
TERMS OF USE OF CHOICE APPLICATION SERVICES FOR PARTNERS



1. INTRODUCTORY PROVISIONS AND DEFINITIONS

1.1. These Terms of Use of Choice Application services (hereinafter “**Terms**“) are issued by **Choice QR s.r.o.**, Identification Number: 09517600, registered office Rybná 716/24, Staré Město, 110 00 Prague 1, entered in the Commercial Register maintained by the Municipal Court in Prague, file reference C 337491 (hereinafter “**Operator**“).

1.2. These Terms govern the mutual rights and obligations between the Operator and the Partner during the mediation of Brokered Agreements via the Choice Application, as well as the Contracting Parties’ other rights and obligations. These Terms are an integral part of the Contract, and are binding for the Partner upon Registration.

1.3. Unless the context indicates otherwise, the following words and expressions used in these Terms have the following meaning:

1.3.1. “**Choice Application**“ is a technical solution, or more precisely a computer programme or application called Choice, whose main essence and function is to enable Users to browse, order and purchase Products from the Operator’s Partners, and to broker the conclusion of a Purchase Contract regarding the relevant Products with the User, or to broker delivery services.

1.3.2. “**Copyright Act**“ is Act no. 121/2000 Coll., on Copyright and Related Rights and on Amendment of Certain Acts, as amended.

1.3.3. “**Price List**“ is the Operator’s Price List, which forms an Appendix to these Terms and an integral part of the Contract with the Partner.

1.3.4. “**Partner**“ is the operator of a restaurant or other business providing catering services, or another partner (natural or legal person engaged in business) whose Products are offered and sold via the Choice Application on the basis of the Contract.

1.3.5. “**Terms**“ are these Terms of Use of Choice Application services.

1.3.6. “**Selling Price**“ is the price of the Partner’s Products (including VAT) purchased by the User on the basis of a Brokered Agreement as per the information recorded by the Choice Application.

1.3.7. **“Products”** are the Partner’s products and services that are offered and sold by the Partner, via the Choice Application, to Users for the purpose of direct and immediate consumption on the basis of a Brokered Agreement.

1.3.8. **“Operator”** is the company defined in Article 1.1 of these Terms.

1.3.9. **“Civil Code”** is Act no. 89/2012 Coll., of the Civil Code, as amended.

1.3.10. **“Registration”** is the Partner’s electronic registration in the Choice Application, properly performed by the entry of at least the mandatory registration details, and their subsequent storage in the Choice Application.

1.3.11. **“Services”** mean the Operator’s activity for the Partner aimed at the Partner concluding Brokered Agreements with Users via the Choice Application or by other means, i.e. primarily consisting of (i) brokering the conclusion of purchase or similar contracts for Products, (ii) offering and presentation of Products from the Partner’s current menu to third parties, for the prices as per the Partner’s current Price List, (iii) mediation of communication between the Partner and the User, all via the Choice Application.

1.3.12. **“Contract”** is a contract concluded between the Operator and the Partner, whose subject is primarily the provision of Services to the Partner by the Operator, and the Partner’s undertaking to pay the Operator the agreed remuneration, as well as the related rights and obligations of both Contracting Parties.

1.3.13. **“User”** is a natural or legal person who uses the Choice Application services, thereby concluding a Brokered Agreement with the Partner.

1.3.14. **“Brokered Agreement”** is a purchase or other contract concluded between the Partner and the User via the Choice Application in relation to Products.

2. CONCLUSION AND SUBJECT OF THE CONTRACT

2.1. The Partner’s Registration in the Choice Application constitutes a binding offer by the Partner to conclude a Contract with the Operator. By sending the Registration, the Partner expresses their agreement with the current versions of the Terms and the Price List.

2.2. If the Registration is approved, then the Operator sends the Partner a confirmation to the Partner’s e-mail address set forth in the Registration; the delivery of this confirmation to the Partner constitutes the conclusion of the Contract. The Contract is concluded for an indefinite period.

2.3. The Contract can also be concluded in ways other than via the Registration.

2.4. A provision in the Contract takes precedence over provisions in the Terms.

2.5. On the basis of the Contract, the Operator undertakes to provide Services to the Partner, and the Partner undertakes to pay the Operator the remuneration properly and on time, as well as to fulfil the other obligations stipulated in the Contract.

2.6. The Partner explicitly acknowledges, and agrees with, the fact that the Operator does not guarantee the Partner any number of Brokered Agreements.

2.7. The Operator's brokerage activity is non-exclusive, and the Operator is therefore entitled to also provide Services consisting of brokerage via the Choice Application or in other ways to other parties. The Operator also has the right to represent, or more precisely be active for the benefit of the User, without this fact precluding the Operator's entitlement to remuneration for the provision of the Services.

