

Account Holder Terms of Trade

For The Growth Collective Limited (TGCL) also trading as ezlunch

EXECUTIVE SUMMARY

This is a summary of the major terms of the Agreement between you and TGCL. It does not constitute part of the Agreement and, therefore, does not amend or change the meaning or effect of any of the terms contained in the Agreement. You should, therefore, read and understand the actual terms of the Agreement prior to entering into this contract.

Access and Payment - Clauses 2, 3, 5, 7

Subject to any approval by your Institution, by entering this Agreement with you TGCL agrees to act as a link between you and suppliers of particular goods and services. You will also be able to make donations to your Institution of choice.

You will pay fees for the provision of this service by TGCL.

TGCL has the right to decline to provide you with access to the services provided by TGCL for any reason whatsoever.

When you register with TGCL a Credit Account will be opened for you. You must keep you account secure and you are responsible for the actions of anyone you authorise to use the account. However, where you have complied with security requirements you will not be held responsible for any misuse of the account by unauthorised third parties.

Purchases are made by first topping up the account with enough money to cover a transaction. The total price of the transaction will be deducted from the account when you place an order or make a donation along with any relevant fees. No credit is available. You may close your account by informing TGCL in writing of the required closure. Subject to any deduction as detailed below, TGCL will refund you the amount left in your account.

You should keep your account active. A lengthy period of inactivity (being 14 months or more) will result in your account being closed by TGCL and you will forfeit to TGCL any money left in the account.

TGCL has the ability to deduct amounts from your account where it has incurred loss or damage caused by a breach of your obligations under this Agreement.

Privacy – Clause 6

TGCL takes privacy and information security seriously.

This clause outlines what type of information will be held by TGCL and how that information will be used. Some information will be provided to Suppliers for the sole purpose of fulfilling orders or to TGCL's professional advisers for a specific purpose and you agree to this occurring. Other than this authorised disclosure, TGCL will not disclose your information unless required to do so by law.

You may view and modify any personal informational held by TGCL.

Complaints – Clause 8

All complaints regarding the supply of items or the items themselves must be directed to the Supplier and not TGCL. The Supplier will be responsible for responding to you and redressing any issue you raise.

Should the Supplier fail to do so, TGCL may investigate your complaint and/or, at its sole discretion, provide you with a voucher for your next order.

Confidential Information and Intellectual Property – Clause 11

TGCL holds or owns a variety of intellectual property associated with the Service and Website. This remains TGCL's intellectual property at all times and you may not in any way challenge TGCL's right to that intellectual property or use of that intellectual property in any way. TGCL may also provide you with confidential information. You agree to keep this information confidential and return any such information to TGCL on termination of the Agreement.

Indemnity and Liability – Clause 12

As TGCL is acting only as a facilitator or link between the various users of the Website, TGCL cannot and does not control or assume responsibility for the acts or omissions of these parties.

TGCL will only be responsible to you for its own intentional or willful acts or omissions that result in a breach of this Agreement with resulting damage or loss to you. In any event, TGCL's liability to you is limited to a maximum of \$5,000.

You may be liable to compensate TGCL for any costs, loss or damage incurred by TGCL resulting from your breach of the Agreement or the exercise of any of your rights under this Agreement.

Termination – Clause 13

This Agreement is terminable by either party in a number of situations. The situations that may result in termination and the results of termination of this Agreement are set out in Clause 17.

Disputes – Clause 14

This clause contains a method for resolving disputes that must be followed and exhausted before court proceedings are commenced by either party.

By registering as an Account Holder with TGCL, you accept the following terms and conditions and agree to be bound by them.

