

*Effective date: 16<sup>th</sup> September 2024*

## Account Holder Terms and Conditions

For The Growth Collective Limited (“TGCL”) also trading as ezlunch, myKindo and Kindo

Please read through our Terms and Conditions (“T&Cs”) and confirm your acceptance of these (by ticking the box on the Registration page). By registering as an Account Holder with TGCL, you accept the following terms and conditions and agree to be bound by them.

### **1. DEFINITIONS**

- 1.1 Account Holder means an individual who has registered as an account holder with TGCL.
- 1.2 Agreement means these T&Cs and any variations updated from time to time.
- 1.3 AML/CFT Act means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
- 1.4 Confidential Information means any product, business, marketing, strategic, technical or other information relating to customers or suppliers, or data (including but not limited to information retained on all types of medium including written, diagrammatical, software, plans or other storage medium) relating to the Service, the Website or business or affairs of TGCL whether disclosed in writing, orally or by any other means, and whether or not that information is marked “confidential”, to the recipient party by TGCL or its authorized agents, whether before or after the date of this Agreement.
- 1.5 Credit Account means a credit account opened in the name of an Account Holder upon registration, from which all payments, deductions or reimbursements will be made.
- 1.6 Deadline means the date specified by a Supplier as the latest date and time an Order can be made for any Item or Items as displayed on the Website.
- 1.7 Delivery Site means the location where an Order will be delivered by a Supplier to the Customer.
- 1.8 Donation means a gift of money by the Account Holder to an Institution by way of the Website.
- 1.9 Excluded Account Holder means any person or entity that is captured by section 22, section 37 or 39 of the Anti- Money Laundering and Countering Financing of Terrorism Act 2009.
- 1.10 Institution means any New Zealand School, entity or organisation connected with a particular Member who has registered with TGCL to use the Service.

- 1.11 Intellectual Property includes (without limitation) all current and future patents or patent applications, copyright, designs, registered or unregistered trademarks, trade names, goodwill rights, trade secrets, Confidential Information and any other intellectual proprietary or like right or form of intellectual property pertaining to the Services, the Website or the business of TGCL.
- 1.12 Item means any one good or service provided to the Customer by a Supplier.
- 1.13 Member means a club member or student who is a member of, or enrolled with, an Institution.
- 1.14 New Zealand School means state schools, state integrated schools and private schools that are established and defined in accordance with the Education and Training Act 2020.
- 1.15 Order means any order placed by an Account Holder for one or more Items.
- 1.16 Price means the price charged to the Account Holder in respect of an Item and will be inclusive of GST, where applicable.
- 1.17 Registered Charity means entities established, registered and annually reporting in accordance with the provisions of the Charities Act 2005.
- 1.18 Registered Institution means any New Zealand School or Registered Charity.
- 1.19 Service means the service of providing an electronic online interface or other platform by TGCL to facilitate interactions between Account Holders, Institutions and Suppliers.
- 1.20 Supplier means a supplier who has registered with TGCL to prepare, assemble and deliver an Order or accept a payment or Donation and may include an Institution.
- 1.21 Term means the period commencing on the date of this Agreement (“Commencement Date”), and ending on the date this Agreement is terminated (“Termination Date”).
- 1.22 TGCL means The Growth Collective Limited (NZ Company number 3037933) and its successors and assigns.
- 1.23 Total Sum means the total sum to be charged to the Credit Account for any one Transaction and may include the combined total of the Price for each Order, Donations, or both and any applicable service fees.
- 1.24 Transaction means one discrete transaction, which may include an Order, a Donation or a combination of an Order and Donation, conducted by the Account Holder through the Website.
- 1.25 Website means the website located at <http://shop.tgcl.co.nz>, the myKindo app, or any related services (blogs, website or SMS-based) and websites, including an Institution’s website, through which the Service is offered.
- 1.26 We, Us and Our means TGCL.
- 1.27 You, Yourself and Your means the Account Holder.
- 1.28 The plural includes the singular, and vice versa.

## **2 AGREEMENT**

2.1 TGCL agrees to provide the Service to you in accordance with this Agreement, subject to approval by your Institution (the school, entity or other organisation attended by the Members).

