



MADISON MARCUS  
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# Website Terms and Conditions

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## Terms and Conditions

By browsing, accessing or otherwise using this website or any data or content from this website, you agree to be irrevocably and unconditionally bound by these Terms and Conditions. You will need to access this website to be able to submit an order (**Order**) for the products (**Products**) that may be listed on this website from time to time. Should you not accept these Terms and Conditions, you must refrain from using this website operated by Kaspas Brands Pty Ltd ACN 641 009 798 (**Kaspas**). If you continue to use this website by placing an Order for a Product(s), you are deemed to have agreed to these Terms and Conditions.

### 1. No Warranty

- (a) Kaspas and its contractors are responsible for maintaining this website and all publications, content, data or the like uploaded on this website and make no warranty as to the accuracy or reliability of the information contained therein. This extends to any content, data or information generated or uploaded to this website by or on behalf of Kaspas and/or any third party and/or any user or subscriber to this website.
- (b) Kaspas, its associated entities, related entities, officers and employees are not liable or responsible for any loss or damage which may be caused to any recipient by directly or indirectly relying on anything contained in or omitted from our website or any information or data contained therein.
- (c) You acknowledge that you access this website at your sole and absolute risk and by accessing this website you expressly and irrevocably release Kaspas from any and all liability which may accrue as a direct or indirect result of your access and access to this website and reliance upon any data or information therein.
- (d) Kaspas reserves the right to alter and/or amend these Terms and Conditions at any time without further notice to you.

### 2. Disclaimer

- (a) The contents of this website are provided for general information purposes only.
- (b) To the maximum extent permitted by applicable laws, content published within this website is provided in good faith on an "as is", "as available" and "where is" basis and Kaspas excludes and disclaims to the maximum extent permitted by law all guarantees, conditions, warranties or terms of any kind, whether express or implied or imposed by any applicable law.
- (c) Illustrations and photos contained on this website are sample representations of the relevant products advertised, and variations may occur from time to time.
- (d) Whilst Kaspas endeavours to ensure the functionality of this website, to the maximum extent permitted by applicable laws, Kaspas:
  - (i) in no way guarantees uninterrupted access to the website or the security of the website;
  - (ii) does not guarantee the accuracy or completeness of the elements and / or information published on the website; and
  - (iii) disclaims liability for any damage whatsoever, including without limitation direct, indirect, incidental, special, punitive or consequential damages and / or loss of profits, business interruption or loss of data or information that may result from access to this website and the use of all or part of the elements or information contained on the website.
- (e) Notwithstanding any of the above, nothing in these terms and conditions or within this website shall operate to exclude, restrict or modify any guarantee, term, condition or

warranty, right or remedy implied or imposed by any statute or regulation that cannot lawfully be excluded or limited (including under the *Australian Consumer Law*). To the extent that rebel's liability can be limited, our liability will be so limited.

### 3. Restrictions

- (a) By browsing, accessing or otherwise using this website, you warrant and agree that you must not and will not:
- (i) use any device, software, hardware, process or any other technology of any means to access, retrieve, scrape or index this website or any information, content or data contained therein;
  - (ii) interfere with the operation of this website by any means, through any technology or through any third party;
  - (iii) cause excessive and burdensome internet traffic to this website or the Kaspas infrastructure;
  - (iv) use any data, information or content of this website to compete with Kaspas in any capacity whatsoever, whether by website or otherwise;
  - (v) violate any proprietary rights, property rights, copyrights, privacy or intellectual property rights of Kaspas or any other person;
  - (vi) violate these Terms and Conditions or any New South Wales or Australian law, regulation, requirement or code of conduct;
  - (vii) solicit any unauthorised financial benefit from any other user of this website;
  - (viii) copy, reproduce, retransmit, create derivative works, sell or display or in any way exploit this website without the prior express written authorisation of Kaspas.
- (b) You acknowledge that if you fail to adhere to the restrictions set out in term 3(a) above, Kaspas may proceed with any of the following actions against you:
- (i) reporting your conduct to Australian or New South Wales regulatory officials such as the New South Wales Police Force or the Australian Federal Police;
  - (ii) institute technological barriers however Kaspas deem necessary;
  - (iii) commence Court proceedings seeking damages from you; or
  - (iv) commence Court proceedings seeking injunctive and/or declaratory relief against you.
- (c) You must indemnify Kaspas and its related associated entities from any loss suffered as a direct or indirect result of your contravention of term 3(a) including but not limited to damages, costs, legal expenses, disbursements, fees, charges and the like.
- (d) By placing an Order, you warrant that:
- (i) you are legally capable of entering into binding contracts; and
  - (ii) you are at least 18 years old.
- (e) If your Order contains any Products that contain alcohol, then you further acknowledge and agree that:
- (i) it is an offence for any person under the age of 18 years to buy and/or attempt to buy any Product that contains alcohol; and
  - (ii) it is an offence for any person over the age of 18 years to purchase a Product