1. DEFINITIONS

The following definitions are used in these Terms:

- 1.1 “*Account Holder*” means an individual or organisation who has registered as an account holder with TGCL.
- 1.2 “*Agreement*” means these terms of trade and any variations updated from time to time.
- 1.3 “*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.
- 1.4 “*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.
- 1.5 “*Customer*” means a person on whose behalf an Account Holder will place an Order or make a Donation.
- 1.6 “*Deadline*” means the time specified by a Supplier as the latest 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 “*TGCL*” means The Growth Collective Limited and its successors and assigns.
- 1.10 “*Institution*” means any school or organisation connected with a particular Customer 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 trade marks, 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 “*Order*” means any order placed by an Account Holder for one or more Items.
- 1.14 “*Price*” means the price charged to the Account Holder in respect of an Item and will be inclusive of GST.
- 1.15 “*Service*” means the service of providing an electronic online interface or other platform by TGCL to facilitate interactions between Account Holders, Institutions and Suppliers.
- 1.16 “*Service Fee*” means the fee charged by TGCL for use of the Service, as displayed on the website, and paid to TGCL.
- 1.17 “*Supplier*” means a supplier who has registered with TGCL to prepare, assemble and deliver an Order and may include an Institution.
- 1.18 “*Term*” means the period commencing on the date of this Agreement (*the Commencement Date*), and ending on the date this Agreement is terminated (*the Termination Date*).
- 1.19 “*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.
- 1.20 “*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.
- 1.21 “*Website*” means the website located at <http://shop.tgcl.co.nz> or any related services (blogs, website or SMS-based) and websites, including an Institution’s website, through which the Service is offered.
- 1.22 “*We*”, “*Us*” and “*our*” means TGCL.
- 1.23 “*You*”, “*yourself*” and “*your*” means the Family Account Holder.
- 1.24 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 or Institutions (the school or schools or other organisations attended by the Customers).

3. REGISTRATION AND WARRANTIES

- 3.1 If your Institution is registered with TGCL, you may 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.
- 3.3 TGCL reserves the right to decline an application to register as an Account Holder at any time for any reason.
- 3.4 You must ensure all registration details are up to date and secure at all times. You must not allow any other person to access your account without TGCL's express authorisation. You must ensure that any person so authorised must comply with these Terms of Trade. You remain wholly responsible for any use of the Service by that person.
- 3.5 You may not register more than one account.
- 3.6 Where you use a mobile phone device to make Transactions, you undertake to register its details as requested and keep the phone number and device secure.
- 3.7 By registering with us, you also warrant that:
- 3.7.1 You are the legal guardian of the Customer.
 - 3.7.2 You are 18 years of age or over.
 - 3.7.3 You are legally competent to make a Transaction.
 - 3.7.4 All the information provided in the registration is complete, accurate and current and you will ensure that it will remain so at all times.

4. ORDERS AND DONATIONS

- 4.1 You may make any Transaction allowed by the Institution's website.
- 4.2 The Supplier 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 will not be obliged to arrange for the supply or provision of 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 SMS.
- 4.4 Once accepted, the Transaction is deemed to be a valid Transaction for which you are obliged to pay. However, as long as you have complied with any confidentiality or security requirements in these Terms of

Trade, you will not be responsible for any unauthorised use of your Credit Account.

- 4.5 Where a Transaction includes an Order for which there is a specified Deadline, that Transaction must be received and confirmed by TGCL no later than the Deadline.
- 4.6 Where a Transaction includes an Order with a Deadline you may cancel or adjust that Order any time before the Deadline. No refunds will be given for cancellations or adjustments after the Deadline.
- 4.7 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. This status is available to view on the Website. No refunds will be given for cancellations or adjustments made after the order has been processed.
- 4.8 TGCL reserves the right to reject a Transaction at any time for any reason.
- 4.9 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.
- 4.10 TGCL will do our best 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 your 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 credit card, or by bank transfer or instant online bank transfer (Account2Account). Top ups by credit card will incur a 50c + 2% service fee. Top ups by Account2Account will incur a 50c service fee. These will be clearly displayed at the time of top up. There is no minimum top up amount.
- 5.3 The Total Sum and the Institution Fee 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 and the Institution Fee.