## **3 REGISTRATION AND WARRANTIES**

- 3.1 Your Institution must be registered with TGCL in order to register to use the Service. There is no fee for registering as an Account Holder.
- 3.2 You must supply all information required by TGCL for registration. This is listed on the Website. In some cases, this information will be provided directly by the Institution. Accepting this agreement implies acceptance of that arrangement and constitutes express authority to the Institution to provide any information to TGCL, as may be necessary to give effect to the Service.
- 3.3 You shall not be entitled to register or use the Services if you are, or become, an Excluded Account Holder.
- 3.4 TGCL reserves the right to decline an application to register as an Account Holder at any time for any reason.
- 3.5 You must ensure all registration details are up to date and secure at all times. Where information is passed to TGCL by an Institution, you will keep that information up to date at the Institution.
- 3.6 No person is permitted to access or use your account and you must take all reasonable steps to prevent another person from accessing or using your account.
- 3.7 Where you use a mobile device to make Transactions, you undertake to keep the device secure, including keeping secure any PIN, Face ID and other ID methods used to access the Service.
- 3.8 You may not register more than one account.
- 3.9 By registering with us you warrant that you are legally competent to make Transactions.

## **4 ORDERS AND DONATIONS**

- 4.1 You may make any Transaction allowed by the Institution's website.
- 4.2 The Supplier, TGCL and/or the Institution will control what Transactions may be conducted through the Website. This means that available Items or Donations will vary between Institutions. TGCL is not obliged to arrange for the supply or provision of an Item or Donation that is not listed on an Institution's website.
- 4.3 A Transaction is deemed to be accepted by TGCL when full payment has been made and an electronic confirmation has been generated by TGCL through the Website or by email.

- 4.4 As long as you have complied with any confidentiality and security requirements in these T&Cs, you will not be responsible for any unauthorised use of your Credit Account.
- 4.5 Where a Transaction includes an Order with a Deadline you may cancel or adjust that Order any time before the Deadline. The applicable amount payable for a Transaction that is cancelled or adjusted prior to the Deadline will be credited to your Credit Account and may be withdrawn, in accordance with clause 12. No credit refunds will be given for cancellations or adjustments after the Deadline.
- 4.6 Where there is no specified Deadline, a Transaction or any part of a Transaction may be cancelled or adjusted until such time as the transaction has been 'processed'. A Transaction has been 'processed' when either the Supplier has changed the status or midnight. Where the supplier has changed the status, this is available to view on the Website. The applicable amount payable for a Transaction that is cancelled or adjusted prior to being processed will be credited to your Credit Account and may be withdrawn in accordance with clause 12. No credit refunds will be given for cancellations or adjustments made after the order has been processed.
- 4.7 TGCL reserves the right to reject a Transaction at any time for any reason.
- 4.8 Items listed on the Website are subject to availability. Where it is necessary and appropriate, a Supplier may replace any Item with a substitute without notice to you.
- 4.9 TGCL will take all reasonable steps to ensure that all Orders are collated and passed to the Supplier immediately or shortly after the Deadline each day. The Supplier will then produce and package the Order and deliver it to the Delivery Site on the specified day and at the time agreed with you or the Institution, to the best of their ability.

## **5 PRICE AND PAYMENT**

- 5.1 The Price for each of the Items will be displayed on the Website. These may be changed from time to time by the Supplier or TGCL.
- 5.2 Upon registration, a Credit Account will be opened for you. You may top up your Credit Account using any of the methods made available on the Website. These include payments directly to the TGCL bank account (with identifying information as specified on the Website); POLi bank transfer; debit and credit cards; other payment methods as may be made available. Availability of these options may vary from time to time.
- 5.3 The Total Sum will be deducted from the Credit Account on completion of a Transaction.
- 5.4 No credit is offered by TGCL. Transactions will only be accepted when there are sufficient funds in the Credit Account to cover the Total Sum.
- 5.5 Credit Accounts may be topped up in advance or during the purchase process. TGCL holds funds from a Credit Account on trust for you. No interest will accrue on any funds held in a Credit Account.