containing alcohol on behalf of another person that is under the age of 18 years.

#### 4. Copying of Data

- (a) This term is subject to the *Copyright Act 1968* (Cth) and nothing in this term is intended to affect or alter the operation of the *Copyright Act 1968* (Cth). In the event of an inconsistency between this term and the *Copyright Act 1968* (Cth), the *Copyright Act 1968* (Cth) shall prevail to the extent of that inconsistency.
- (b) All content included on this website, including but not limited to data, information, content, material, text, images, audio, videos, logos, button icons, is the intellectual property of Kaspas, its associated entities or related entities or its third-party content suppliers. Use of this website does not transfer any intellectual property rights or copyrights to the user or grants the user any licence to exercise any intellectual property rights unless expressly authorised by Kaspas in writing.
- (c) Kaspas grants users of this website revocable permission to download copyright material on this website for their own personal use provided that such use is non-commercial and not to obtain any financial benefit whilst excluding Kaspas.
- (d) You must not reproduce, copy or alter information, data or content contained on this website without the prior express written authority of Kaspas.
- (e) This website contains registered trademarks and other trademarks which are protected by law. The user must not use any of the marks or trademarks appearing on this website or our name or the names of our related bodies corporate without the prior written consent of Kaspas. The user must also not use any of the other company, product and services marks on this website that are owned by other third parties (including our suppliers) without obtaining the relevant third party owner's consent.

#### 5. Third Party Content

- (a) You acknowledge that this website may from time to time contain information, data and content uploaded by third parties (**Third Party Content**).
- (b) Kaspas does not in any way monitor the Third Party Content on this website and makes no warranty as to the accuracy of such Third Party Content. For that purpose, Kaspas is not liable or responsible for any matters pertaining from the Third Party Content whether directly or indirectly.
- (c) You rely upon Third Party Content on this website at your sole and absolute risk and you acknowledge that Kaspas makes no express or implied representations as to the Third Party Content or the accuracy thereof.
- (d) You are responsible for making your own independent enquiries in respect of the Third Party Content on this website. You acknowledge that the Third Party Content does not necessarily represent the view of Kaspas.
- (e) You release and hold harmless Kaspas from any and all liability arising from any Third Party Content on this website.

#### 6. Advertising

- (a) Kaspas is entitled to, at its sole and absolute discretion, upload and include advertisements and links to third party material (such as contact details of users) and other third party websites on this website.
- (b) Such third party material and third party websites are not part of this website and are not controlled by Kaspas by any means whatsoever. Kaspas makes no warranty or express or implied representations as to the accuracy or reliability of the third party material and third party websites or any information, data or material contained therein.

- (c) You acknowledge that you access such third party material and third party websites at your sole and absolute risk. For that purpose, Kaspas is not liable or responsible for any matters or liability pertaining from the third party material and third party websites and you agree to release Kaspas from such liability.

