

# WHOLESALE AGREEMENT

## Terms and Conditions

### 1. General

- 1.1 These Terms and Conditions constitute the Wholesale Agreement ("**Agreement**") between The Yume APP Pty Ltd ACN 603 045 987 ("**Yume**"), the Supplier who has registered as a participating Supplier on the Yume Wholesaler Platform ("**Supplier**"), and the Buyer who has registered to purchase Wholesale Products on the Yume Wholesale Platform ("**Buyer**").
- 1.2 Subject to the provisions of this paragraph, Yume may amend the Agreement at our sole discretion and at any time. The most recent version of the Terms and Conditions (as may be amended by Yume from time to time) will be available on the Website and Yume Wholesale Platform. Both the Buyer and the Supplier agree to regularly check the Website or Yume Wholesale Platform for updates and, that either or both of these notification methods constitute adequate notice of any amendments to the Terms and Conditions.
- 1.3 This Agreement will continue in effect until terminated by either party in accordance with clauses 1.4 and 1.5.
- 1.4 Yume may terminate this Agreement, at any time for any reason, upon written notice.
- 1.5 Both the Buyer and the Supplier may terminate this Agreement by providing seven (7) business days written notice to us.
- 1.6 Termination of this Agreement under clauses 1.4, 1.5, 5.3, or 16.2 will not in any way affect any rights or obligations which are accrued up to and including the date of termination including your obligation to honour any valid Invoices according to the terms of these Terms and Conditions.

### 2. Definitions

**"Additional Terms"** means any additional terms and conditions that the Supplier wishes to impose on the Buyer. These must be expressly and unambiguously disclosed by the Supplier on the Yume Wholesale Platform.

**"Advertisement"** means the advertisement that the Supplier places on the Yume Wholesale Platform.

**"Australian Consumer Law"** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**"Buyer"** means a person who has registered as a user of the Yume Wholesale Platform, who has chosen to purchase a Wholesale Product via the Website or Yume Wholesale Platform.

**"Invoice"** means that Invoice issued by Yume to a Buyer as evidence of the Buyer's entitlement to the Wholesale Product.

**"Promotional Value"** means the discounted price of the Wholesale Product, being a minimum of 20% off the usual price of the Wholesale Product and which price may be varied

from time to time by the Supplier.

**"Supplier"** means any person who supplies a Wholesale Product to a Buyer.

**"Supplier Fees"** means 12% of the Promotional Value.

**"Website"** means the Yume website or microsite located at <http://theyumeapp.com/>.

**"Wholesale Product"** means the goods to be provided by the Supplier via the Yume Supplier Platform.

**"Yume Wholesale Platform"** means the online platform found on the Website which facilitates buying and selling of Wholesale Products.

### **3. Wholesale Platform**

- 3.1 Yume operates a Wholesale Platform that allows Buyers to purchase a Wholesale Product at the Promotional Value.
- 3.2 Any prospective Supplier is entitled to sign up to the Yume Wholesale Platform at any time, but that prospective Supplier will not be approved to advertise its Wholesale Products on the Yume Wholesale Platform until Yume is satisfied that the prospective Supplier meets all of the criteria in clause 4.
- 3.3 Once approved, the Supplier shall specify the Wholesale Product, the Promotional Value, and the maximum amount of Wholesale Product to be made available on the Yume Wholesale Platform.
- 3.4 Buyers wishing to obtain a Wholesale Product must select and purchase the Wholesale Product using the Website or Yume Wholesale Platform.
- 3.5 Yume is authorised to promote and allocate the Wholesale Product on the Supplier's behalf subject to these Terms and Conditions. The Invoice will evidence the Buyer's entitlement to the Wholesale Product and will be sent to the Buyer electronically once the Buyer has purchased the Wholesale Product on the Yume Wholesale Platform. The Wholesale Product will then be shipped to the Buyer at their preferred delivery address.
- 3.6 The Buyer shall pay the Promotional Price for the Wholesale Product as specified on the Yume Wholesale Platform at the time the Buyer agrees to purchase the Wholesale Product, notwithstanding any later changes to the Promotional Price for the same or similar Wholesale Product.
- 3.7 The Supplier must honour all valid transactions and is responsible for all Buyer service relating to the Wholesale Product and for supplying all goods described in the Invoice.

