

## **Terms & Conditions**

### **1. Subject matter of the contract**

1.1 Choco Communications UK Limited (hereinafter "**CHOCO**") has developed an app and a web interface (hereinafter collectively the "**App**") through and via which commercial customers from the gastronomy, drink and food sector (hereinafter a "**Buyer**") can communicate and send their orders to their suppliers (hereinafter a "**Supplier**").

1.2 These General Terms and Conditions (hereinafter "**General Terms and Conditions**" or "**GTC**") apply to the use of the App. For the free download of the App, the general terms and conditions of the Apple App Store or Google Play Store shall apply in addition to these GTC and any section of those general terms and conditions shall take precedence over any section in these GTC in the event of inconsistency. CHOCO may enter into separate agreement with the Suppliers for the paid use of the App and other paid services, which shall exclusively govern the relationship between the relevant Supplier and CHOCO, superseding these GTCs.

1.3 The object of these GTC is to set out the terms and conditions under which CHOCO grants a licence for the Buyers and Suppliers who use the App (each a "**Company**"). By using the App, the Company confirms that it accepts these GTC and that it agrees to comply with them. If the Company does not agree to these GTC, it must not use the App. CHOCO may enter into separate agreement with the Suppliers for the paid use of the App, which shall exclusively govern the relationship between the relevant Supplier and CHOCO, superseding these GTCs.

1.4 The provisions of these GTC shall prevail over any other general or specific terms and conditions of the Company. These GTC may be supplemented by CHOCO, where appropriate, by specific terms of use for certain aspects of the App, which shall supplement these GTC and shall prevail over them in the event of any conflict.

### **2. Use of the App**

2.1 CHOCO grants to Company a non-exclusive, revocable, non-sublicensable, personal and non-transferable licence to use the App (in executable code) solely for the Company's internal business operations in the United Kingdom. For the avoidance of doubt, this licence also covers the use of the App by such individual Users (as defined in section 3.6 below) as the Company may designate. The source code of the App and other CHOCO software is not subject to these GTC and CHOCO reserves all rights thereto.

2.2 The App is designed and intended for professional use and is aimed exclusively at business customers, in particular the catering trade, the food industry and the food trade. Consumers are not permitted the use the App.

### **3. Registration and Account access Account creation and conclusion of contract**

3.1 The use of the App requires that the Company registers in the App and accepts these GTC. For this purpose, a registration form is available in which all information marked as mandatory must be filled in. Before submitting the form, the Company can correct any errors directly by correcting the respective information in the form. CHOCO will not activate incomplete registrations.

3.2 The Company may access, save and print the current GTC on the website at any time. CHOCO does not store the text of the contract after it has been concluded.

3.3 Upon receipt of the Company's application for registration, CHOCO may then open an account in the Company's name (hereinafter the "**Account**"), which enables it to use the App.

3.4 The Company warrants, represents and undertakes that all information provided in the registration form is accurate, up-to-date, truthful and not misleading.

3.5 The Company undertakes to update the information relating to its Account immediately in the event of any changes, so that it always complies with the above criteria.

### **User Assignment**

3.6 The Company shall ensure that any person ("**User**") who uses the App, or creates an Account, for or on behalf of a Company or

assigns himself or herself to an existing Company Account is authorised to accept these GTC and to (in relation to the Buyer) place binding orders with Suppliers or to (in relation to the Supplier) receive and fulfil orders from Buyers.

3.7 CHOCO may technically enable a Company to create additional User profiles. The Company shall not permit any third party competing with CHOCO to (directly or indirectly) have access to the App.

3.8 The Company undertakes to ensure that Users do not allow any third party to use the App in their place or on their behalf.

3.9 The Company is responsible for ensuring that all Users are aware of these GTC and other applicable terms and conditions, and that they comply with them and the Company shall be liable for the acts and omissions of its Users.

#### **Access data**

3.10 The Company undertakes to maintain the security and confidentiality of the data it uploads to the App ("**Access Data**") and, where applicable, to impose the same obligations on Users associated with its Account.

3.11 Any access to the Account using the Company's Access Data shall be deemed to have been made by the Company. The Company shall immediately notify CHOCO if it becomes aware that its Account has been used without its knowledge. The Company acknowledges that CHOCO has the right to take all appropriate measures in such cases, in particular to temporarily block the Account to prevent misuse. CHOCO shall not be responsible for any loss, destruction, alteration or disclosure of Access Data.

