

TLS Online Ordering Terms of Service

Software License

Merchant's use of the online ordering software ("Software") is governed by the terms of this Agreement. Merchant may not install, reinstall, remove or modify any software that is accompanied by or includes this Agreement. TLS hereby grants to Merchant a personal, nontransferable, non-exclusive license to use the Software for online ordering powered by TLS and for no other purpose. Please note that all software languages, including without limitation HTML, Java, Python, Ruby on Rails, CSS, Ajax, C++ and Active X controls (the "Code"), is owned by TLS or its third party service provider. Any reproduction or redistribution of the Software is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible. WITHOUT LIMITING THE FOREGOING, COPYING OR REPRODUCTION OF THE SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED. THE SOFTWARE IS WARRANTED, IF AT ALL, ONLY ACCORDING TO THE TERMS OF THIS AGREEMENT. Merchant acknowledges that the software and any accompanying documentation and/or technical information are subject to applicable export control laws and regulations of the U.S.A. Merchant agrees not to export or re-export the Software, directly or indirectly, to any countries that are subject to U.S.A. export restrictions.

Food Orders

The Merchant acknowledges and agrees that the end-user consumers of the Software (the "Consumers") may place orders with the Merchant through the Merchant Website or other media or media channels, devices, software, or technologies as may be included within the TLS Services, for the food and beverages, and pick-up and/or delivery services in connection therewith, as is set forth on the Merchant Menu (the "Consumer Orders"). Upon placement of such a Consumer Order, TLS will send written confirmation to the Merchant the fax number, email address, or currently in the Merchant's Website account information or via such other delivery method as TLS and the Merchant may agree upon (the "Order Confirmation"), and which Order Confirmation contains a confirmation code or other method for delivering the Consumer Order to the Merchant.

Merchant Menu

The Merchant will provide TLS with the Merchant's current menu and related information requested by TLS within forty-eight (48) hours of execution of this Agreement, and any updates, changes, or modifications thereto (the "Merchant Menu"), in such format as is requested by TLS for TLS's use for integrating the Software in the Merchant's Website, the TLS Merchant Network, TLS marketing services or for any marketing or advertising activities undertaken by TLS, in its sole and absolute discretion (the "TLS Marketing Activities"). The Merchant hereby grants to TLS a non-exclusive, transferable, royalty-free, fully-paid, worldwide license, to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part), and distribute such Marketing Materials, including any trademarks, trade names, service marks, logos, telephone numbers, and addresses therein, for any purpose, including marketing, commercial, advertising, promotional activities or otherwise, and with a right to sublicense, in connection with TLS Marketing Activities or the TLS Merchant Services; and, in connection with TLS's exercise of the license rights granted by the Merchant, TLS may prepare derivative works of, or incorporate into other works, all or any portion of the Marketing Materials. The license rights granted hereby will apply to any form, media, or technology now known or hereafter developed. TLS does not assert any ownership over the Marketing Materials; rather, as between TLS and the Merchant, and subject to the rights granted to TLS herein, the Merchant shall be the owner of its Marketing Materials and the intellectual property rights associated thereto.

Payment

TLS merchant services enable a Consumer to pay for a Consumer Order via credit cards. If the Consumer Order is paid via credit card, the full purchase price for such Consumer Order, including all applicable taxes, shall be processed and received by TLS or TLS's third party service provider. TLS will deliver to the Merchant the aggregate purchase price of all Consumer Orders applicable to the Merchant that were so processed by TLS or TLS's third party service provider, less TLS's sales commission percentage (the "Commission Percentage") and the applicable credit card merchant payment processing fee, via direct nightly bank deposit (the "Processing Fee"). The Merchant will provide their Tax ID that will be used to setup the TLS Marketplace account for direct deposit.

Taxes

Notwithstanding anything to the contrary herein, the Merchant is, and will be, responsible for all taxes, payments, fees, and any other liabilities associated with the computation, payment, and collection of taxes in connection with Consumer Orders and the Merchant's use of the Website and the TLS Services. TLS may charge and collect sales tax from Consumers as an agent on behalf of the Merchant in accordance with instructions provided by the Merchant or applicable law; and, in which case, TLS will collect such sales tax solely as an agent on behalf of the Merchant and shall pay such amount collected to the Merchant (or as may be otherwise required by applicable law). The Merchant shall be solely responsible for verifying amounts collected, filing the appropriate tax returns, and remitting the proper amount to the appropriate taxing authorities. Sales tax shall include any sales, use, privilege, gross receipts, Merchant, excise, or other tax due in relation to the sale of food and beverages, including pick-up and delivery services (if applicable), by the Merchant.

