for *Food Businesses*, you may not be covered under the *Insurance Policy*. The *Insurance Policy* also contains limits of cover.

The *Insurance Policy* is not a general business insurance policy that would otherwise cover all aspects of *Your* business. If you maintain your own insurance policies these are to be your first recourse in the event of a claim arising before seeking to rely on the *Insurance Policy*. The *Insurance Policy* is available for viewing at [\[Insert\]](#).

## Conduct

In all communications and dealings with any *Customer* (whether in person, by phone, via the *Platform* or otherwise) *You* must behave courteously and professionally, even if the *Customer* does not. If a *Customer* acts inappropriately (including by engaging in violent, threatening or offensive behaviour)

then *You* should first contact *Your* local police station and subsequently notify *Us*, preferably with a copy of the relevant police report. *We* may, but are not obliged to, revoke or suspend the registration of any such *Customer* but are not liable in any way for the conduct of the *Customer*.

## Accurate and acceptable Content

All *Content* that *You* post on the *Platform* or provide to *Us* or any *Customer*, in connection with any *Meal*, *Menu*, the *Platform* or any *Services* must be accurate and not misleading and must not include any *Unacceptable Content*. *We* have no obligation to monitor, vet or correct any *Content* you post or provide but have the right to do so for any reason.. *You* agree that *We* are not obliged to publish any such *Content* and may delete or edit it as *We* see fit.

## Personal information

*You* consent to *Us* providing *Your* personal information to others as described in *Our Privacy Policy* and *Our* other practices described in the *Privacy Policy*.

*You* acknowledge that *We* do not undertake background checks on *Customers* and *You* agree that *We* are not obliged to do so.

## Contractual relationship

*You* acknowledge that it is *You* (as a *Food Business*), and not *Cookaborough*, that sells your *Meals* to *Customers*. *Cookaborough* is merely a facilitator of the sale/*Offer* and is not responsible for the preparation or supply of any *Meal*. When a *Customer* accepts an offer to purchase a *Meal*, that is a further separate contract which applies between *You* and the relevant *Customer* for that *Meal* and as such *We* are not a party to that contract or bound by it.

In making *Offers*, and preparing and supplying *Meals*, *Food Businesses* are not employees, agents or subcontractors of *Cookaborough*. *You* agree that *Cookaborough* is not responsible or liable for any breach, act, omission or negligence of any *Customer*. Notwithstanding any of the above for the proper functioning of the *Service* provided through the *Platform*, *We* impose certain obligations on *Food Businesses* and *Customers*, as provided in these *Terms*. *You* agree that as a *Food Business* *You* will be working for yourself, and not as *Our* employee, agent or subcontractor, and *You* are free to work whenever you see fit and *You* may choose which *Meals* (if any) to offer and the price at which *You* offer them.

## Copyright, trademarks and Licence rights

All *Cookaborough IP* is owned by *Us* or licensed to *Us*. All of *Your IP* is owned by *You* or licensed by *You*.

Neither these *Terms* nor *Your* use of the *Services* or any aspect of the *Cookaborough IP* convey or grant to *You* any rights: (i) in or related to the *Services* except for the limited license granted above; or (ii) to use or reference in any manner *Cookaborough's* company names, logos, product and service names, trademarks or services marks or those of *Cookaborough's* licensors. *You* may not modify, publish, transmit, distribute, participate in the transfer or sale, create derivative works, or in any way exploit, any of the *Cookaborough IP* in whole or in part without *Our* prior written permission. *You* hereby grant

*Us* (and warrant that *You* have the right and authority to grant *Us*) a non-exclusive, irrevocable, transferable licence to copy, use, modify, sublicense, adapt and otherwise utilise *Your IP* for the purposes of supplying you with the *Services*, promoting your Food Business on the Platform, promoting the Platform and any other purpose specified in these terms and conditions for the agreed duration of this agreement.

*Our* use of any aspect of *Your IP* does not convey or grant to *Us* any rights in or related to *Your IP* except for the limited license granted above. *We* may not modify, publish, transmit, distribute, participate in the transfer or sale, create derivative works, or in any way exploit, any of *Your IP* in whole or in part without *Your* other than in accordance with the limited licence stated above or otherwise with your prior written permission.