### **4. Supplier Conditions Precedent**

- 4.1 The Supplier must hold an active Australian Business Number or Australian Company Number.
- 4.2 Yume is committed to advertising only safe, quality products produced in accordance with all applicable legislation, regulations, and codes of practices. To that end, before Yume will approve a prospective Supplier to advertise a Wholesale Product on the Yume Wholesale Platform, the prospective Supplier must provide Yume with copies of any applicable:
  - (a) food safety certifications;

- (b) Hazard Analysis and Critical Control Points (HACCP) Certification;
  - (c) food premises registration; and
  - (d) product & public liability insurance policies.
- 4.3 The Supplier represents and warrants to Yume that for so long as the Supplier's Wholesale Product is advertised on the Yume Wholesale Platform, the Supplier holds all of the applicable documents listed in clause 4.2 and all other necessary documents in full form and effect and the Supplier warrants to notify Yume of any amendment, material breach, or revocation of any of those documents.
- 4.4 To the extent that the Supplier is supplying alcohol, or any other Wholesale Product that requires a licence or a form of certification to sell that Wholesale Product, the Supplier represents and warrants to Yume and to the Buyer that it has all the necessary licences and certifications and will immediately notify Yume of any changes to that licence or certification.

## **5. Wholesale Products**

- 5.1 Yume's aim and intention is to help Suppliers reduce food wastage and in so doing, help them operate in a more sustainable and environmentally friendly way. The Wholesale Product must therefore be limited to surplus food products that are approaching their 'use by' or 'best-before' date, or which are otherwise unable to be sold at full price through the Supplier's regular channels, but which are still fit for human consumption and compliant with all Australian food safety standards, regulations and laws.
- 5.2 The Supplier must ensure that:
- (a) the Wholesale Product is consistent in a material respect with the description or image advertised and represented on Yume Wholesale Platform;
  - (b) the Wholesale Product is, including at the time of delivery to the Buyer, fit for human consumption and complies with all applicable Australian food service, manufacture and safety standards, the Food Standards Code, regulations and laws; and
  - (c) the Supplier fully complies at all times with the Australian Consumer Law.
- 5.3 Yume reserves the right at any time to reject, revise, or discontinue any Wholesale Product, at any time and for any reason, and to terminate the Wholesale Product and to remove all references to the Wholesale Product from the Website or Yume Wholesale Platform; and redirect or delete any URL used in connection with the Wholesale Product.
- 5.4 The Supplier accepts that Wholesale Products that have been allocated to Buyers form a binding agreement and a guarantee that the Buyer will receive the Wholesale Product described in the Invoice.

## **6. Defective Wholesale Products**

- 6.1 The Buyer must notify Yume of any claim relating to a defective Wholesale Product by the Buyer within 14 days of receipt of the Wholesale Product.
- 6.2 Yume will assess each claim on a case by case basis and notify the Buyer of the outcome within a reasonable period of time. Without prejudice to the Buyers statutory rights, Yume may refund or

arrange for a refund of the cost of the defective product to the Buyer and arrange for the defective product to be returned. Yume is not responsible for defective Wholesale Products supplied by the Supplier.

## **7. Fees and Payment**

- 7.1 Yume does not charge the Supplier any upfront registration fees.
- 7.2 The Buyer must pay the Promotional Price to Yume Directly by Credit Card.
- 7.3 Yume will deduct the Supplier Fee from the Promotional Price and transfer the balance to the Supplier.
- 7.4 Additional payments for shipping are at the sole discretion of the Supplier.
- 7.5 If the Supplier fails to provide the Wholesale Product to a Buyer, the Supplier must offer the Buyer a replacement product which may be accepted or rejected by the Buyer, or refund the Buyer in full for any amount paid by the Buyer for the Wholesale Product.
- 7.6 Yume is authorised to review the Supplier's credit history, which may include a credit check.
- 7.7 Supplier Fees are compensation to Yume for marketing, promoting, and advertising the Wholesale Product and for the use of the Yume Wholesale Platform.
- 7.8 It is the Supplier's responsibility to determine what, if any, taxes apply to the payments the Supplier takes or receives from a Buyer, and it is the Supplier's responsibility to collect, report and remit the correct tax to the appropriate tax authority. Yume is not responsible for determining whether taxes apply to the Supplier's transaction with Buyers, or for collecting, reporting or remitting any taxes arising from any transaction with or by the Supplier and Buyer. The Supplier may be asked to provide Yume with a valid tax identification number for tax reporting purposes. Notwithstanding anything else in this Agreement, the Supplier shall be, and will remain, registered for tax collection purposes in all states and localities in which the Supplier is required to be so registered in connection with the Wholesale Product, and shall be responsible for paying any and all taxes related to the sale of the Wholesale Product.

