



instafood

Terms and Conditions for Food Delivery Driver

1. DEFINITIONS

- 1.1 “Batching” means Delivery Orders that are gathered by Contractors before being delivered to Customers.
- 1.2 “Platform Fee” means the commission you agree to pay the Company (10%) for using its APP technology and marketplace platform to enable you to carry out Delivery Orders. This is GST exclusive.
- 1.3 “Customer” means a person or a party who has made a Delivery Order and has paid for it.
- 1.4 “Delivery Fee” is the fee that Customer pays in addition to the sales value of their food to have it delivered.
- 1.5 “Delivery Order” is the task of picking up a meal from a vendor and delivering it to the Customer’s address.
- 1.6 “Operational Handbook” is a handbook that explains in detail how to use the APP.
- 1.7 “Sales Value” is the amount that the Customer pays for the food items in the order.
- 1.8 “Schedular Payment” means payments made by the Company to the Contractor based on the Service Courier Charge collected. A Schedular Payment will record two full weeks of Service Courier Charges collected and paid out on Wednesday the week after. These payments are required to have withholding tax deducted.
- 1.9 “Service Courier Charge” is payment you receive for completing a Delivery Order successfully. This is GST inclusive.
- 1.10 “Services” means accepting and completing Delivery Orders.
- 1.11 “Total Value” is the total amount that a Customer pays to have their order delivered to their address. It is the combined amount of the Sales Value and Delivery Fee.
- 1.12 “Vendor” means any food outlet/restaurant/café that creates and sells food for sale.

2. BACKGROUND

- 2.1 The Company carries on business as a food delivery service.
- 2.2 The Company and the Contractor agree that the Contractor will operate as an Independent Contractor to the Company on the terms outlined herein and in accordance with all the Company's current and future written policies.
- 2.3 Nothing expressed or implied in this Agreement, or in the relationship between the Contractor and the Company, shall be construed as creating an employment relationship between the Company and the Contractor.
- 2.4 The Company and Contractor do not intend to form an employment relationship.

3. DURATION

- 3.1 This Agreement commences on the date you make your first delivery with Instafood and is subject to the provisions of this agreement shall continue until terminated by either party in accordance with clause 9 below.

4. CONTRACTOR'S OBLIGATIONS

- 4.1 The Contractor agrees to carry out the Services for the Company.
- 4.2 The Contractor agrees that the APP will send automatic reports to Instafood. The Contractor will not prevent this.
- 4.3 The Contractor shall abide by policies of the Company as set out in the Instafood Operational Handbook. The Contractor agrees to familiarise themselves with the Operational Handbook.
- 4.4 The Contractor shall maintain a current Police vetting clearance.

5. HOURS OF OPERATION

- 5.1 Instafood's usual hours of business are Monday to Sunday between the hours of 7am and 2am ("Hours of Operation"). Instafood is under no obligation to offer the Contractor Delivery Orders.

6. LOCATION OF WORK

- 6.1 The Contractor may work from any location they choose within the Company's operating areas.

7. INSURANCE

- 7.1 The Contractor shall at all times during the term of this agreement keep and maintain public liability and professional indemnity insurance for the provision of the Contract Services for cover as required by the Company on terms and conditions reasonably acceptable to the Company.
- 7.2 For the avoidance of doubt, the Company shall not be liable for any loss suffered by the Contractor if the Contractor fails to keep and maintain insurance as required by clause 7.1.
- 7.3 The Contractor shall, on request by the Company, supply the Company with a copy of the insurance policies referred to in clause 7.1.

8. FEES AND BENEFITS

8.1 In consideration of the provision by the Contractor of the Services, the Company agrees to pay the Contractor a schedular payment based on completed Delivery Orders. The Service Courier Charge is made up of the following (all fees specified are in New Zealand Dollars):

Pick-up & side view food photo	Delivery distance	Drop-off fee and 5m photo
\$2.20	\$1.20	\$1.40

- (a) "Pick-up & side view food photo" is the fee you receive when you arrive at the Vendor and pick up the item and then provide a side view photo of all of the food following pick-up from the Vendor;
- (b) "Delivery distance" is the fee you receive based on the distance of the delivery location from the Vendor. Please note the delivery distance is based on the expected trip distance from Google Maps, not the actual trip that may contain detours/roadworks or congestion.
- (c) "Drop-off fee and 5m photo" is the fee you receive once the drop-off to the Customer has been completed and a photo from a 5m distance showing completed delivery has been provided.

8.2 The amounts listed at clause 8.1 above will be invoiced fortnightly by the Contractor, with all tax and insurance obligations the responsibility of the Contractor.