#### **4. Features and functionality of the App**

4.1 The App contains a messaging service (the "**Messaging Service**") which enables: (a) the Buyer to communicate directly with its Suppliers and place orders; or (b) the Supplier to receive orders from the Buyer directly and bundled in digital form.

4.2 Conversations via the Messaging Service take place between two Companies, including at least one Buyer.

4.3 The Buyer may only start a conversation with Suppliers (i) whose contact details have been added to the Buyer's Account at the Buyer's initiative or (ii) whom the Buyer has invited to participate in its use of the App and who have accepted this invitation. CHOCO does not allow the Buyer or the Supplier to view the List (as defined in section 4.5) of all Suppliers / Buyers using the App or to compare their characteristics.

4.4 The App includes an optional feature that enables Buyers to voluntarily include the estimated price for products (the "**My Price Feature**"). The My Price Feature enables Buyers to calculate the estimated cost of their order via the App. The Company acknowledges that CHOCO does not control or alter the information transmitted via the My Price Feature (the "**My Price Feature Information**"), and they may change from time to time subject to the specific information that Gastronome may voluntarily insert therein. By using the App and submitting the My Price Feature Information, each Gastronome and Supplier agrees to the use of My Price Feature via the App. The My Price Feature Information cannot be seen by any other than the Buyer to which the My Price Feature Information relates. Please note that we cannot accept any responsibility for the content of the data that you voluntarily upload to the App, therefore, you are fully liable for any shared information on the App which may infringe any applicable laws and/or any third parties right.

4.5 In order to facilitate the placing of the order, the Buyer shall also have the option of entering lists of the products that it usually orders from the relevant Supplier (hereinafter "**Lists**") or to ask CHOCO to enter them on the basis of the documents provided by the Buyer. By selecting a List, the Buyer only needs to specify the desired quantities in order to place an order with the relevant Supplier.

4.6 To use the functionality set out in section 4.5 above: (a) the Buyer shall provide CHOCO with the contact details of its suppliers and the desired Lists; and (b) upon receipt of the information at section 4.6(a), CHOCO may set up the Account with the contact details of the Suppliers and the Lists requested by the Buyer.

4.7 The content on the App that CHOCO provides is provided for general information only. It is not intended to amount to advice on which the Company should rely. Although CHOCO makes reasonable efforts to update the information it provides on the App, it makes no promises and provide no assurances that that content on the App is accurate, complete or up to date.

4.8 The App may encompass functionalities that are powered by artificial intelligence (the "AI"). Company will retain ownership over the input it provides and the output generated by AI based on the input. Choco does not guarantee the accuracy, completeness and reliability of the output generated by AI and, to the extent permitted by law, disclaims all warranties and liability for such output. To the

extent such full exclusion of liability is not enforceable, Choco's (including its legal representatives', employees', agents' and subcontractors') aggregate liability shall be limited to £100 (one hundred pounds). Output generated by AI may not be unique to Company and it does not represent Choco's views. Company undertakes to comply with the fair use policies of Choco's third party service providers when using AI-powered functionalities. In the event of a conflict between this section and the rest of the Agreement, this section shall take precedence.

## **5. Suspension / withdrawal of the App**

5.1 CHOCO does not guarantee that the App, or any content, will always be available or be uninterrupted. CHOCO may suspend or withdraw or restrict the availability of all or any part of the App for business and operational reasons. CHOCO will use reasonable endeavours to give the Company reasonable notice of any suspension or withdrawal (via the App or otherwise).

5.2 CHOCO reserves the right to offer other additional functionality in the App that it deems appropriate, in a form and according to the functionalities and technical means that it deems most suitable for the relevant functionality. CHOCO also reserves the right to modify the App (or any functionality of the App) or to remove certain functionality or other information to which a Company has access (such as a Supplier's product list).

## **6. Free service**

6.1 CHOCO shall not charge the Buyer any commission or other costs for the provision of access to the App. CHOCO may charge the Supplier a fee for the provision of access to the App and such fee will be highlighted to the Supplier during the registration process.

6.2 The contract for the use of the App shall run for an indefinite period.

6.3 The Company may terminate the contract on the use of the Services at any time with 7 days' notice by sending a corresponding message by e-mail to CHOCO at the contact details stated at the beginning of these General Terms and Conditions. The termination shall result in the automatic deletion of the Company Account.

6.4 CHOCO may terminate the contract properly and close a Company's Account for any reason, subject to at least 30 days' notice.