## 7. Uploading Data

- (a) By subscribing to Kaspas, you may be entitled to upload material, information, data, content, text, images, video, audio or the like with the approval of Kaspas (**uploaded data**).
- (b) Kaspas may reject any request by you to upload any uploaded data to this website at its sole and absolute discretion.
- (c) You expressly warrant that the uploaded data is not:
  - (i) in contravention of any law, regulation, code of conduct or requirement imposed by any authority;
  - (ii) in contravention of copyright or the intellectual property rights of any third party;
  - (iii) misleading or deceptive;
  - (iv) inappropriate noting the purpose of this website;
  - (v) materially incorrect;
  - (vi) obscene;
  - (vii) offensive;
  - (viii) defamatory;
  - (ix) maliciously false;
  - (x) unlawful;
  - (xi) corrupt;
  - (xii) likely to damage the reputation of Kaspas; or
  - (xiii) likely to damage or adversely affect the operation of this website.
- (d) You expressly warrant that the uploaded data is:
  - (i) owned and controlled by you, including any rights in the uploaded data;
  - (ii) able to be lawfully displayed by Kaspas on this website;
  - (iii) lawfully obtained by you, including obtainment of all necessary licences, rights, consents and permissions required to use the uploaded data
- (e) In the event that you contravene terms 7(c) or 7(d), you agree and acknowledge that:
  - (i) Kaspas may remove, alter, delete or disable the uploaded data at its sole and absolute discretion;
  - (ii) you indemnify Kaspas and its related and associated entities from any loss suffered as a direct or indirect result of your contravention of term 7(c) and/or 7(d) including but not limited to damages, costs, legal expenses, disbursements, fees, charges and the like.
- (f) You grant Kaspas a global, royalty-free, perpetual, transferable and irrevocable licence

to use, reproduce, modify, adapt, translate, distribute, publish, create derivative works from and display your uploaded data through any medium, whether currently in existence or not.

- (g) Kaspas is not liable to you for any loss which may be occasioned by use of your uploaded data by a website user. You acknowledge that you upload data to this website at your sole and absolute risk.

## 8. Service Disclaimers

### 8.1 Availability of Products

- (a) From time to time, Kaspas may make a product(s) (**Product**) available for you to place in your shopping cart on this website (**Order**).
- (b) You acknowledge that your Order is subject to the Product's availability and if the Product(s) becomes unavailable, your Order may be cancelled in accordance with term 12.

### 8.2 Dietary and Allergy Requirements

- (a) Despite its best endeavours to adhere to a user's special requests for each Order, traces of allergens or gluten may be unintentionally present in food due to cross-contamination during store operations. Kaspas cannot guarantee that any Order will be 100% allergen or gluten free, as the case may be. To the full extent permitted by law Kaspas will not be liable for any costs, fees, claims, damages or charges whatsoever, including medical and dental costs, if a user has any adverse reaction to a product sold through Kaspas

## 9. Transactions involving Alcohol and other age-restricted products

- (a) Kaspas is committed to the responsible service of alcohol in compliance with the Liquor Act 2007. You acknowledge that it is an offence for any person under the age of 18 to buy, or attempt to buy, intoxicating liquor, or for any person over the age of 18 to buy intoxicating liquor on behalf of any person under the age of 18.
- (b) Orders containing either alcohol or other age-restricted products can therefore not be accepted from or on behalf of persons under the age of 18. In the event that you place an age-restricted product, you will be required by Kaspas to show ID on delivery. If a user is unable or refuses to provide legal proof of age being an accepted form of identification in Australia, Kaspas is entitled to cease the transaction and will be not liable for processing any refunds for related item/s in such event.
- (c) Kaspas reserves the right to refuse to fulfil an Order which includes any alcoholic products, if Kaspas determines that a user is intoxicated or similarly unsuitable for the consumption of such products, or any other reason at the discretion of the Kaspas representative, without further explanation to you.
- (d) For orders placed on third-party delivery platforms, the third-party delivery provider has the obligation of confirming the age and identify of the user. They are also entitled to refuse the delivery of an order which includes alcohol items in case the proof of age and identify fails or in the circumstances that the third-party determines consumer is intoxicated or unsuitable for the consumption of these products.

## 10. Placing an Order for Products

- (a) You may order Products by selecting and submitting your Order through this website in accordance with these Terms and Conditions. Orders for Products may be made with different 'restaurants' (**Restaurant**) that are featured on this website.
- (b) Any Order placed through this website is an offer by you to purchase the particular Product for the price notified (including the delivery and other charges and applicable

taxes) at the time you place the order.