8.3 The Company shall pay the Contractor schedular payments on Wednesdays fortnightly **PROVIDED THAT** the Contractor provides to the Company, no later than the Monday of the schedular payment week, a detailed tax invoice recording a particularised breakdown of all amounts owing to the Contractor and such invoice is approved by the Company for payment.

8.4 Instafood will deduct withholding tax on the gross schedular payments as per the Income Tax Act 2007.

8.5 Customers may choose to tip you, that is entirely at their discretion, which may be subject to tax.

9. TERMINATION

9.1 This Agreement can be terminated on notice, without cause, at any time by either the Company or the Contractor. The terminating party shall provide one (1) months' notice to the other in writing.

9.2 The Company may terminate this contract with immediate effect, and is not required to provide notice, if the Contractor:

- (a) Is guilty of any serious or repeated breach or any non-observance of any term of this contract, gross negligence or if the Contractor refuses to carry out the Services;
- (b) Is convicted of any criminal offence which in the reasonable opinion of the Company may adversely affect the Company's business or reputation;

- (c) Is adjudicated bankrupt or reaches a compromise with creditors or goes into liquidation or receivership;
- (d) Is rendered unable to perform the Services;
- (e) Acts or omits to act in such a way that could, in the Company's sole discretion, bring the Company or the Business into disrepute;
- (f) There is, in the opinion of the Company, a conflict of interest arising in relation to the provision of the Services by the Contractor;

9.3 Upon termination of this Agreement, howsoever occurring, the Contractor shall immediately return to the Company records, documents, plans, letters, papers and other material and information of every description (including all electronic information and all copies of or extracts from the same) within their possession or control relating to the affairs of the Company.

9.4 Termination by either party under the provisions of this clause of the Agreement will be without prejudice to any other remedies that the party may have against the other pursuant to this Agreement.

10. ENTITLEMENTS

10.1 The Contractor is an independent contractor for all purposes under this Agreement.

10.2 The Contractor shall be solely responsible for the payment of all levies, assessments, taxes or other payments levied upon the Contractor as required under the provisions of the Income Tax Act 1994, the Goods and Services Tax Act 1985, the Injury Prevention, Rehabilitation, and Compensation Act 2001, and all other legislation that may be in force and that affects the performance of the Services.

10.3 The Company is not liable to pay any superannuation in respect of the Contractor, or make any contribution to any Kiwisaver scheme the Contractor may be involved in.

11. NOTICES

11.1 Any notice given under this agreement shall be made by letter or sent by email to the addresses provided by the Company and the Contractor or such other address advised by the parties from time to time.

12. HEALTH AND SAFETY

12.1 The Contractor will make themselves aware of, and comply with, the health and safety policies of the Company when on the property of the Company or property of any other entity in conjunction with provision of the Services, while performing the Services.

12.2 The Contractor will also make themselves aware of, and comply with, the health and safety policies of any third-party premises that they enter for the purpose of performing the Services.

12.3 All work-related hazards, incidents, injuries or accidents are to be reported immediately to the Company. Hazards include anything relating to the Contractor's personal circumstances which render him/her or others more susceptible to harm, including stress.

13. DEDUCTIONS

- 13.1 The Contactor is liable for any debt arising in direct connection with their performance of the Services, howsoever arising.

14. VEHICLES

- 14.1 The Contractor shall provide their own vehicle and shall meet all running and maintenance costs for the vehicle.

15. INDEMNITY

- 15.1 The Contractor agrees, to the extent permissible by law, to indemnify the Company, the Company's directors shareholders, employees and contractors ("the Indemnified Parties"), and keep the Indemnified Parties indemnified against any actions, claims, proceedings, holiday pay, income tax, penalties, levies, loss, damage, costs or expenses which the Indemnified Parties may suffer or incur as a result of:

- (a) The Contractor's provision of the Services;
- (b) Arising from the Contractor's actions on the Company's behalf (whether the Company has authorised them or not) including any liability arising out of the Contractor's breach of this contract;
- (c) Negligent acts;
- (d) Any legal costs incurred by the Indemnified Parties in connection with any of the matters referred to in this clause, and/or
- (e) Any sum or sums awarded against the Indemnified Parties, including legal costs and disbursements, arising out of any determination that the Contractor is an employee of the Company.

- 15.2 Without limitation, the indemnity in clause 15.1 extends to the Company's liability to third parties arising out of the Contractor's acts or omissions, performance of the Services, or status, including liability to governmental or regulatory authorities. The indemnity applies whether the Company has been negligent or is at fault and does not limit any further compensation rights of the Indemnified Parties.

- 15.3 For the purpose of section 12 of the Contract and Commercial Law Act 2017, the undertakings contained in clauses 15.1 and 15.2 are intended to create a benefit in favour of, and enforceable by, the Indemnified Parties, and the Company's officers, directors, agents, advisers and employees. Notwithstanding this clause, this contract may be varied by the written agreement of the parties.