6.5 In addition, the contract may also be terminated in writing by CHOCO without notice for good cause. Good cause entitling CHOCO to terminate the contract shall be deemed to exist in particular if the Company has breached Sections 2, 7, 10, 13 or 14 of these General Terms and Conditions and has not remedied this breach within seven days of receipt of a notification in text form by e-mail.

6.6 In any case, CHOCO also reserves the right to close and delete an Account that has remained inactive for a continuous period of six months.

## **7. Duties of the Company**

Without prejudice to the other obligations provided for herein, the Company, the Buyer and/or the Supplier shall comply with the following obligations (as applicable):

7.1 The Buyer undertakes to ensure that orders sent via the App are accurate, true and correct.

7.2 The Supplier undertakes to respond to and fulfil orders placed via the App under the same conditions as other orders received outside the App.

7.3 The Company shall comply with applicable laws and regulations when using the App and shall not violate the rights of third parties or public order.

7.4 The Company shall be solely responsible for proper compliance with any legal requirements, in particular of an administrative, fiscal and/or labour nature, as well as for any payment of taxes or duties of any kind that may be incumbent upon it in connection with its use of the App. CHOCO shall not be held liable in this respect under any circumstances.

7.5 The Company acknowledges that it is aware of the limitations, particularly of a technical nature, of the App.

7.6 The Company undertakes to observe reasonable rules of politeness, courtesy and decency in its exchanges with other Companies.

7.7 The Company shall provide CHOCO with all necessary information and actively cooperate with CHOCO with regard to its use of the App and the proper performance of its obligations under these GTC.

7.8 The Company warrants, represents and undertakes that it is authorised to transmit through the App any content or information (commercial, editorial, graphics, audios, audiovisual or other, including the name and/or image that the Company or a User may have chosen to identify him/her within the App, the names of the Buyer and Suppliers and/or their contact details and the Lists of products) that it uses within the framework of the App and, in particular, within the framework of its exchanges with other Companies or that it transmits to CHOCO via the App (hereinafter "**Content**" and/or "**Information**").

7.9 The Company grants CHOCO the right to reproduce, display, disclose and use the Content and to perform all necessary acts on the Content for the purposes of operating the App and providing the services. In particular, CHOCO shall be entitled to collect and use the Content about the Company's use of the App for internal research, security, analytics and reporting purposes and for developing and improving its services. CHOCO shall retain all rights in the aggregated information derived from such practices and may use it at its own discretion during and after the term of this Agreement without being subject to any limitations (such as for distributing insights and reports), to the extent it does not identify the Company, its Users or any person. Choco may sublicense the rights granted herein to its subcontractors for the purposes of this Agreement. The Company warrants, represents and undertakes that it has all the necessary rights required to enable the use, reproduction and dissemination of this Content and Information by CHOCO.

7.10 The Company further undertakes to ensure that the said Content or Information is lawful, not contrary to public order, morality or the rights of third parties, whether intellectual property rights or equivalent, personal rights, trade secrets or confidential information, that it is not in breach of any legal or regulatory provisions and, more generally, that it is in no way likely to give rise to any liability on the part of CHOCO.

7.11 The Company shall only transmit Content and/or Information that is appropriate to the purpose of the App and, in particular, shall not transmit the following Content and/or Information through the App (including, for the avoidance of doubt, via the My Price Feature): (a) Content that is not reasonably related to the ordering or execution of contracts between Buyer and Supplier (such as political or religious Content); (b) Content that is pornographic, obscene, indecent, shocking or unsuitable for a family audience, defamatory, offensive, violent, racist, xenophobic or revisionist; (c) unlawful Content; (d) Content that violates personal rights; (e) Information that breaches a confidentiality agreement or discloses a trade secret without permission; (f) Content that is false or misleading or promotes illegal, fraudulent or deceptive activities; (g) Content that is harmful to computer systems (such as viruses, worms, Trojan horses, etc.); and (h) in general, any Content that in any way and in any form infringes the rights of third parties or may harm third parties.

7.12 In order to use the App, the Company must be connected to the internet. The Company is solely responsible for the internet connection, and the Company acknowledges that the quality of the App is directly dependent on this.

7.13 The App is subject to continuous development. CHOCO shall inform the Company of any new version or any change to an existing version. The Company acknowledges and accepts that the use of the App requires the use of the latest versions of the App.

7.14 In order to improve and promote the App, CHOCO has the right to get in touch with each User of the App without prior notice to or approval by the Company. This may include the participation of a User in referral programs, sweepstakes and similar promotional activities.