2.8. The Operator makes the Choice Application, or a relevant part thereof, available to the Partner for the purpose of managing the Partner's profile and their menu of Products, including their prices and other information. The Partner is responsible for including information regarding allergens in their menu in the Choice Application. In addition to the designation of the Product and its price, the Product presentation in the Choice Application also contains information about the cost of packaging and delivering the Product, which the User is obliged to pay. The presentation can also contain a more detailed description of the Product, its properties, sizes and availability, and possibly also a photographic illustration of same. The Partner is responsible for the correctness, up-to-dateness and legal flawlessness of the information published in the Choice Application. The Operator reserves the right to remove a Product from the Partner's menu in the Choice Application without notifying the Partner in advance.

2.9. The Operator can decide, at their own discretion, whether and in what order they display and present the Partner's menu in the Choice Application.

2.10. The Partner undertakes to provide the Operator with the necessary information relating to Brokered Agreements.

3. CHOICE APPLICATION SERVICES

3.1. The Operator offers the following services via the Choice Application:

3.1.1. Choice Take Away, consisting of Users having the option to order the Partner's Products via the Choice Application to take away, i.e. with the option of personal collection or delivery to a designated location by the Partner, or via a delivery service (distribution).

3.1.2. Choice QR, consisting of the Operator enabling the Partner to offer Users the option of opening the Partner's current Product menu in the Choice Application by scanning the QR code located in the Partner's premises; after scanning the QR code, the User will be redirected to the Partner's current Product menu in the Choice Application, and they will have the option of ordering and/or paying for the Partner's products. In this context, the Operator will supply the Partner with the relevant QR codes, and enable the Partner to use these QR codes; the Partner will place these QR codes in their premises.

4. BROKERED AGREEMENT

4.1. If the Operator receives an order for the Partner's Product from the User via the Choice Application, then the Operator will forward this order to the Partner via the Choice Application, or by other means of electronic communication.

4.2. The Partner either confirms or rejects the order for the Product from the User. The delivery of a confirmation of the order to the User via the Choice Application constitutes the conclusion of a Brokered Agreement between the Partner and the User.

4.3. Under a Brokered Agreement, the Partner undertakes to supply Products to the User properly and on time, and the User undertakes to take receipt of the ordered Products from the Partner and pay the Selling Price for them, all at the delivery location as per the Brokered Agreement.

4.4. The Contracting Parties to the Brokered Agreement are only the Partner and the User, not the Operator.

4.5. Depending on the User's choice and on whether the given method is currently available to the User in the Choice Application, the Selling Price of the ordered Product can be paid by the User via the following payment methods:

payment in advance, before delivery and receipt of the Product by the User: cashless online payment by payment card via a payment gateway;

payment upon receipt of the Product by the User: (i) cash or (ii) cashless payment by payment card in the Partner's premises upon receipt of the Product;

another payment method offered to the User in the Choice Application before the Product order is completed.

4.6. The Partner explicitly authorises the Operator to perform the following activities on the Partner's behalf in relation to the Brokered Agreement:

collection of the paid Selling Price from the User on the basis of the Brokered Agreement, if the Selling Price is paid in the form of a cashless online payment by payment card via a payment gateway before the delivery and receipt of the ordered Product, whereby this price is transferred by the User to the Operator's bank account;

forwarding of the issued receipt for the Selling Price to the User.

4.7. Depending on the User's choice and on whether the given delivery method is currently available to the User in the Choice Application, the delivery of the ordered Product can be realised in the following ways:

personal collection by the User, at their own expense, in the Partner's premises;

delivery by the Partner to the location in the Partner's premises (to the desk) that the User stated in the order (by scanning the QR code on the desk in the Partner's premises);

delivery to the location that the User stated in the order as the delivery location, by the Partner or using a delivery service (in that case, the transport costs can be charged to the User);

other methods offered to the User in the Choice Application before the Product order is completed.

4.8. The Partner's rights and obligations in relation to the Operator and the User are further defined in the Terms of Use of the Choice Application for the User, which are available in the Choice Application (hereinafter "Terms for the User"), and by which the Partner is also bound in the parts that relate to them.

4.9. In relation to the Brokered Agreement, the Partner is exclusively responsible to the User for compliance with the relevant legal regulations that govern relationships with consumers arising on the basis of consumer contracts. In this regard, the Partner is obliged to familiarise themselves with the wording of the Terms for the User, and subsequently notify the Operator if they find any provision in the Brokered Agreement that is in conflict with the relevant legal regulations that govern relationships with consumers arising on the basis of consumer contracts.