- 5.6 Some top-ups and some transactions may incur a service fee and any such service fee will be clearly displayed on screen. TGCL reserves the right to change the amount or method of calculation of the service fee at any time. Any proposed changes will be notified on the Website and on notification your continued use of the Service constitutes your agreement to the change.
- 5.7 Should TGCL incur any losses, costs or damages as a direct or indirect result of your breach of this Agreement, TGCL may, in its absolute discretion, deduct any amount owing by you from the Credit Account at any time without notice. TGCL reserves the right to pursue payment from you of any outstanding amount not recovered from the Credit Account in this manner.
- 5.8 A TGCL Credit Account may be closed when:
- 5.8.1 You ask for its closure by contacting TGCL (email hello@mykindo.co.nz) or using the account closure facility TGCL makes available to you.
  - 5.8.2 Our relationship is terminated pursuant to clause 14 of this Agreement.
  - 5.8.3 The Account Holder has not accessed the Website for a period of 14 months, in which case the balance remaining in the relevant Credit Account shall be forfeited to TGCL.
- 5.9 If a Credit Account is closed in accordance with clause 5.8 above, withdrawals may be made in accordance with clause 12.
- 5.10 If you have received a Donation receipt from TGCL on behalf of the Institution and the donation is subsequently refunded to your Credit Account, you must destroy the associated donation receipt and not attempt to claim tax rebates on the refunded amount.

## **6 ELECTRONIC COMMUNICATION AND WEBSITE INFORMATION**

- 6.1 You agree to receive communication via email or SMS from TGCL relating to your registration, Credit Account, transactions or promotions, marketing and other updates regarding the Service or the Website. All regular updates from TGCL will contain clear instructions to unsubscribe and you may unsubscribe at any time.
- 6.2 You may post reviews and provide feedback and other comments on or through the Website or by any other means directly to TGCL. You grant TGCL and its affiliates the right to use, copy, reproduce, modify, delete, distribute and display any such information provided to TGCL in whatever form or medium.
- 6.3 You will be taken to have read any information placed on the Website relating to any Item. You will, therefore, be taken to be aware of any potential issues or problems associated with the purchase, use or consumption of any Item, including relevant to food Items any potential allergens, and no responsibility for this will be accepted by TGCL.
- 6.4 While TGCL strives to ensure that our Website is accurate, you acknowledge that you use any information and data provided on the Website at your own risk. TGCL does not warrant or guarantee the accuracy or currency of any

information, data or material on the Website, and reserves the right to update, amend or delete the same at any time.

6.5 The Website may provide links to other websites not operated or controlled by TGCL. TGCL shall not be liable for any representation, services, content or data contained in such external sites.

## **7 COMPLAINTS AND RETURN OF PRODUCT**

7.1 Notwithstanding anything else in this Agreement, you acknowledge that the Supplier, not TGCL, is solely responsible for the quality, standard and fitness for purpose of any Item supplied to you.

7.2 In the event of any complaints, problems or other issues relating to any Item, including but not limited to damaged Items, damaged packaging, expiry of shelf life, delay in delivery, fitness for purpose, and inferior quality, you shall raise the complaint with the Supplier who will be solely responsible for responding to that complaint and, where applicable, providing redress to you. The TGCL helpdesk is available to assist you in this.

7.3 Should the Supplier fail to address the complaint in clause 7.2 to a satisfactory standard, TGCL may investigate the complaint at your request and at its discretion may provide you with a voucher for your next Order, to be used within 8 weeks from the date of issue.

7.4 If you are not satisfied with our Service, please let us know by emailing us at [hello@mykindo.co.nz](mailto:hello@mykindo.co.nz). We will endeavour to respond to you within 5 working days of receiving your complaint with either a solution to your complaint or a summary of next steps. If we are not able to resolve your complaint immediately, we will investigate and resolve your complaint in accordance with our internal complaints process. We aim to resolve complaints within 20 working days of receiving them. If we can't resolve a complaint within this timeframe, we will contact you and let you know that we require more time to investigate and resolve your complaint.

7.5 TGCL is a member of Financial Services Complaints Limited (FSCL), an approved dispute resolution scheme for the purposes of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. If we are unable to resolve your complaint to your satisfaction, you may refer your complaint to FSCL. FSCL will not charge a fee to investigate or resolve your complaint.

7.6 You can contact FSCL by emailing [complaints@fscl.org.nz](mailto:complaints@fscl.org.nz), or by calling 0800 347 257 (free phone). You can also write to FSCL at PO Box 5967, Lambton Quay, Wellington 6145.