## **8. Advertising**

- 8.1 Upon registration as a Yume Supplier, the Supplier may upload the following advertising material to build their account profile:
  - (a) company details;
  - (b) company logo;
  - (c) high quality 'stock' photographs or images of the Wholesale Product; and
  - (d) descriptions of the Wholesale Product.
- 8.2 The Supplier must not upload any photographs, images, text or any other material that may be considered to be of inadequate quality, unprofessional, unlawful, obscene, offensive or otherwise inappropriate.

- 8.3 Yume may in its absolute discretion remove any material which it considers inappropriate or of an unacceptable quality that has been uploaded by the Supplier and may issue the Supplier a warning or revoke the Supplier's right to use Yume and its services.

## 9. Buyer Data Restrictions

- 9.1 "**Buyer Data**" means all identifiable information about Buyers generated or collected by Yume through the Yume Wholesale Platform, including, but not limited to, Buyers' name, shipping addresses, email addresses, phone numbers, Buyer preferences and tendencies, and financial information.
- 9.2 Buyers and Sellers must register valid personal details with Yume in order to purchase and sell Wholesale Products.
- 9.3 The Supplier shall use Buyer Data only to fulfil its redemption obligations in connection with the Wholesale Product as authorised by this Agreement ("**Agreed Purpose**"). The Supplier expressly agrees that any Buyer Data shall be used only for the Agreed Purpose. The Supplier represents and warrants that it will not resell, or otherwise disclose any Buyer Data to any third party, in whole or in part, for any purpose, unless required by applicable law. If the Supplier engages any third party to facilitate its redemption obligations hereunder, the Supplier shall ensure that such third party implements and complies with reasonable security measures in handling any Buyer Data.
- 9.4 The Supplier shall immediately notify Yume if the Supplier becomes aware of or suspects any unauthorised access to, or use of, any Buyer Data or any confidential information of Yume, and shall cooperate with Yume in the investigation of such breach and the mitigation of any damages caused by the breach. The Supplier will bear all associated expenses incurred by Yume to comply with applicable laws (including, but not limited to, any data breach laws) or arising from any unauthorised access or acquisition of Buyer Data while such data is in the Supplier's possession or control. Upon termination or expiration of this Agreement, the Supplier shall, as directed by Yume, destroy or return to Yume all the Buyer Data in the Supplier's or any agent of the Supplier's possession.

## 10. Marketing

- 10.1 Yume and its business partners may communicate with the Supplier with regard to products, promotions, and other services that may be of interest to the Supplier. This may include email or other communications. Yume may also solicit the Supplier's opinion for market research purposes. The Supplier agrees that Yume and its business partners may contact or communicate with it, in relation to the above items.

## 11. Intellectual Property Rights

- 11.1 The Supplier grants to Yume a non-exclusive, worldwide, royalty free, perpetual, transferable and sub-licensable licence and right to use, modify, reproduce, sublicense, publicly display, distribute, broadcast, transmit, stream, publish and publicly perform:
- (a) any audiovisual content, video recordings, audio recordings, photographs, product images, graphics, artwork, text and any other content provided by Supplier ("**Materials**")
  - (b) the Supplier's name, logos, trademarks, service marks, domain names ("**Supplier IP**"),

in each case, arising in relation to or in connection with the Yume service, the Website, the Yume Wholesale Platform in all media or formats now known or

hereinafter developed ("**Licence**").