## **8. Limitation on liability**

8.1 CHOCO: (a) does not warrant that: (i) that the App will meet the Company's requirements; or. (ii) the App will be free from viruses or malicious software. (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Company acknowledges that the App may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.2 The Company acknowledges and agrees that: (a) the App is provided on an "as is" basis; (b) CHOCO assumes no liability or responsibility whatsoever in connection with any products purchased and sold via the App or the contract or relationship between the Supplier and the Buyer, in particular, the Company acknowledges that: (i) CHOCO has no responsibility for the communications between businesses in the App and CHOCO does not moderate, select, routinely review, or control such communications, and acts only as a hosting provider for such communications; (ii) orders for products placed via the App are between the Buyer and the Supplier and

CHOCO does not check the orders and is not a party to the contract between the Buyer and the Supplier; (iii) CHOCO does not control the pricing, payment or delivery of the products, which are agreed directly between the Supplier and the Buyer; (iv) CHOCO shall not be a party to disputes of any kind between the Buyer and the Supplier, including in relation to the terms and delivery times for products, warranties or guarantees, payment deadlines or payment obligations and other obligations of any kind entered into between the two parties; (v) CHOCO does not carry out any due diligence on the Supplier or Buyer; (vi) CHOCO does not carry out, and cannot be held liable for, any verification of the quality or characteristics of the products listed, their compliance with applicable laws and regulations, their storage or delivery conditions, or the financial capacity and solvency of the Buyer or Supplier; and. (vii) the App provides an additional, non-exclusive solution for communication and order placement between Buyer and Supplier and that this solution is not a substitute for other means that the Company might otherwise use to achieve the same objective; and. (c) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these GTC.

8.3 Nothing in these GTC shall limit or exclude either party's liability for: (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors; (b) fraud or fraudulent misrepresentation; and (c) any other liability which cannot be limited or excluded by applicable law.

8.4 Subject to clause 8.3, the maximum aggregate liability of CHOCO arising out of or in connection with these GTC (whether such liability arises in contract, tort (including negligence), misrepresentation, breach of any duty (including strict liability) or otherwise shall be limited to the greater of (i) £100 and (ii) the amount of any fees CHOCO has received from the Company in relation to the provision of access to the App.

8.5 Subject to clause 8.3, CHOCO shall be liable to the other (whether such liability arises on contract or tort (including negligence) for misrepresentation, breach of any duty (including strict liability) or otherwise) for any of the following: (a) indirect or consequential loss or damage; (b) loss of profits; or (c) loss or depletion of goodwill.

## **9. Indemnification**

9.1 The Company shall indemnify and keep indemnified CHOCO against all claims, demands, actions, proceedings, losses, actions, proceedings, fines, penalties, awards, liabilities, damages, compensation, settlements, charges and expenses/costs (including legal costs) suffered by CHOCO or any of its group companies as a result of or in connection with any claim from a third party in relation to the Company's use of the App.

## **10. Prohibited Conduct**

10.1 The Company shall not use the App for the following purposes: (a) to engage in any activity that is illegal, fraudulent or prejudicial to the rights or safety of others; (b) to interfere with public order or to violate applicable laws and regulations; (c) to intrude into a third party's computer system or for any other activity designed to control, interfere with or intercept any Content or breach the integrity or security of all or part of a third party's computer system; (d) for sending unsolicited e-mails and/or sending commercial solicitation or advertising messages; (e) for manipulations aimed at improving the ranking of a third party's website; (f) for disseminating information or links referring to a third party's website; (g) for aiding or abetting in any way, shape or form one or more of the acts and activities described above; and. (h) generally for any activity using the App for purposes other than those for which it was designed.

10.2 The Company shall not (i) engage in any conduct that is likely to interrupt, suspend, slow down or prevent the continuous use of the App by any of CHOCO's customers, (ii) intrude or attempt to intrude into CHOCO's systems, (iii) engage in any improper use of the App's system resources, (iv) engage in any action that is likely to place a disproportionate load on the infrastructure of the App, (v) breach CHOCO or the App's security and authentication measures, or (vi) engage in any act likely to damage the financial, commercial or moral rights and interests of CHOCO, its customers or of the Users of the App.

10.3 The Company shall not monetise, sell or give access to all or part of the App and the information hosted and/or shared on it to third parties.

## **11. Measures in the event of non-compliance**

11.1 In the event of non-compliance by a Company with any of the provisions of these General Terms and Conditions or, more generally, a breach of applicable laws and regulations, without prejudice to its other rights or remedies, CHOCO reserves the right to: (a)

suspend or block access to the App of the Company or User who committed or participated in the breach; (b) remove Content posted on the App; (c) publish through the App such information notices as CHOCO deems necessary; (d) notify governmental agencies and authorities; and/or. (e) take legal action of any kind.