## **8 NO AGENCY**

8.1 The parties acknowledge that TGCL, the Supplier, Institution or the Account Holder are not agents or authorised representatives of any of the others.

## **9 SUB-CONTRACTING AND ASSIGNMENT**

- 9.1 TGCL may assign any of its rights or obligations under this Agreement without obtaining the prior approval of the Account Holder.

## **10 CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

- 10.1 You acknowledge and agree that all Intellectual Property rights relating to the Service or the Website are owned by TGCL and that you will not:
- 10.1.1 display, copy, print, reproduce, adapt, reverse-engineer, distribute, store, publish or create derivative works using the Intellectual Property or the Confidential Information; or
  - 10.1.2 challenge, nor assist any other party (directly or indirectly), to challenge TGCL's sole ownership of the Intellectual Property, nor to use the same in services to any other party.
- 10.2 You acknowledge that, through your association with TGCL, you may come into possession of Confidential Information. You agree that you will treat such Confidential Information as confidential and not disclose it to any other party (nor allow it to be disclosed to any other party) and shall take appropriate steps to ensure that such information cannot be accessed or used by any unauthorised party.
- 10.3 You agree to, on the termination of this Agreement for any reason, return to TGCL (or destroy, at TGCL's sole discretion) all books of accounts, records, papers, correspondence and any other documents or electronic data concerning and containing Confidential Information. All Confidential Information shall remain the exclusive property of TGCL.
- 10.4 The obligations under this clause 10 shall survive termination of this Agreement.

## **11 LIABILITY AND INDEMNITY**

- 11.1 You acknowledge that TGCL cannot guarantee, without limitation, the continued availability, currency, description, representation, capability, quality, safety or fitness for purpose of any particular Supplier or any Items.
- 11.2 To the extent permitted by law, TGCL excludes all liability and responsibility to you in connection with any acts or omission by the Suppliers (including in relation to treatment of your personal information) and/or in connection with or in relation to the purchase, delivery and use of any Item through the Website whether such liability arises in contract, equity, tort, breach of statutory duty or otherwise.
- 11.3 You agree that TGCL is not responsible for and will not be liable to you, for any loss or damage incurred by you of any sort whatsoever caused by or resulting from the use or misuse of the Website or Service by authorised or unauthorised users, the Suppliers, Institution or any third party.

- 11.4 You agree to fully indemnify TGCL and its directors, employees and authorised representatives from any and all claims, liabilities, losses (including consequential loss), expenses and damages occasioned by reason of any claim, proceeding, delay, action, liability or injury arising directly or indirectly from a breach of this Agreement by you, the Member or your agents or representatives.
- 11.5 You agree that TGCL cannot guarantee, without limitation, the continued availability, currency or description of the Service or the Website.
- 11.6 To the maximum extent permissible by law, you agree that TGCL's liability to you is excluded except in relation to a failure by TGCL to provide the Service or in relation to a breach by TGCL of its obligations to you (if any) under this Agreement where such failure or breach arises from an intentional or willful act or omission by TGCL. In any case, any liability of TGCL to the Account Holder or the Member relating to this Agreement shall be limited to the lesser of (a) the total value of all fees received from the Account Holder by TGCL under this Agreement or (b) NZ\$1,000.

## **12 WITHDRAWALS**

- 12.1 The following withdrawals from your Credit Account are permitted:
  - 12.1.1 If you have received a refund from a Registered Institution to your Credit Account of any amount paid to a Registered Institution, then you will be entitled to withdraw the cash value of that refund via electronic payment to a New Zealand bank account or a reversal of your digital transaction using the myKindo facility at any time within 24 months of the date of the refund.
  - 12.1.2 If you have a balance that is over NZ\$10 which does not relate to refunds from a Registered Institution, then you will be entitled to withdraw the cash value of that refund via electronic payment to a New Zealand bank account or a reversal of your digital transaction or you may donate the balance to a Registered Institution using the myKindo facility.
  - 12.1.3 If your Credit Account has a balance that is NZ\$10 or less and which does not relate to refunds from a Registered Institution, this balance will not be available for withdrawal. Balances that are NZ\$10 or less may be donated to a Registered Institution using the myKindo facility.
- 12.2 TGCL reserves the right to charge you a fee for processing the withdrawal. TGCL reserves the right to deduct this fee from the amounts donated or from the balance of your Credit Account.
- 12.3 Withdrawals may only be made to a New Zealand bank account or a reversal of your digital transaction. Cash payments are not permitted.