16. NON-SOLICITATION

- 16.1 For a period of six months following termination of this contract for any reason, the Contractor shall not either directly or indirectly, whether as agent, adviser, employee, director, shareholder, partner, contractor or consultant or in any other role, encourage or persuade any of the Company's clients, suppliers, employees, contractors or staff to terminate, restrict, divert, limit or end their trade relations with the Company. The Contractor shall not solicit, canvass or endeavour to entice away from the Company any such clients, suppliers, employees, contractors or staff.

- 16.2 The Contractor acknowledges that the remuneration set out in clause 8 includes consideration for entering into the restraints and restrictions set out in this clause.
- 16.3 The Contractor confirms that it considers these restrictions to be reasonable in all the circumstances. However, if a court or tribunal finds any of them to be unenforceable, both the Company and the Contractor agree to accept any modification of the post-termination duration or applicable geographical scope required to render the restraint enforceable.

17. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 17.1 As part of his/her engagement the Contractor may obtain, or have access to, confidential *information* concerning the Company (and/or any parent company and/or its subsidiary or associated companies) and the business of the Company. Under no circumstances is any use to be made of this information except for purposes directly related to furthering the business objectives of the Company or as set out in this clause.
- 17.2 Without limiting the generality of the previous sub-clause, the Contractor shall keep confidential, all information relating to:
- (a) Contractual arrangements of and relating to the Company.
 - (b) The Company's business connections and transactions and customer information.
 - (c) Any plans, products, processes, technical information, and know-how of and relating to the Company.
- 17.3 The restrictions contained in this clause will continue to apply after the termination of this contract for service for whatever reason.
- 17.4 The restrictions include that the Contractor shall not divulge or allow to be divulged to any person any confidential information other than to persons who have first signed a confidentiality agreement in a form approved by the Company.
- 17.5 The Contractor shall comply with all directions issued by the Company from time to time to prevent or stop breaches of confidentiality.
- 17.6 The Contractor shall notify the Company immediately if he/she becomes aware of a suspected or actual breach of confidentiality.
- 17.7 The restrictions will cease to apply to:
- (a) Knowledge or information which comes into the public domain without breach by the Contractor of the restrictions contained in this clause;
 - (b) Information required to be divulged by a duly authorised officer or agent of the Company;
 - (c) Information required to be divulged by operation of law or order of a Court or Tribunal having jurisdiction.
- 17.8 The Contractor will not directly or indirectly contest any rights of the Company or any associate of the Company in respect of any patent, trademark, copyright or other right forming part of or relating to Confidential Information.

17.9 The Contractor will fully disclose to the Company all inventions, software, designs, improvements and discoveries relating to the business of the Company which the Contractor may from time to time make and all such inventions, software, designs, improvements and discoveries shall be the sole property of the Company.

18. PRIVACY ACT 1993

18.1 The Contractor consents to the collection and storage of personal information about him/her by the Company from time to time in relation to the Company's business, or as required by legislation.

18.2 The Contractor shall have the right to access all personal information concerning the Contractor held by the Company and to request correction of that information.

18.3 The Company will not disclose personal information about the Contractor except in accordance with the provisions of the Privacy Act 1993.

19. GENERAL

19.1 This agreement is governed by New Zealand law and the parties irrevocably submit to the exclusive jurisdiction of the New Zealand courts.

19.2 This Agreement represents a full record of the Agreement entered into by the Company and the Contractor related to the provision of the Services and supersedes any previous contracts or understandings, written or oral, existing between the parties.

19.3 By mutual agreement the parties hereto may amend this Agreement during its currency. Any such amendment shall not have effect unless it is recorded in writing and executed by both parties.

19.4 This agreement shall be binding on the legal representatives, assignees and successors of both parties.

19.5 This contract cannot be sold, transferred, assigned, or sub-contracted by the Contractor except with the prior written consent of the Company.

19.6 In the event that any one of the clauses in this Agreement is declared to be invalid or unenforceable by any authority legally entitled to make such a determination, the validity and enforceability of the remaining clauses will not be affected unless those clauses are expressly altered or amended by that authority.

19.7 No failure or delay on the part of either party in exercising any power or right under this agreement will operate as a waiver, nor will any single or partial exercise of such right or power preclude any other or future exercise of the same, or any other right or power contained in this agreement.

20. ENTIRE AGREEMENT AND INDEPENDENT ADVICE

20.1 This agreement supersedes any previous agreement between the parties, written or oral, relating to independent contracting and may be amended or modified only in writing signed by both parties (except where otherwise indicated in the agreement).

20.2 You confirm that prior to signing this agreement, you have read and understood the provisions of this agreement and have had a reasonable opportunity to seek independent advice on its terms.