- 11.2 The Supplier represents and warrants to Yume and each of its related bodies corporate that the Supplier has all rights, consents or approvals to use the Materials and is not breaching the intellectual property rights of any third party in using or providing the Materials or Supplier IP to Yume for use in relation to the Yume service, Website or Yume Wholesale Platform.
- 11.3 The Supplier acknowledges and agrees that Yume owns all interest in and to the Website, Buyer Data, Yume trade names, logos, trademarks, service marks, domain names, social media identifiers, all data collected through or from the Website, all audiovisual content, video recordings, audio recordings, photographs, graphics, artwork, text or any other content created by Yume or at Yume's direction, or assigned to Yume, and any materials, software, technology or tools used or provided by Yume to conduct its business and provide the services in connection therewith (collectively "**Yume IP**"). The Supplier must not use, sell, rent, lease, sublicense, distribute, broadcast, transmit, stream, place shift, transfer, copy, reproduce, download, time shift, display, perform, modify or timeshare the Yume IP or any portion thereof, or use such Yume IP as a component of or a base for products or services prepared for commercial use, sale, sublicense, lease, access or distribution.
- 11.4 The Supplier shall keep the Yume IP confidential, and shall not prepare any derivative work based on the Yume IP or translate, reverse engineer, decompile or disassemble the Yume IP.
- 11.5 The Supplier shall not include any trade name, trademark, service mark, domain name, social media identifier, of Yume or its affiliates, or any variant or misspelling thereof, in any trademark, domain name, email address, social network identifier, metadata or search engine keyword. The Supplier shall not use or display any Yume IP in a manner that could reasonably imply an endorsement, relationship, affiliation with, or sponsorship between the Supplier or a third party and Yume.

## **12. Representations and Warranties**

- 12.1 The Supplier represents and warrants that:
  - (a) the Supplier has the right, power and authority to enter into this Agreement;
  - (b) the Supplier, if required by applicable law, is registered for tax collection purposes in all jurisdictions where the Supplier's goods and services will be provided;
  - (c) the Supplier, if providing Alcohol as a Wholesale Product, is licensed to do so by the relevant liquor regulator in all jurisdictions where the alcoholic product will be provided and will comply with the terms of that licence;
  - (d) the terms and conditions of the Advertisement, including any discounts offered thereunder do not and will not violate any, local, state or federal law, statute, rule, regulation, or order, including but not limited to, any law or regulation governing the use, service, storage, sale, and distribution of food;
  - (e) the Supplier owns all interest in and to the Supplier IP and has licensing rights in (with the right to sublicense to Yume) the Materials, and has the right to grant the Licence stated in clause 11.1 of these Terms and Conditions;
  - (f) the Supplier's IP and the Materials do not include any material that is unlawful, threatening, abusive, defamatory, vulgar, obscene, profane or otherwise objectionable, or that

encourages conduct that constitutes a criminal offence, gives rise to civil liability or otherwise violates any law;

- (g) any advertising or promotion of the Supplier's goods and services relating thereto will not constitute false, deceptive or unfair advertising or disparagement under any applicable law;
- (h) it is not subject to any inquiries, warnings, infringement notices, closure of food premises, or any other food safety related offences or penalties and that it will inform Yume within five (5) business days of becoming aware of any circumstance which could lead the Supplier to be subject to any of the above mentioned inquiries or penalties.

### **13. Indemnification**

To the extent allowed under applicable law, the Supplier agrees to defend, indemnify and hold Yume, its affiliated and related entities, and any of its respective officers, directors, agents and employees, harmless from and against any claims, lawsuits, investigations, penalties, damages, losses or expenses (including but not limited to reasonable attorneys' fees and costs) arising out of or relating to any of the following:

- (a) any breach or alleged breach by the Supplier of this Agreement, or the representations and warranties made in this Agreement;
- (b) any claim for tax obligations of the Supplier arising from the sale and redemption of a Wholesale Product;
- (c) any claim arising out of a violation of any law or regulation governing the provision of the Supplier's goods and/or services;
- (d) any penalties or claims arising out of the Supplier's violation of law or regulation governing the manufacture, service, storage, handling, use, sale, and distribution of food and food products;
- (e) any claim by a Buyer or anyone else arising out of or relating to the goods and services provided by Supplier, including but not limited to, any claims for false advertising, product defects, personal injury, death, or property damages;
- (f) any claim arising out of the Supplier's misuse of Buyer Data, or any violation of an applicable data privacy or security law.
- (g) Any legal fees incurred by Yume in defending a claim brought against it that is related to the Supplier's provision of goods and/or services.