5.5 TGCL reserves the right to change the amount or method of calculation of the Service Fee, User Service Fee or Institution 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.

5.6 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.

5.7 An TGCL Credit Account may be closed when:

5.7.1 You ask for its closure by contacting TGCL in writing. You will need to provide your family name, login id, current account balance, and you must nominate a bank account for the balance of the Credit Account to be deposited into;

5.7.2 The Account Holder has not accessed the Website for a period of 14 months or more, in which case the balance remaining in the relevant Credit Account shall be forfeited to TGCL.

5.7.3 Our relationship is terminated pursuant to clause 13 of this Agreement.

5.8 Subject to clause 5.7, upon closure of an Credit Account, we shall refund the balance (excluding vouchers and similar items) held in the Credit Account to you, after a processing fee of \$5 has been deducted. A processing fee will not be deducted if the closure is made at the end of the school year, provided that you email your details (as set out in clause 5.8.1) on or before 31 January.

6. PRIVACY

6.1 TGCL is committed to protecting the privacy of all registered Account Holders.

6.2 TGCL and the Website gather the following information from the registered Account Holder:

6.2.1 Account Name: this is used on the Website and can be any name you choose.

6.2.2 Email address: this is used as your login and will be used to send any notices to you. We ask for this twice to ensure that it is accurate, as it is important.

6.2.3 Password: this is a security measure to ensure that only you can place orders using your account.

6.2.4 Customer Name: this is the name of a person attending a particular Institution. Each person for which you will be placing Orders will need to be listed here. This information is used for delivery.

6.2.5 Organization: this information is used for delivery. If your Institution is registered it will be available to be selected. If your Institution is not registered you will not be able to use the Service.

6.2.6 Room: this information is used for delivery of an Order. If Orders are to be distributed to a particular location or classroom, the location must be inserted here and updated each year as it changes. If the Customer will collect their Order from a site at the institution, they may require an alternative identifier, such as Student ID.

6.2.7 The Website will use a single cookie to maintain your identity during your session. It is deleted when you log out.

6.2.8 We record ip addresses against each user session for security purposes.

6.2.9 We maintain standard web server logs, for traffic analysis purposes. These record each request to the server, along with http headers and your ip address.

6.3 TGCL will use information supplied by you to verify your identity or the Customers identity, to enforce or apply our Terms of Trade, for internal research purposes, and for any other use that you authorise.

6.4 TGCL will not disclose any information in relation to you or the Customer to any third party without consent, other than to:

6.4.1 Suppliers for the sole purpose of providing the Orders; and

6.4.2 The New Zealand Government or any party with statutory enforcement powers (including but not limited to the Police, the Inland Revenue Department, and the Ministry of Business Innovation and

Employment), where required or permitted by law;

6.4.3 Any other third party where required to do so by law;

6.4.4 Professional advisors and consultants who have entered into confidential undertaking with TGCL to provide research, administration or customer support services incidental to the Service, in which case only the minimum information required for such services will be supplied.

6.5 The Growth Collective Limited (New Zealand company number 3037933 and its successors and assigns) is the entity which collects, handles and holds all information provided by the Account Holder on the Website. Such information will only be stored in secure networks and facilities.

6.6 You are entitled to have access to any personal information related to you or the relevant Customer, which has previously been supplied to us. You shall be entitled to edit, amend or delete any such information unless prohibited by law.

6.7 In the event that TGCL, the Service or the Website is sold, acquired, merged, liquidated, restructured or otherwise transferred to another party, TGCL reserves the right to transfer to the extent permissible by law its user databases, together with any personal or non-personal information contained therein to such party acquiring the assets.

7. ELECTRONIC COMMUNICATION AND WEBSITE INFORMATION

7.1 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.

7.2 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.

7.3 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.

7.4 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.

7.5 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.

8. COMPLAINTS AND RETURN OF PRODUCTS

8.1 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.

8.2 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.

8.3 Should the Supplier fail to address the complaint in clause 8.2 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.

