

# TERMS AND CONDITIONS

CloudBrands, Inc. ("Orderbyte," "Localbytes," "we," "us," or "our") writes these Terms and Conditions ("Terms") as they relate to the products and services offered by us. We thank you for your interest in our services, which are made up of our Orderbyte ordering platform ("Orderbyte"), web-based digital storefronts built by Orderbyte for our licensees' (the "Restaurants") use, native restaurant apps, and our "Localbytes" marketplaces platform ("Marketplace"), which are accessed via our dedicated websites, (<http://www.localbytes.co/>) and (<https://orderbyte.io/>). The Orderbyte ordering platform, web-based digital storefronts, native restaurant apps, and Marketplace platforms are collectively referred to herein as the "Platform." The activities enabled via the Orderbyte ordering platform, web-based digital storefronts, native restaurant apps, and Marketplace platforms together comprise, and are collectively referred to as, the "Services.". As "Localbytes" belongs under the umbrella of products offered by "Orderbyte", it will be considered as one when "Orderbyte" is mentioned in the terms below.

We provide our Services to you subject to the following Terms and Conditions, which we reserve the rights to update and modify at any time, as we improve the service, by posting a modified version directly here in this Site. By browsing the public areas or by accessing and using the Services, you acknowledge that you have read, understood, and agree to be legally bound by the terms and conditions of our Terms and Conditions and Privacy Policy, which is hereby incorporated by reference (collectively, "Agreement."). If you do not agree to any of these terms, then please do not use the Services.

Three user types exist on the Platform and Services. These include: Food service establishments and related partners (each individually, a "Restaurant"), individuals ordering from said Restaurants (referred to as "Customer"), and property owners and real estate management firms that operate an Orderbyte-enabled food delivery marketplace in their property ("Building"). By registering as a user of this Website ("User," "Restaurant," "Customer," "Building," "you," or "your") or by placing an Order through this Website, you agree to be bound to these Terms (as defined below).

\*\*\*By using the service, you indicate your acceptance of these terms and your agreement to be bound by these terms. You may not use the service if you do not agree to these terms. Please carefully read the agreement to understand each provision. There are mandatory class action and individual arbitration waiver provisions that affect your legal rights. If you use the platform and/or its services, either as an individual or on behalf of a company, you agree to bind both the "individual" and the "company" to the terms.\*\*\*

## a. Platform and Services Description

Orderbyte is a restaurant order management system for takeout and delivery. A single

dashboard for independent restaurants to launch and grow their entire online ordering operation in one place. Our single dashboard provides restaurants and dark kitchens with the digital tools to manage and maximize their online sales: branded digital storefronts, omni-channel ordering, multi-menu management, hyperlocal marketplaces, personalized virtual restaurant brands, and more.

Although you are able to place orders through the Services, Orderbyte itself does not sell the products contained in your order, is not a party to any such transaction, and has no control over the quality or safety of the products. Your order, including an order placed through Marketplace, is between you and the restaurant from which you order. In addition, restaurants may state ingredients or represent allergen or food preparation standards through the Services, such as food or beverages being nut-free, gluten-free, lactose-free, organic, or kosher. We do not investigate or verify the menus, ingredients, food preparation standards, or any descriptions, statements, or representations made by the restaurants. Therefore, if you or anyone else who will be consuming any item from an order has any food allergies or specific preparation requirements, you are strongly advised to contact the restaurant directly to address your specific needs. By using the Services, you agree that Orderbyte is not responsible for any statements or omissions concerning the products contained in your order.

Also, please be advised that your use of Google Pay or Apple Pay in connection with the Services is subject to the terms and conditions, including the privacy policies, of Google and Apple, respectively. By using Google Pay, you hereby accept the Google Pay API Terms of Service.

Orderbyte uses Google Maps and the Google Maps API as part of our online ordering system. By using Orderbyte web, iOS, or Android ordering systems you are also bound to the Google Maps API Terms of Service.

We provide Visitors and Registered Users with access to the Services as described in this Agreement. Visitors. No login is required for visitors to the Website (“Visitors”). Visitors can (a) view all publicly-accessible content, (b) e-mail us, and (c) chat us. Registered Users. Login is required for all individuals who register to use the Services (“Registered Users”). Registered Users can do all the things Visitors can do, and also (a) place orders, (b) search for restaurants based on location and cuisine, (c) research a particular restaurant, (d) sign up for alerts and other notifications, and (e) blog about your dining experience, including posting to your Facebook wall. Orderbyte is under no obligation to accept any individual as a Registered User or a Member, and may accept or reject any registration in its sole and complete discretion.