5. OPERATOR'S REMUNERATION, AND PAYMENT TERMS

5.1. The Operator is entitled to remuneration for the provision of the Services.

5.2. The Operator's remuneration consists of a monthly fee from the Partner for the use of the Choice Application services as per Article 3 of these Terms, whose amount is stipulated in the Price List (hereinafter "Monthly Fee").

5.3. The Monthly Fee is always charged for the calendar month in advance, unless the Operator and the Partner agree otherwise. The Operator shall issue a tax document (invoice) to the Partner for a sum corresponding to the amount of the Monthly Fee, always on the first month of the relevant calendar month for which the Monthly Fee is paid; VAT at the rate as per the relevant legal regulations will be added to this amount. The due payment date of the invoice is 14 (fourteen) calendar days from the date of issue.

5.4. The Contracting Parties can agree in writing on individual price and payment terms. In that case, the agreed individual terms take precedence over the Price List.

5.5 The Operator is entitled to unilaterally amend the Price List. The Operator will notify the Partner of the amendment to the Price List before it comes into effect, including the date of effectiveness of the amendment, at least 14 (fourteen) calendar days before the amendment comes into effect. If the Partner does not agree with the amendment to the Price List, then they have the right to notify the Operator in writing that they do not consent to the new version of the Price List, and withdraw from the Contract in writing for this reason, no later than the time the new Price List comes into effect. In that case, the withdrawal from the Contract is effective the day that the new Price List comes into effect. If the Partner does not withdraw from the Contract as per the previous provisions, then they are bound by the new Price List from the first day of its effectiveness.

5.6. In addition to the Monthly Fee, the Operator is entitled to stipulate and request other remuneration for activities performed by the Operator on the basis of or in connection with the Contract, primarily for services involving support for and maintenance of the Choice Application, integration etc.

6. GRANTING OF LICENCE

6.1. The Operator provides the Partner with a non-exclusive authorisation to exercise the right to use the Choice Application (hereinafter “**Licence**”), only for the purposes of the proper use of the Services, for the duration of the Contract.

6.2. The remuneration for the provision of the Licence is included in the remuneration for the Services as per Article 5 of the Terms.

6.3. Under no circumstances does the Partner have the right to grant any third party a sublicense, or transfer the Licence to any other party, on the basis of a Licence granted in this way. The Partner also does not have the right to copy the Choice Application for the purpose of its distribution, distribute it, rent or lend it, or disclose it to third parties in any way.

7. OTHER RIGHTS AND OBLIGATIONS

7.1. The Partner undertakes to participate in the creation of the good reputation of the Choice Application services in relation to both Users and potential Users. In this context, they shall primarily realise the Brokered Agreement properly and on time, not reject Product orders from Users without a serious reason, settle any complaints by Users regarding Products properly and on time, not discourage Users from using the Choice Application services in any way, etc.

7.2. The Operator is entitled to restrict or interrupt the functioning of the Choice Application, or access to same, for the period absolutely necessary for the maintenance or repair of the Choice Application, or for another reason on the part of the Operator or a third party. The Operator is also entitled to modify the technical solution of the Choice Application for operational or other reasons.

7.3. The Operator is entitled to unilaterally offset, at any time, their payable and non-payable receivables due from the Partner (including receivables due to the price of services arising on a basis other than the Contract) against the Partner’s payable and non-payable receivables due from the Operator.

7.4. The Partner is not entitled to offset any of their receivables due from the Operator against the Operator’s receivables due from the Partner without their written consent. The Partner is also not entitled to assign their receivables due from the Operator to a third party without the Operator’s written consent.

7.5. The Contracting Parties undertake to maintain confidentiality in relation to classified information and all facts that constitute the Contracting Parties’ trade secrets. Confidential information is considered, in particular, all information relating to the Contracting Parties that is

subject to protection as per the regulations governing the area of intellectual property (e.g. information regarding information systems, know-how and individual components thereof).

7.6. The Partner explicitly consents to the processing, storage, use and downloading of data that is processed within the scope of the Choice Application by the Operator for the purpose of (i) internal use by the Operator and (ii) processing and publication in an aggregated or more precisely anonymised form (e.g. for the purposes of various studies including case studies, statistical reports, infographics etc.). The Partner also explicitly consents to this data being downloaded, processed and stored in the Operator's database even after the end of the provision of the Services, including data that was obtained from appropriate sources after the termination of the Contract and before the disconnection of the sources that this data comes from. The Partner also acknowledges, and explicitly agrees with, the fact the personal data of the Partner or their representatives is processed by the Operator, as the Controller, in connection with the Provision of the Services.