9. NO AGENCY

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

10. SUB-CONTRACTING AND ASSIGNMENT

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

11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 11.1 You acknowledge and agree that all Intellectual Property rights relating to the Service or the Website are owned by TGCL and will not:
- 11.1.1 Display, copy, print, reproduce, adapt, reverse-engineer, distribute, store, public or create derivative works using the Intellectual Property or the Confidential Information; or
 - 11.1.2 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.
- 11.2 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.
- 11.3 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.
- 11.4 The obligations under this clause 11 shall survive termination of this Agreement

12. LIABILITY AND INDEMNITY

- 12.1 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.
- 12.2 To the extent permitted by law, TGCL excludes all liability and responsibility to you in connection with any acts or omission by the Suppliers 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.
- 12.3 You agree that TGCL cannot guarantee, without limitation, the continued availability,

currency or description of the Service or the Website.

- 12.4 You agree that TGCL is not responsible for and will not be liable to you, for any loss or damage accrued 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.
- 12.5 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 Customer or your agents or representatives.
- 12.6 To the maximum extent permissible by law, TGCL only accepts liability to you for any failure to provide the Service or breach of its obligations to you (if any) under this Agreement resulting from an intentional or willful act or omission by TGCL. Any liability of TGCL to the Account Holder or the Customer relating to this Agreement shall be limited to the total value of all fees received from the Account Holder by TGCL under this Agreement to a maximum of \$5,000.00 New Zealand Dollars.

13. TERMINATION

- 13.1 You may terminate your registration either in whole or in relation to a specified Supplier and/or Institution, by giving TGCL at least ten (10) working days written notice.
- 13.2 TGCL may terminate the Agreement and your registration:
- 13.2.1 immediately by notice in writing (including email) if you or any Customer associated with you is in breach of the Terms of Trade. If the breach can be remedied, you have twenty-four (24) hours to remedy that breach from receipt of the written notice (including email) from TGCL requiring immediate remedy; or
 - 13.2.2 without cause upon ten (10) working days written notice.
 - 13.2.3 without cause and without notice, if the relationship between TGCL and your Institution has been terminated.
- 13.3 Upon termination of this Agreement the parties shall pay each other all sums of money which may be due or owing in respect of the Service under this

Agreement prior to termination. Unredeemed vouchers and similar are not considered money owing to you.

14. DISPUTE RESOLUTION

14.1 If any dispute arises between the parties out of or in relation to this Agreement:

- 14.1.1 the party claiming a dispute has arisen must give written notice to the other specifying the nature of the dispute;
- 14.1.2 the parties will endeavour, in good faith, to negotiate a resolution of the dispute;
- 14.1.3 if the parties have not resolved the dispute within fourteen (14) days after the date notice of the dispute was given, the dispute is to be mediated by a mediator jointly agreed by the parties, or, if the parties are unable to agree, selected by the President of the Auckland District Law Society at the time the dispute arises. The costs of the mediation shall be shared equally between the parties unless otherwise agreed in the course of the mediation;
- 14.1.4 Should mediation fail to resolve the matter within 30 days, then the dispute may be referred to arbitration. The arbitration will be conducted by a single arbitrator, agreed between the parties or in default of agreement, by an arbitrator selected by the President of the Auckland District Law Society. The arbitration will be governed by the Arbitration Act 1996 (New Zealand) and the then current Arbitration Protocol. The law of New Zealand will apply, and judgment upon the award rendered by the arbitrators may be entered in any Court having jurisdiction thereof;

pending resolution of the dispute, these Terms of Trade will remain in full force and effect without prejudice to either parties' rights and/or remedies.

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 (a "Schedule").

15.3 Once the parties have agreed to the additional terms and conditions in accordance with clause 14.2 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 this Agreement, the terms and conditions in the Schedule will apply.

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 terms and conditions 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 the terms and conditions contained in this Agreement from time to time, in its absolute discretion. You are deemed to have accepted such change by continuing 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, understandings 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.