- (c) No order shall be deemed to be accepted by us until we issue an email acceptance of the order.
- (d) If a restaurant has a minimum Order amount in place, you may not place an Order with that Restaurant until the value of your Order exceeds the required amount. The minimum amount must be met after rewards or discounts.
- (e) Kaspa may ask you to provide additional details or require you to confirm your details to enable us to process any Orders placed through this website.
- (f) All Orders for a Product from this website must be intended for personal non-commercial use only.
- (g) It is your responsibility to ensure that all information and details as stated in your Order are accurate before proceeding to "checkout" and making payment for same. Once your Order is processed, errors cannot be corrected.

## 11. Acceptance or Rejection of Orders

- (a) Kaspa reserves the right to accept or reject an Order for any reason, including but not limited to:
  - (i) if the requested Product is not available; or
  - (ii) if there is an error in the price or the product description posted on this website or in your order.
- (b) In the event that Kaspa is required to reject an Order, Kaspa will use all reasonable endeavours to let you know as soon as possible of the rejection and the reason for the rejection.
- (c) Each order placed for Products through this website that is accepted shall result in a separate binding agreement between you and Kaspa for the supply of those Products.
- (d) For each order accepted, Kaspa will supply the Products in that order in accordance with these Terms and Conditions.

## 12. Changes or Cancellation

### 12.1 Changes

- (a) Once your Order and your payment has been authorised, you may not be able to change your Order. If you wish to change your Order, you may need to contact the Restaurant directly (if a contact number/email address is listed) or contact the Customer Care. For the avoidance of doubt, the Customer Care team is not obliged to process a requested amendment to your Order.

### 12.2 Cancellation by Kaspa

- (a) Prior to the dispatch of an Order, Kaspa may cancel all or any part of an Order (including any Order that has been previously accepted by Kaspa) without any liability to you for such cancellation provided that:
  - (i) the requested Products in that Order are no longer available;
  - (ii) there is an error in the price, or the product description posted on this website in relation to the relevant Product in that order; or
  - (iii) that order has been placed in breach of these Terms and Conditions.
- (b) If Kaspa deems that an Order must be cancelled due to anything contained within term

12.1, then Kaspas will endeavour to provide reasonable notice of such cancellation and there will be no charge, provided that:

- (i) Kaspas has cancelled the order prior to the delivery of the Products;
- (ii) you are not at fault for the cancellation; or
- (iii) you are not in breach of these Terms and Conditions.

### 12.3 Cancellation by User

- (a) Prior to the acceptance by Kaspas of an Order, you may cancel all or any part of an Order due to circumstances beyond your reasonable control without any liability to Kaspas for such cancellation, however Kaspas shall not be required to facilitate the cancellation of any Order or provide funds, returns or replacements of any Products if you simply change your mind.
- (b) If the user elects to cancel an Order in accordance with term 12.3(a) above, then the user must provide Kaspas with notice of such cancellation, and the applicable reasons for cancellation, prior to the acceptance of the Order.
- (c) For the avoidance of doubt, the user is unable to cancel all or any part of an Order after payment of that Order has been processed.

### 12.4 Cancellation Refunds and Fees

- (a) Orders may only be granted a refund if the cancellation occurs within five (5) minutes of an Order being placed. Kaspas holds the right to approve or deny any refund at its absolute discretion.
- (b) Orders placed on third-party delivery provider platforms and cancelled on such platforms may incur a cancellation fee. It is the responsibility of the user to acknowledge the refunds and cancellation policy on the third-party Terms and Conditions before placing any orders on their platforms.

## 13. Payment Terms

### 13.1 General

- (a) Kaspas shall charge, and you agree to pay, the following fees and charges in relation to an Order (as applicable):
  - (i) the advertised purchase price of each Product that is ordered;
  - (ii) the delivery fee for delivering the Products to you; and
  - (iii) any other fees and charges set out in these Terms and Conditions or displayed on this website from time to time.
- (b) All fees and charges identified in these Terms and Conditions and all prices for the Products as shown on this website are inclusive of GST as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) unless otherwise indicated.
- (c) By entering your payment information, you acknowledge and consent to any third party payment processor used by Kaspas charging the credit card details you enter onto the website for the amount of your Order.

### 13.2 Prices

- (a) All prices displayed upon this website are in Australian Dollars (AUD), unless otherwise stated.