7.7. The Partner hereby grants their consent to the Operator to use the Partner's name, logo and trade name (hereinafter "**Name**") in all communication media for advertising purposes, primarily in the form of the promotion of the Choice Application and the Services. The Partner explicitly declares that they have the right to grant such consent. In cases where the Partner requires the Operator to abide by certain rules when using the Name (e.g. those contained in the graphic manual for the use of the given Name), the Partner must inform the Operator of these rules in writing, otherwise these rules will not be taken into consideration when using the Name. The payment for the use of the Name is included in the Operator's remuneration. The Partner has the right to revoke their consent to the use of the Name, or restrict it via a written declaration delivered to the Operator.

7.8. While using the Operator's Services and the Choice Application, the Partner undertakes to comply with the applicable and effective legal regulations of the Czech Republic and the European Union, in particular the Copyright Act. The Partner is obliged to compensate the Operator or third parties in full for all damage caused to them due to a breach of this obligation, that the Partner is responsible for.

7.9. The Operator is entitled to deny the Partner access to the Choice Application services if the Partner breaches their obligations arising from this Contract and/or legal regulations.

7.10. The Operator also reserves the right to restrict the provision of the Services, or terminate it without compensation, at any time and even without prior notification.

7.11 The Partner acknowledges that the Operator provides them with the personal data of Users who use the Choice Application services, and conclude Brokered Agreements with the Partner, via the Choice Application. The Partner also acknowledges that they are in the position of Personal Data Controller in relation to Users' personal data, and undertakes to process this personal data in accordance with legal regulations relating to personal data processing and protection, in particular but not exclusively Regulation (EU) 2016/679 of the European Parliament and of the Council, of the 27th of April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation – GDPR) and Act no. 110/2019 Coll., on Personal Data Processing, as amended.

8. RESPONSIBILITY

8.1. The Operator is not responsible for the fulfilment of the Brokered Agreement with the User. In this context, the Operator is not responsible for the quality or origin of the Products, and also bears no responsibility for payment for or delivery of the Products. The Operator bears no responsibility arising from the legal relationship between the Partner and the User. The responsibility for the resolution of all issues arising from Brokered Agreements concluded between the User and the Partner or in connection with them (including the settlement of any complaints) is born by the specific Partner who concluded the Brokered Agreement with the User.

8.2. The Operator is not responsible for services provided by other entities, in particular payment system operators, payment methods, the quality and quantity thereof, or any consequences, or for the rights and obligations relating to these services etc. The Partner acknowledges that the Operator is not a provider of payment systems or portals.

8.3. The Operator is not liable to the Partner or a third party for any lost profit. The Contracting Parties agree that the expected amount of actual damage from one damage event will not exceed, and is limited to, the amount paid for provided Services in the weekly billing period that preceded the weekly billing period in which the relevant damage event occurred.

8.4. The Operator is not liable for damage caused by force majeure, e.g. in particular by natural disasters, natural, war or terrorist events etc.

8.5. The Operator is not liable for damage caused by Choice Application outages or outages on the part of service providers, or for damage arising from actions that are necessary to ensure the operation of the Operator's Services and the Choice Application (e.g. software updates, server configuration etc.).

9. FINAL PROVISIONS

9.1. All relationships arising from the Terms and the Contracts are governed by the Legal Code of the Czech Republic. All disputes between the Contracting Parties, arising from the Contract or in connection with it, will be resolved by the general courts of the Czech Republic.

9.2. If any provision of these Terms is or becomes invalid or ineffective, then the other provisions of these Terms remain valid and effective. The invalid or ineffective provision will be replaced by another, valid and effective provision, whose content and meaning best corresponds to the content and meaning of the original provision.

9.3. The Operator is entitled to unilaterally amend and supplement the wording of these Terms. The Operator will notify the Partner of the amendment to the Terms at least 14 (fourteen) days before it comes into effect, including the date of effectiveness of the amendment, by displaying a notification in the Choice Application or using the Partner's e-mail address set forth in the Contract. If the Partner does not agree with the amendment to the Terms, then they have the right to notify the Operator in writing that they do not consent to the new version of the Terms, and withdraw from the Contract in writing for this reason, no later than the time the new Terms come into effect. In that case, the withdrawal from the Contract is effective the day that the new Terms

come into effect. If the Partner does not withdraw from the Contract as per the previous provisions, then they are bound by the new Terms from the first day of their effectiveness.

9.4. The Contracting Parties are entitled to withdraw from the Contract for any reason, or even without stating a reason. The notice of withdrawal must be in writing, and must be delivered to the other Contracting Party. The notice period is 3 (three) calendar months, and begins to run the first day of the calendar month following the month in which the notice was delivered to the other Contracting Party. In the event of a withdrawal from the Contract, the remuneration for the Services will be calculated in accordance with these Terms.

9.5. The Contracting Parties are entitled to withdraw from the Contract in the event of a significant breach of same by the other Contracting Party.

9.6. These Terms become valid and effective on 25/09/2020

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