## **13 ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF TERRORISM**



- 13.1 Where you seek to undertake one of the transactions set out below, TGCL will be required to collect and verify certain information about you, and certain persons associated with you, in order for TGCL to satisfy its obligations under the AML/CFT Act and related regulations:
- 13.1.1 A single Donation or a series of Donations to a single Registered Institution in any consecutive 12-month period is equal to or exceeds NZ\$10,000.
  - 13.1.2 A withdrawal of a balance that is over NZ\$10 which does not relate to refunds from a Registered Institution.
- 13.2 TGCL will notify you of the checks that are required to be undertaken at the time of you undertaking one of those transactions set out in paragraphs 13.1.1 or 13.1.2 above. You acknowledge and agree to TGCL undertaking these checks. You also acknowledge and agree to TGCL disclosing personal information about you such as your name, date of birth and residential address to its nominated electronic verification provider(s) for the purposes of undertaking these checks.
- 13.3 TGCL reserves the right to charge you a fee for the completion of the checks that it is required to undertake in order to comply with the AML/CFT Act and regulations. TGCL reserves the right to deduct this fee from the amounts donated or from the balance of your Credit Account.
- 13.4 Where TGCL cannot undertake the checks contemplated in this paragraph 13, you will not be entitled to use the Services and TGCL will terminate its relationship with you in accordance with paragraph 14 below.

## **14 TERMINATION**

- 14.1 You may terminate your registration either in whole or in relation to a specified Institution, by closing your account using the facility provided on the Website or giving TGCL at least ten (10) working days written notice.
- 14.2 TGCL may terminate the Agreement and your registration:
- 14.2.1 immediately by notice in writing (including email) if you or any Member associated with you is in breach of the T&Cs. If the breach can be remedied, you have twenty-four hours to remedy that breach from receipt of the written notice (including email) from TGCL requiring immediate remedy; or
  - 14.2.2 without cause upon ten working days written notice; or
  - 14.2.3 immediately if the Account Holders does not comply with any applicable legislative or regulatory requirements in relation to the Service;
  - 14.2.4 immediately where the Account Holder becomes an Excluded Account Holder;
  - 14.2.5 without cause and without notice, if the relationship between TGCL and your Institution has been terminated;
  - 14.2.6 where TGCL cannot undertake those checks set out in paragraph 13; or
  - 14.2.7 as otherwise specified in this Agreement.

- 14.3 Upon termination of this Agreement you shall pay to TGCL all sums of money which may be due or owing in respect of the Service under this Agreement prior to termination.

## **15 SCHEDULES**

- 15.1 From time to time the parties may negotiate terms and conditions that are different to those contained in this Agreement.
- 15.2 Any such additional terms and conditions will only be effective where they are recorded in writing in a schedule to this Agreement and signed by an authorised representative of both parties (“Schedule”).
- 15.3 Once the parties have agreed to the additional terms and conditions in accordance with clause 15.2 above, the Schedule will become a part of the Agreement. To the extent that any terms and conditions contained in the Schedule are inconsistent with any term or condition in these T&Cs, the terms and conditions in the Schedule will apply.

## **16 MISCELLANEOUS**

- 16.1 The parties shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 16.2 Failure by the parties to enforce any of the T&Cs contained in this Agreement shall not be deemed to be a waiver of any of the rights or obligations it has under this contract.
- 16.3 This Agreement shall be governed by and interpreted in accordance with the laws of New Zealand. The Courts of New Zealand have jurisdiction to hear any dispute in connection with this Agreement.
- 16.4 TGCL may vary these T&Cs from time to time. TGCL will notify you of any variations of these T&Cs and you are deemed to have accepted such variations by any subsequent continued use of the Service and/or the Website.
- 16.5 This Agreement contains the entire agreement and undertaking between the parties with respect to the subject matter hereof and supersedes all prior discussions, representations, understanding and agreements whether oral or in writing.
- 16.6 If any provision of this Agreement is found to be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.