11.2 Other users may submit complaints about the Content or Choco may monitor the Content at its own discretion. Choco may, without prior notice, remove or disable access to any Content (i) if it violates the Agreement including Choco policies made available to Company, (ii) if it constitutes illegal content such as illegal hate speech, terrorist content, unlawful discriminatory content, or any content that the applicable laws render illegal or (iii) if it is likely to give rise to complaints by third parties or other Choco customers. Due account of the fundamental rights and freedoms and legitimate interests of all parties involved will be taken when making decisions about removal of the Content and will inform the involved users about the decision, including the reasons about why the complaint is accepted or rejected and available remedies.

## **12. Intellectual property**

12.1 The Company acknowledges and agrees that CHOCO and/or its licensors own all intellectual property rights in the App, and all software, structures, infrastructures, databases and content of any kind (texts, images, graphics, music, logos, trademarks, databases, etc.) used by CHOCO in the context of the App (collectively "CHOCO IPR"). Any unauthorised use without the prior written consent of CHOCO is prohibited. Except as expressly stated herein, these GTC do not grant the Company any rights or licences in respect of the CHOCO IPR.

12.2 The Company is not entitled to reproduce and/or decompile the App in whole or in part.

12.3 The Company expressly authorises CHOCO to use the reproduction of its brand name or logo in the App, in particular to enable a Supplier to designate the brand name or logo on its Product List.

## **13. Confidentiality**

13.1 Each party undertakes to keep strictly confidential the documents, data and Information of the other party which are confidential in nature ("Confidential Information").

13.2 The party receiving Confidential Information undertakes not to disclose it without the prior consent of the other party for a period of five years from the end of the performance of the Services concerned. It may only disclose it to employees, trainees, vicarious agents or consultants if they are subject to professional secrecy or if obligations corresponding to the confidentiality obligations of these General Terms and Conditions have been imposed on them beforehand. Furthermore, the parties shall only disclose the Confidential Information to those employees who need to know it for the performance of this contract and shall also oblige these employees to maintain confidentiality to the extent permitted by labour law for the time after their departure.

13.3 This obligation does not extend to Confidential Information: (a) which was already known to the receiving party or thereafter becomes known to it from a third party without breach of any confidentiality agreement, legal requirements or governmental orders; (b) which are already public at the time of their disclosure or which become public without breach of these conditions; which are required to be disclosed by law or by order of a court or governmental authority (c) disclosed upon the disclosing party's prior consent. To the extent permissible and possible, the recipient obliged to disclose shall notify the other party in advance and give it the opportunity to oppose the disclosure.

13.4 With respect to the personal data that Choco processes on behalf of Buyer for the provision of the Services, the Parties enter into a Data Processing Agreement available [here](#) ("DPA") and which is incorporated by reference into these GTC.

## **14. Publicity**

14.1 The Company expressly authorises CHOCO to name it as a reference client and, where appropriate, to use its name, brand or logo for commercial references, including but not limited to at events, in its corporate or promotional materials, in articles, on its website and App, and on professional social networks such as LinkedIn, in any form whatsoever.

## **15. Amendments**

15.1 CHOCO may amend these General Terms and Conditions at any time. CHOCO may notify the Company of any amendments to

these General Terms and Conditions, either via e-mail or through an in-app notification. Any such amendments to these GTC shall be deemed to have been accepted by the Company if the Company continues to use the App.

## **16. General Provisions.**

16.1 In these GTC, unless the context otherwise requires the words "includes" or "including" shall be construed as illustrative only and shall not limit the generality of the preceding words.

16.2 CHOCO shall have no liability to the Company if it is prevented from or delayed in performing its obligations under these GTC, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of CHOCO or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

16.3 No failure or delay by a party to exercise any right or remedy provided under these GTC or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

16.4 Except as expressly provided in these GTC, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

16.5 If any provision or part-provision of these GTC is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these GTC.

16.6 These GTC constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into these GTC it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these GTC. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these GTC.

16.7 The Company shall not, without the prior written consent of CHOCO, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these GTC. CHOCO may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these GTC.

16.8 Nothing in these GTC is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

16.9 These GTC do not confer any rights on any person or party (other than the parties to these GTC and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## **17. Governing law & Jurisdiction**

17.1 These GTC and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

17.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these GTC or their subject matter or formation (including non-contractual disputes or claims).