Merchant Representations, Warrants, And Covenants

The Merchant hereby represents, warrants, and covenants that: (i) the menu prices charged to Consumers through the TLS Merchant Services will not be higher than those charged to any consumers that place orders directly with the Merchant; (ii) it will comply, and prepare, sell, market, and provide all foods in strict compliance, with all federal, state, and local laws, rules, regulations, and standards pertaining to food preparation, sale, marketing, safety, and as otherwise applicable to the Merchant's operation of its business; (iii) it will not offer for sale any potentially hazardous food, alcoholic beverage, tobacco product, or any other item prohibited by law or by TLS's policies; (iv) it bears all risks to persons and property arising from its (or its employees' or service providers') contact therewith, and waives, and agrees to indemnify TLS, its employees, contractors, shareholders and affiliates, for any and all claims relating thereto against TLS; (v) the creation, distribution, transmission, public display and performance, accessing, downloading and copying of the Merchant's Marketing Materials pursuant to the license rights granted to TLS by this Agreement does not and will not infringe the proprietary rights, including but not limited to the copyright, patent, trademark, trade secret or moral rights of any third party; and (vi) The Merchant's Marketing Materials do not violate any state or federal law, rule, or regulation applicable thereto, including with respect to electronic advertising.

TLS Content

Excluding the Marketing Materials, all of the content on the Merchant's Website or the TLS Merchant network website (the "Websites") and included in the TLS Services (including without limitation, all source code, databases, functionality, software, website designs, equipment, audio, video, text, photographs and graphics, the "TLS Content"), including the trademarks, service marks and logos contained therein ("Marks"), are owned by or licensed to TLS, and are subject to copyright and other intellectual property rights under United States and foreign laws and international conventions. All TLS graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, common law trademarks or trade dress of TLS in the U.S. and/or other countries. TLS' trademarks and trade dress may not be used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of TLS. The Merchant agrees not to circumvent, disable or otherwise interfere with any security related features of the Websites or the TLS Merchant Services, or any other features that seeks to either prevent or restrict the use or copying of any TLS Content or enforce limitations on use of the Websites, the TLS Services, or the TLS Content therein. "Consumer Data" means any and all identifiable information about purchasers generated or collected by TLS or the Merchant, including, but not limited to, purchasers' name, shipping addresses, email addresses, phone numbers, and purchaser preferences and tendencies; and the Merchant agrees that the Merchant will only use the Consumer Data in fulfilling the applicable Consumer Order and in complying with the Merchant's obligations in this agreement, and the Merchant agrees that Consumer Data will not be used to enhance any file or list of the Merchant or any third party without written permission by TLS. The Merchant represents, warrants, and covenants that it will not resell or broker any Consumer Data to any third party, in whole or in part, for any purpose whatsoever. The Merchant agrees that it will not copy or otherwise reproduce any Consumer Data other than for the purpose of fulfilling the applicable Consumer Order. The Merchant (and any other persons to whom the Merchant provides any Consumer Data) will implement and comply with reasonable security measures in protecting, handling, and securing the Consumer Data. If any Consumer Data is collected by the Merchant (or otherwise on its behalf), the Merchant shall ensure that it (and any applicable third parties) adopt, post, and processes the Consumer Data in conformity with an appropriate and customary privacy policy. For purposes of this Agreement, the restrictions set forth herein on the Merchant's use of Consumer Data do not apply to: (a) data from any consumer who was a consumer of Merchant prior to the Merchant using the Websites or the TLS Merchant Services, but only with respect to data that was so previously provided to the Merchant by such consumer; or (b) data supplied by a consumer directly to the Merchant who becomes a consumer of the Merchant and who explicitly opts in to receive communications from the Merchant

for the purposes for which such Consumer Data will be used by Merchant; and, provided in all cases, that the Merchant handles and uses such Consumer Data in compliance with applicable Laws and the Merchant's posted privacy policy.