*We* agree to make the *Customer Information* available to *You*, which *You* will be entitled to download from the Platform at any point in time.

*We* also agree to provide the *Customer Information* to *You* when you terminate these terms or otherwise cease to use the *Services* as a *Food Business*.

Please note that Cookaborough will also retain a copy of the Customer Information for its internal purposes and is entitled to utilise that Customer Information for its own purposes.

## Indemnity

To the maximum extent permitted by law, *You* agree to indemnify and keep indemnified Cookaborough, its affiliated companies and their officers, employees, agents and contractors against all *Losses* incurred by those indemnified as a direct or indirect result of any negligence by *You* in connection with any *Meal*, *Your* use of the Platform or any *Services*, any breach of these *Terms* by *You* or any claim by any *Customer* against those indemnified, in relation to any *Meal* where *You* are the relevant *Food Business* and have breached the relevant agreement.

## Amendment

*We* reserve the right, at any time, to amend these *Terms*, and the *Services* at *Our* sole discretion. In the event that these *Terms* or the *Services* are amended by *Us*, *We* will notify you via the Platform and, if possible, by communication via email to your notified contact email address. Without limiting the operation of any other *Terms* herein, *We* will not be held liable for loss or damage arising from the exercising of these amendment rights.

## Governing Law

*Your* use of the *Services*, and any dispute arising out of *Your* use of the *Services*, is subject to the laws of Victoria, Australia. If any provision of these *Terms* is held to be illegal, invalid or unenforceable, in whole or in part, under any law, such provision or part thereof shall to that extent be deemed not to form part of these *Terms* but the legality, validity and enforceability of the other provisions in these *Terms* shall not be affected.

## Disclaimers

- (a) *We only provide access to the Services and take no responsibility for any Meals provided through the use of the Services. We may not monitor or control the Services that are provided through the Platform. We do not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any information or services provided by third parties via the Platform or endorse any opinions expressed via the Platform.*
- (b) *The Services are provided on an "as is" and "as available" basis. To the maximum extent permitted by law, We disclaim any warranties, express, implied or statutory, that may be expressed or implied by law regarding the Services, including warranties of accuracy, merchantability, fitness for a particular purpose, and all responsibility for any loss, injury claim, damage of any kind whatsoever. We further disclaim any warranties regarding the security, reliability, timeliness, availability and performance of the Services. You understand and agree that You will be solely responsible for any damages to any computer system or any Loss of data that results from the use of the Services. We do not warrant that the Services are free of any form of harmful surreptitious code, virus or other contaminants. We do not accept any liability for any interference with, or damage to, Your computer systems, infrastructure, software or data occurring in connection with the Services.*
- (c) *We make no warranty regarding the ownership, continuation, suitability or fitness for use of third party intellectual property used in the Services. The Services or the Platform may contain links to other Websites. You acknowledge and agree that We have no responsibility for the Content or availability of the linked Websites and We do not specifically endorse any organisation, association or entity referred to or linked from the Platform.*
- (d) *You acknowledge that Your use of the Services is entirely at Your own discretion and risk and, to the maximum extent permitted by law, We expressly exclude all liability for any Loss, damage, expenses and costs incurred by You in accessing and using the Services, including but not limited to:*
  - (i) *use of the Services for a purpose for which it is not intended;*
  - (ii) *the inability to obtain consistent, reliable and uninterrupted access to the Services;*
  - (iii) *damage or interference to any piece of hardware, software, equipment or device installed on or used in connection with Your use and access to the Services, or Your internet data that arises in connection to Your use of the Platform, its Content or any linked Website; and*
  - (iv) *any errors, omissions or inaccuracies contained in the Services.*
- (e) *Any allergen or dietary information provided in respect of a Meal is the sole responsibility of the Food Business. We make no warranty as to the currency, completeness, accuracy or reliability of any allergen information provided in respect of a Meal and do not accept*

any liability for any *Loss* suffered as a result of inaccurate or incomplete allergen information.