## b. User Conduct and Guidelines

The Orderbyte community, like any community, functions best when its people follow a few

simple rules. By accessing and/or using the Services, you hereby agree to comply with these community rules and that:

1. You agree to use the Platform in a manner that is consistent with these Terms and compliance with all applicable laws and regulations;
2. By becoming a registered User, you consent to the inclusion of your data in our database, including all orders requested through Orderbyte-enabled digital storefront;
3. You will not use, duplicate, copy, reproduce, sell, resell or exploit the Platform or Services for any unlawful purpose, including any fraudulent activity, or to engage in any commercial activities, including, without limitation, raising money; advertising or promoting a product, service, or company; or engaging in any multi-tiered marketing scheme;
4. You will not access or use the Services to collect any market research for a competing businesses. This includes reverse engineering, disassembling or attempting to discover the source code or underlying structures, know-how, algorithms pertaining to the Platform or Service;
5. You acknowledge and agree to not upload, post, transmit, or perform any other sharing action of Orderbyte content (sound, graphics, photographs, text, pictures, any other materials pertaining to Restaurants, advertisers, partners on Orderbyte) that infringes on any protected copyrights, trademarks, service marks, patents, or any proprietary rights of people/entities. You are only permitted to share what is expressly authorized by us or our partners, based on the specific content piece;
6. You will not impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
7. You will not use manual or automated means (such as robot, spider, crawlers, data mining tools, site retrieval applications, among others) to scrape or index data from the Platform, directly or indirectly, except for Internet search engines (e.g., Google) and non-commercial public archives (e.g., archive.org) that comply with our robots.txt file;
8. You will not create multiple accounts for yourself for any reason, including, without limitation, in order to obtain the same promotion multiple times;
9. You will not interfere with or attempt to interrupt or impair the Platform or Service operations via any virus, device, information collection or transmission mechanism, software or routine, or access or attempt to gain access to any data, files, or passwords related to the Services through hacking, password or data mining, or any other means; and
10. You agree to comply with all local, state, provincial, country and/or regional laws or regulations that are applicable to your use of the Platform.

We reserve the right, in our sole discretion, to deny, suspend or terminate you (or any device or IP address) and your account access to the Services, or any portion of the Services, without notice and/or reason. A violation of any of the guidelines may result in CloudBrands, Inc. taking legal action and/or implementing appropriate technical remedies for prevention.

## c. Eligibility and Restrictions

As an eligible “Customer”, you warrant that you are an individual of at least 13 years or older, you have not been restricted or removed from the Service, and your use has been in compliance with all applicable Terms. The services are designed specifically for Diners in the United States, where the Platform and Service is provided from. If you are 13 or older, but under the age of 18, you should review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand it. You may not use the Services to purchase alcohol products unless you and the recipient meet the minimum age requirements under applicable state or provincial laws and present a valid photo identification verifying your age at the time you pick up or receive delivery of your order.

As an eligible “Restaurant”, you warrant you warrant that you are an individual of at least 18 years or older, you have not been restricted or removed from the Service, and your use has been in compliance with all applicable Terms. The platform and services are designed specifically for restaurants in the United States, where the Platform and Service is provided from. Restaurants on our Services are expressly prohibited from selling or offering for sale to any customer, regardless of age, any tobacco or nicotine products including, but not limited to, cigarettes and e-cigarettes. You may not attempt to purchase any such products through our Services. We reserve the right to immediately deny you access to our Services, without notice, if we determine, in our sole discretion, that you have violated or attempted to violate this policy. For the avoidance of doubt, even if You are of legal age to purchase tobacco products in your jurisdiction, doing so or attempting to do so through our Services is expressly prohibited. Orderbyte enforces a maximum order amount of \$1,000 per order. Orderbyte reserves the right to modify this maximum at any time without notice.

## d. Registration

As part of the registration process, Users will be asked to create an account, including (but not limited to) the provision of:

1. Full name
2. Email address
3. Unique username
4. Unique password
5. Unique identifier
6. Further information to assist in authenticating user identity

It is required to provide accurate, true, latest, and complete information of the User. You are responsible for the confidentiality and security of your private account details. You acknowledge your role in promptly informing CloudBrands, Inc. in the need to deactivate an account due to any breach or unauthorized use. We obtain the right to modify any details without notice at any time. CloudBrands, Inc. is not responsible for any loss incurred due to unauthorized breach of your account.

Certain features of the Platform or Services may have their own terms and conditions that you must agree to when you sign up for that particular product, function, or service. All other terms and conditions of each agreement will remain in full force and effect.

## e. Pickup and Deliveries

Restaurants available through the Services do not deliver to every location. If we currently do not deliver to your area, but you would like us to, please let us know. We are expanding the reach of our Services, so we recommend that you create an account.