- (b) The prices of products and delivery and other charges displayed on this website are current at the time of issue, however, Kaspas reserves the right to change prices at any time before we accept an Order from you.
- (c) The purchase price of each Product is shown on this website at the time you place your Order.
- (d) A surcharge of 15% may be applied to all user orders on Australian Public Holidays at the discretion of Kaspas.

### 13.3 Delivery Fees

- (a) Delivery fees are payable in addition to the purchase price of each Product and may vary depending on the delivery method.
- (b) You acknowledge and agree that you may incur additional delivery fees/freight charges (in excess of the fees and charges specified above) for:
  - (i) special, non-stock and/or bespoke items;
  - (ii) heavy, bulky and/or awkward items;
  - (iii) express or urgent deliveries; or
  - (iv) bulk or large quantity orders.

### 13.4 Incorrect Pricing

- (a) Kaspas will use its reasonable endeavours to ensure that any price indicated for a Product is accurate and without error. In the event that a price listed for a Product is incorrect or erroneous (**Incorrectly Priced Product**), Kaspas reserve the right to rectify any prices on the website at its sole and absolute discretion and without any notice to you.
- (b) If an Incorrectly Priced Product has been added to your Order, Kaspas may in its sole and absolute discretion cancel your Order or contact you for further instructions.
- (c) If an Incorrectly Priced Product has been shipped to you, you agree that Kaspas may direct you to either:
  - (i) pay Kaspas the difference between the actual price for the product and the price you paid for the product, within ten (10) business days of receiving notice from Kaspas of same; or
  - (ii) return the Incorrectly Priced Product to Kaspas.

## 14. Vouchers and Reward Programs

- (a) Kaspas may offer vouchers, discounts codes, loyalty programs or other promotions (**Rewards**) to a user via the Kaspas website or third-party platforms. The nature, quantity, availability and type of Rewards are provided at the sole and absolute discretion of Kaspas.
- (b) To receive the benefit of the Reward, users must redeem a Reward within the time stipulated by Kaspas, including vouchers offered via third-party platforms such as UberEats and Menulog.
- (c) Subject to a user's rights under the Australian Consumer Law and these Terms and Conditions, Kaspas will not be responsible for the reissuing any of Rewards if the Reward has become unavailable or expired.
- (d) A Reward cannot be sold, transferred, assigned or otherwise dealt with by a user. Rewards are not exchangeable and cannot be taken as cash consideration.

- (e) If a user receives a Reward issued and supplied from any of Kaspas's third-party delivery providers, Kaspas shall not be liable for the availability, quality or nature of such Reward, and any questions or requests arising from such Reward must be directed to the third-party provider.

## 15. Warranties

15.1 You expressly warrant that:

- (a) you agree to be irrevocably and unconditionally bound by these Terms and Conditions;
- (b) your use of this website is conditional upon compliance with these Terms and Conditions;
- (c) you acknowledge that the Product is provided on an "as-is" basis without any further warranties of any kind by Kaspas;
- (d) all information and data provided by you through the website (including as part of the customer registration process) or otherwise is true, accurate, complete and up to date;
- (e) the person receiving the Products at the delivery address is authorised by you to do so;
- (f) you have and will comply with all relevant laws relating to your use of this website and your placement of any order to Kaspas;
- (g) you will ensure that your email address that you provided to us as part of the registration process to use the website (**Login ID**) and password that is used to access the website are kept securely;
- (h) you will promptly advise us of any changes to your information provided to us as part of the customer registration process;
- (i) you are responsible for any costs associated with your access to or use of the website, including Internet access fees;
- (j) you are responsible and liable for any person that uses your Login ID and password to order Product(s) through the website;
- (k) you agree that we may charge you for all Products that we agree to supply to you that have been ordered using your Login ID and password through our website;
- (l) except for any applicable non-excludable consumer guarantees, rights or warranties under the *Australian Consumer Law*, Kaspas gives no guarantees and makes no warranties as to the condition of the goods supplied to you;
- (m) To the extent that a consumer guarantee applies under the *Australian Consumer Law*, the liability of Kaspas for breaches of any consumer guarantees are limited, to the repair or replacement of the Product;
- (n) in the event you notice any defect or fault of the Product which render the product non-compliant with the non-excludable guarantees under the *Australian Consumer Law*, you must contact Kaspas within fourteen (14) days from the date the Product is confirmed to be delivered to you with sufficient details regarding the alleged defect or fault, including photographic evidence;
- (o) You will not
  - (i) use the website or any activities that breach any laws, infringe a third party's rights or are contrary to any relevant standards or codes;