- (f) To the extent permitted by law, all liability of *Ours* is excluded in respect of any indirect or consequential *Loss* suffered or incurred by *You*, in relation to any *Meal*, the *Platform* or any *Services*, any delay or failure in providing any of them, or otherwise under or in connection with these *Terms*, and in any event (including where amounting to a direct loss) for any lost profits or goodwill.
- (g) To the maximum extent permitted by law, if any warranties or conditions are implied or imposed by law and cannot be excluded, *Our* liability for any breach of those warranties or conditions are limited, at *Our* option:
  - (i) in the case of goods:
    - a. the replacement of the goods or supply of equivalent goods; or
    - b. the payment of the costs of replacing the goods or equivalent goods.
  - (ii) in the case of services:
    - a. the supply of the services again; or
    - b. the payment of cost of the supply of the services again.

## Definitions

In these *Terms of Use*:

- **Administration Fee** means the described as such in the *Fee List*.
- **Cold Meal** means a *Meal* offered as fresh (uncooked) or frozen.
- **Collector** in relation to a *Customer* means the *Customer* or another person who collects or *Picks-Up* the relevant *Meal* for the *Customer*. For the avoidance of doubt a *Delivery Person* is not a *Collector*.
- **Content** means all information, data, documents, pictures, graphics, video, audio, text or other *Content*, in each case in any form and for the avoidance of doubt includes any recipes, photographs, prices, comments, reviews or feedback.
- **Cookaborough, We or Us** refers to Cookaborough Pty Ltd (ACN 628 305 751), and **Our** has the corresponding meaning.
- **Cookaborough IP** means all intellectual property rights comprised in or utilised in the provision of the *Services*, the *Platform*, the *Cookaborough Material* or any other material supplied to you by *Cookaborough* including (without limitation) text, graphics, branding, trade marks, information, architecture and coding (including any copyright subsisting in them).
- **Cookaborough Material** means any resource material and information which has been supplied by *Cookaborough*.
- **Customer** means a person who has successfully registered with us as a *Customer* and has not had their registration suspended or revoked.

- **Customer Information** the following information relating to *Customers* who have either purchased *Meals* from *You* via the *Platform*, or have been referred to the *Platform* by *You*:
  - (a) full name;
  - (b) email address;
  - (c) mobile and/or telephone number;
  - (d) delivery address (if delivery has been selected);
  - (e) order history (number of orders/value of orders);
  - (f) the date the *Customer* joined the *Platform*; and
  - (g) the *Customer's* referral source, which identifies how the *Customer* was referred to the *Platform* (such as via social media, email invites, internet searches, *Cookaborough* channels etc).
- **Delivery** means delivery performed by *You* or arranged by *You* of the relevant *Meal*, to the relevant *Delivery* location.
- **Delivery Fee** in relation to a *Delivery* means the fee chargeable for the *Delivery*, as indicated in the relevant *Offer*.
- **Delivery Person** means a person who Delivers a *Meal* on behalf of a *Cook*.
- **Fee** means a fee listed on the *Fee* List.
- **Fees List** means the fee list displayed on the *Platform*, or notified to *You* by *Us*, from time to time.
- **Food Laws** means all laws, regulations, standards, codes, orders and directions (including those issued by any governmental authority) applicable in relation to *Your* preparation and sale of *Meals*. In Victoria that includes the *Food Act 1984* (Vic), all regulations issued under it, the applicable parts of the Australia New Zealand Food Standards Code and any direction or guidelines from an authority or local council.
- **Food Business** means any business engaged in providing prepared and packaged food, whether as an additional offering for an established food business (such as a restaurant) or as a home kitchen or other business which has successfully registered with us as a *Food Business* or *Cook* and has not had their registration suspended or revoked;
- **Food Premises** means the location (which may be part of a dwelling) indicated in *Your* registration with *Us* as a *Cook* in which *You* will store ingredients for, prepare and sell any *Meals*.
- **GST** means any tax imposed under the *A New Tax System (Goods and Services) Tax 1999* (Cth) or any legislation that substantially replaces that legislation.
- **Hot Meal** means a *Meal* offered as pre-Cooked and ready-to-eat.
- **Insurance Policy** means the Public and Products Liability *Insurance Policy* maintained by *Cookaborough* in respect of the *Services* and the *Platform*.
- **Meal** means the food described in the relevant food description provided via the *Platform* in connection with the relevant *Menu* and *Offer*, and *Meals* has the corresponding meaning.
- **Meal Price** means the price (as stated in the relevant *Offer*) payable by the *Customer* to the *Cook* for the relevant *Meal*.