In the United States only, we use third-party delivery companies to deliver your orders. If you are not at the delivery location when your order arrives, the delivery person will leave the package for you at your door, or, if applicable, with the doorman or at the delivery center, and you will be charged the applicable fee for the order. Anyone at the delivery address who receives the delivery is conclusively presumed to be authorized to receive the delivery. In the case of inclement weather, your order will be delivered as soon as reasonably possible when the conditions permit.

Certain Orderbyte Restaurant locations may offer takeout or pickup as an alternative to delivery “Pickup”. If you select Pickup on the Platform when placing your order, your order will be delivered to your car at the Restaurant location you select. Pickup is provided by the Restaurants and not Orderbyte or any third-party delivery services. All other terms and conditions related to delivery orders shall also apply to Pickup orders including, without limitation, refunds and returns.

If you have ordered Pickup, you will need to inform the Restaurant when you arrive. You may need to provide the Restaurant with certain information about your vehicle including, without limitation, your license plate number and/or the make and model of your car. Please see our Privacy Policy for more information on how we collect and process such information.

\*\*\*Orderbyte, not being the restaurant, or the delivery service or its agent, makes no express or implied warranty of any kind whatsoever with respect to the delivery services or the pickup services, and disclaims any such warranties that might otherwise exist.\*\*\*

## f. Payments

You pay for orders via the Services. Orderbyte enables the ability to perform card-based purchases (or other approved facility) for payment for any order, creating you an account on the Platform. You agree that Orderbyte may immediately authorize your credit card (or other approved facility) and represent to us that you are an authorized user of the payment method. Fees and taxes shall be applied to every order. In addition, if you are using Marketplace to place your order, Orderbyte may apply an additional fee, which may vary depending on the order (a “Local impact fee”).

Payment processing is provided by an Orderbyte verified payment processor, including Stripe Inc. ("Stripe"). The processing of payment charges are subject to Stripe's "Terms of Service". In this step, you are hereby bound by their Service Agreement, which may be modified by Stripe without notice.

You must keep your Password strictly confidential. You are responsible for all activities and charges that occur under your Password. Your liability for such charges shall continue after termination of this Agreement.

In case of any unsuccessful charges, Orderbyte will notify you of the failure to proceed with the order or transaction via a rejection window screen or an automated email. If you have a question about a transaction on your credit card statement, please use the "Contact Us" section of the Platform or Service to contact our support team.

All refunds are subject to the refund policies of the restaurants from which you order. If you contact us seeking a refund, we cannot – and will not – process any refund until we receive the approval from the applicable restaurant. We will use reasonable efforts to request and obtain refunds when appropriate. For clarity, if a full refund is granted for an order placed on Marketplace, such full refund shall include the Local impact fee, however, if a partial refund is granted for an order placed on Marketplace, such partial refund shall not include the Local impact fee

## g. Copyright and Intellectual Property

The Platform and Services contain material, such as software, data, information, text, graphics, images, sound recordings, audiovisual works, and other material provided by or on behalf of Orderbyte (collectively referred to as the "Content"). Through the registration or use of the Platform or Services, you consent to granting us with a royalty-free, worldwide, non-exclusive, irrevocable, perpetual, and transferable right and license to use, reproduce, modify, public, perform, copy, sublicense and develop derivative (inspired) works from the content you provide to us at any point in time, now or hereafter, for any or no reason. With this in mind, you do retain all copyrights and any relevant intellectual property right to anything you post to the Platform or Services. We reserve the sole discretionary rights to not display any Content from our Platform or Services. We may delete or dispose of any Content at any time for any reason or no reason.

We are committed to comply with all appropriate and relevant copyright laws and warrant the same acknowledge from all Users of the Platform or Services. The Content may be owned by us or by third parties. The Content is protected under both United States and foreign laws. Unauthorized use of the Content may violate copyright, trademark, and other laws. You have no rights in or to the Content, and you will not use the Content except as permitted under this Agreement. No other use is permitted without prior expressed written permission

(consent) from us. You must retain all copyright and other proprietary notices contained in the original Content on any copy you make of the Content. You may not sell, transfer, assign, license, sublicense, or modify the Content or reproduce, display, publicly perform, make a derivative version of, distribute, or otherwise use the Content in any way for any public or commercial purpose. As such, you warrant to us that you 1) own or have legal authorization to use the Content you transmit to or via our Platform or Services; and 2) that any content use does not violate any legal terms (inc. injury or perjury) to individuals or entities. The use or posting of the Content on any other website or in a networked computer environment for any purpose is expressly prohibited.

If you violate any part of this Agreement, your permission to access and/or use the Content and the Services automatically terminates and you must immediately destroy any copies you have made of the Content.