- (ii) use the website in a manner or way, or post to or transmit to or via the website any material, which interferes with other users or our other customers or defames, harasses, threatens, menaces or offends any person or which prevents any other person from using or enjoying this website;
  - (iii) make fraudulent or speculative enquiries, purchases or requests through the website;
  - (iv) use another person's details without their permission or impersonate another person when using the website;
  - (v) tamper with or hinder the operation of the website; or
  - (vi) make any action that imposes or that would, in our reasonable opinion, result in an unreasonable or disproportionately large load on our infrastructure
- (p) Kaspas will not be liable for any defect, fault or damage to the Product of any nature whatsoever:
- (i) in respect of which notice was not provided in accordance with term **Error! Reference source not found.**, or
  - (ii) resulting from or caused or contributed to in any way by:
    - (A) you failing to properly maintain or store the Product after delivery;
    - (B) you using the Product for any purpose other than that for which the goods were designed;
    - (C) the shipping of the Product (including any loss, damage or theft which occurs after dispatch of the Product to You);
    - (D) you continuing to use the Product after any defect became apparent or ought to reasonably have become apparent;
    - (E) you failing to follow any instructions or guidelines provided by Kaspas;
    - (F) fair wear and tear;
    - (G) any accident, intentional damage, negligent damage or Force Majeure.
- (q) For the purposes of this term, "**Force Majeure**" means an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following:
- (i) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
  - (ii) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component; and
  - (iii) epidemics, pandemics, national health emergencies, earthquakes, flood, fire or other physical natural disaster, including adverse weather conditions.

## 16. General Indemnity

- (a) It is an essential term of these Terms and Conditions that you must indemnify Kaspas, its related and associated entities, its officers and its employees for any claims, demands, loss or damage (actual, special and consequential), and related costs, made by you or any third-party arising out of, whether directly or indirectly, your use of and access to this website and any contravention of these Terms and Conditions.
- (b) The indemnity provided in term 16(a) is a continuing indemnity and continues notwithstanding your cessation of use of this website.

## **17. No Waiver**

No term or condition of these Terms and Conditions has the effect of replacing, overriding, or otherwise removing, your statutory rights.

## **18. Amendments or Variations**

Kaspas may, from time to time, make changes to these Terms and Conditions, or to specific functions of this website, without notice to you. It is your responsibility to monitor these Terms and Conditions from time to time to ensure that you remain compliant with what is required from you when using this website or otherwise. Changes to these terms and conditions will be effective immediately upon publishing on this website.

## **19. Severability**

If any term or condition of these Terms and Conditions are deemed invalid, void, or unenforceable for any reason whatsoever, that term or condition will be deemed severable and will not affect the overall validity and enforceability of the remainder of the Terms and Conditions.

## **20. Termination**

Kaspas reserves its right to terminate or suspend your access to the website and shall not be required to provide you with any reasons why it has suspended or terminated your access. However, generally, such suspension or termination will only occur if you are found to be in serious violation of any of these Terms and Conditions.

## **21. Governing Law**

- (a) You irrevocably agree that by using this Website and subsequently, your acceptance of these Terms and Conditions, that these Terms and Conditions are governed by and construed in accordance with the laws of New South Wales and Australia.
- (b) You agree, to submit to the non-exclusive jurisdiction of the Courts of New South Wales and Australia.

## **22. User Care**

- (a) We value customer care. Our team will therefore endeavour to assist you where possible should any issues arise with your Order. You can contact our Customer Care team by emailing us at [support@kaspabrand.com.au](mailto:support@kaspabrand.com.au).
- (b) Your feedback is an essential aspect of our quality and user satisfaction control. In the event that you wish to inform us on the quality of any Products or the service provided by a Restaurant, please consider providing feedback in the form of ratings, comments and reviews on the Website (**Review**).