- **Menu** means batch of one or more *Meals* prepared by a *Cook*.
- **Loss** means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages incurred by a person, and includes legal costs on an indemnity basis and indirect or consequential losses.
- **Offer** means an offer made via the *Platform* by a *Cook* to:
  - (a) prepare and provide a *Meal/s* to a *Customer* via a *Menu*;
  - (b) the specifications of the *Meal/s*; and
  - (c) the terms and conditions of the *Menu* (including price, *Delivery/Pick-Up* details, allergen information and the time for which the *Menu* is open for acceptance).
- **Pick-Up** in relation to an *Offer*, means where the *Customer* picks up the *Meal* from the *Cook*, as the alternative to the *Meal* being delivered, and *Pick-Up* and *Picked-Up* have the corresponding meaning.
- **Platform** means a technology platform that enables *Food Businesses*, via *Cookaborough's* mobile applications or *Websites* provided as part of the *Services*, to make *Offers* to sell *Meals* and to allow *Customers* to buy them. The *Platform* also allows communications to be sent between *Food Businesses* and *Customers*.
- **Privacy Policy** means *Our* privacy policy, as applicable from time to time. At any given time *You* can obtain a copy on our *Website* of the version applicable at that time.
- **Services** means all the services that *We* agree to provide, or in fact provide, to *You* under or in connection with these *Terms*, including the provision of access to the *Platform* and its functionality and, where available, any assistance or advice regarding compliance with *Food Laws*.
- **Stripe Connect** means the payments platform known as such provided by Stripe Payments Australia Pty Ltd (ABN 66 160 180 343);
- **Terms** means these *Terms* of Use.
- **Unacceptable Content** means any *Content* that:
  - (a) is racist, hateful, violent, defamatory, harassing, abusive, threatening, malicious, inflammatory or otherwise objectionable;
  - (b) is pornographic, sexually explicit, obscene or excessively profane;
  - (c) is unlawful or encourages unlawful conduct;
  - (d) is fraudulent, false, misleading or deceptive;
  - (e) infringes, or encourages the infringement of, a third party's rights, including intellectual property, confidentiality or privacy rights;
  - (f) contains any virus;
  - (g) amounts to commercial advertising of any other *Website*, product or service; or
  - (h) contains any link to any *Website* that includes any of the above types of *Content*.
- **You** and **Your** refers to a person who uses the *Services* as a *Food Business*.
- **Your IP** means all copyright and other intellectual property rights owned by *You* existing before the date of these *Terms* and created by *You* in the provision of the *Services*, including *Content* that *You* post on the *Platform*, and any other material supplied by *You* including (without limitation)

text, graphics, branding, trade marks, information, recipes and photography (including any copyright subsisting in them);

## *Cookaborough – Privacy Statement (Food Businesses)*

This document (in conjunction with *Cookaborough's Privacy Policy*) describes how *Cookaborough* and its contractors collect, use, disclose and store *Your* personal information when *You* use or access the *Services*. *Cookaborough* will only collect and store personal information that relates to the provision of the *Services*.

*We* may collect *Your* name and *Your* email address. *We* will collect this personal information when *You* create a log on profile on the *Platform*. *We* may also use your IP address to verify *You* are accessing the *Services* from within Australia and collect other personal information for the purposes of identification and support.

*We* collect, use and disclose your personal information for the purpose of providing the *Services*, conducting our business, communicating with *You*, matching service data with *Customers*, the compilation and analysis of statistics, and complying with our legal obligations.

*Cookaborough* will also share relevant information with contractors that perform our services or dispose of our documents. *We* do not transfer *Your* personal information to anyone outside Australia.

For further information on *Cookaborough's* general *Privacy Policy* please see [[insert hyperlink](#)].