### **14. Confidentiality**

- 14.1 The terms of this Agreement are confidential, and both the Buyer and the Supplier agree not to disclose the terms described in this Agreement to any party (other than to its employees, parent companies, shareholders, lawyers and accountants on a strict need-to-know basis or as required by applicable public records and other law, if the Supplier has taken the necessary precautions of the kind generally taken with confidential information to purchase the confidentiality of the information made available to such parties).
- 14.2 In the event of a breach, Yume is entitled to injunctive relief and a decree for specific performance, and any other relief allowed under applicable law (including monetary damages if appropriate).

## **15. Limitation of Liability**

- 15.1 Yume is not liable to the Supplier for any lost profits, lost business, special, incidental, exemplary, consequential, punitive, or indirect damages regardless of the form of action, whether in contract, tort or otherwise, even if informed of the possibility of any such damages in advance.
- 15.2 Yume is not liable to the Buyer for any loss either financial or non-financial incurred as a result of the quality of a Wholesale Product supplied by the Supplier to the Buyer.
- 15.3 Yume does not warrant or guarantee that the services offered on or through the Website or Yume Wholesale Platform will be uninterrupted or error-free, that the Advertisements are error-free, or that any Yume service will result in any revenue or profit for the Supplier.
- 15.4 Yume's sole and complete liability to the Supplier for any claims arising out of or relating to this Agreement is limited to the amount of fees charged by Yume hereunder after final calculation and reconciliation of all refunds. This limitation of liability applies to the maximum extent permitted by any applicable law and notwithstanding the failure of any limited remedy.

## **16. Insurance**

- 16.1 The Supplier agrees to hold and maintain during the Term, a comprehensive public liability policy to cover:
- (a) death of, or bodily injury (including disease or illness) to, any person; and
  - (b) loss of, or damage to, property,
- arising out of or in connection with this Agreement, for an amount up to at least \$10 million per event.
- 16.2 Yume may terminate this Agreement immediately if the Supplier fails to comply with any of its obligations in this clause 16.

## **17. Donated food**

- 17.1 Where the Supplier chooses to donate food to charities ("**recipients**") under the Yume Wholesale Platform, it agrees that:
- (a) It will donate the food in good faith with the intention that the recipient does not have to pay for the food;
  - (b) the donated food was safe to the recipient at the time it left the possession or control of the Supplier;
  - (c) if the food was of a nature that required it to be handled in a particular way to ensure that it remained safe to consume after it left the possession or control of the Supplier, that the Supplier informed the recipient of those handling requirements; and
  - (d) if the food only remained safe to consume for a particular period of time after it left the possession or control of the Supplier, that the Supplier informed recipient of that time limit.

## **18. Other**

- 18.1 The parties are independent contractors. Nothing in this Agreement is to be construed to create a joint venture, partnership, franchise, or an agency relationship between the parties. Neither party has the authority, without the other party's prior written approval, to bind or commit the other in any way.
- 18.2 This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter.
- 18.3 The Supplier expressly agrees that continuing to market and offer for sale any Wholesale Products through Yume after notification of any amendments or modifications to this Agreement shall constitute the Supplier's acceptance of such amendments or modifications and agreement to be bound by same.
- 18.4 The Supplier is not authorised to transfer or assign its rights or obligations under this Agreement, whether by operation of law or otherwise, without Yume's prior written consent. Any waiver must be in writing and signed by an authorised signatory of Yume. Yume is authorised to transfer or assign this Agreement to a present or future affiliate or pursuant to a merger, consolidation, reorganisation or sale of all or substantially all of the assets or business, or by operation of law, without notice to the Supplier.
- 18.5 The parties agree that it is not necessary for Yume to incur an expense or make a payment before enforcing any right of indemnity conferred by this Agreement or to mitigate its loss.
- 18.6 If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement are not affected.
- 18.7 This Agreement, including its validity, interpretation and construction and all other related matters shall be governed and interpreted by the law of Victoria, Australia.