The trademarks, service marks, and logos of Orderbyte ("Orderbyte Trademarks") used and displayed on the Services are registered and unregistered trademarks or service marks of CloudBrands, Inc. Other company, product, and service names located on the Services may be trademarks or service marks owned by others (the "Third-Party Trademarks", and, collectively with Orderbyte Trademarks, the "Trademarks"). Nothing on the Services should be construed as granting, by implication, estoppel, or otherwise, any license or right to use the Trademarks, without our prior written permission specific for each such use. Use of the Trademarks as part of a link to or from any site is prohibited unless establishment of such a link is approved in advance by us in writing. All goodwill generated from the use of Orderbyte Trademarks inures to our benefit.

Elements of the Services are protected by trade dress, trademark, unfair competition, and other state and federal laws and may not be copied or imitated in whole or in part, by any means, including but not limited to the use of framing or mirrors. None of the Content may be retransmitted without our express, written consent for each and every instance.

Although we encourage you to e-mail us, we do not want you to, and you should not, e-mail us any content that contains confidential information. With respect to all e-mails you send to us, including but not limited to, feedback, questions, comments, suggestions, and the like, we shall be free to use any ideas, concepts, know-how, or techniques contained in your communications for any purpose whatsoever, including but not limited to, the development, production, and marketing of products and services that incorporate such information.

Orderbyte respects the intellectual property rights of others and attempts to comply with all relevant laws. We will review all claims of copyright infringement received and remove any Content or user submissions deemed to have been posted or distributed in violation of any such laws. Attention: DMCA. If it constitutes infringement under the Copyright Act, please provide the following information to us for receipt of notification of claimed infringement (to ensure that your notification complies with the requirement of the Digital Millennium

Copyright Act. For the receipt of any Notification of Claimed Infringement submit to support@orderbyte.io with the following:

1. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
2. A description of the copyrighted work that you claim has been infringed;
3. A description of where the material that you claim is infringing is located on the Website;
4. Your address, telephone number, and email address;
5. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
6. A statement by you, made under penalty of perjury, that the above information in your notification is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

## h. Limitation of Liability

CloudBrands, Inc., our officers, employees, and other direct partners, as it connects with warranty, common law tort, or contract claims, shall not be liable for any consequential, incidental, special, direct, punitive, indirect damages, lost profits or other losses in these terms, resulting without limitation from any damages pertaining to lost data, business interruption via over-reliance or inability to access or use the Platform or Services or Content, even if possibility of damages has been advised. Further, any direct damages that are not attributable to personal injuries suffered from use of the services or the content shall be limited to the monies you have paid us in connection with your use of the services during the three (3) months immediately preceding the events giving rise to the claim. Our total liability of all kinds pertaining to these terms or use of our Platform or Services (inc. warranty claims), regardless of actions or claims will not exceed beyond: the fees you paid Orderbyte during 3 months used prior to the claim or \$120.

We take the customers' satisfaction seriously, yet if you have any problems with your food order, including any delivery services, please contact the restaurant directly. Your order is between you and the restaurant from which you order, and Orderbyte is not an actual party to any such order.

The content and the services are provided on an "as is" and "as available" basis without any warranties of any kind. We disclaim all warranties, including, but not limited to, the warranty of title, merchantability, non-infringement of third parties' rights, and fitness for particular purpose and any warranties arising from a course of dealing, course of performance, or usage of trade. We do not endorse content of advertisements or third parties' content, nor assume any responsibility/liability pertaining to material accuracy therein or third-party IP rights infringed or any fraud therefrom. You shall be solely responsible for your User Content and the consequences of posting, publishing it, sharing it, or otherwise making it available on the Site, and you agree that we are only acting as a passive conduit for your online distribution

and publication of your User Content.

Some jurisdictions, including the state of New Jersey, do not allow the exclusion of certain warranties. Therefore, some of the above limitations on warranties in this section may not apply to you. Nothing in these terms of use shall affect any non-waivable statutory rights that apply to you.

The services and/or the content may contain technical inaccuracies, typographical errors, or omissions, including with respect to allergy information and/or food preparation standards. We are not responsible for any such typographical, technical, pricing, or other errors listed on or omitted from the services and/or the content. The services and the content contain information on our participating restaurants' products, not all of which are available in every location. A reference to a product on the services or in the content does not imply that such product is or will be available in your location. We reserve the right to make changes, corrections, and/or improvements to the services and the content at any time without notice.

We reserve the right to cancel or modify an order where it appears that a customer has engaged in fraudulent or inappropriate activity or under other circumstances where it appears that the order contains or resulted from a mistake or error. In addition, we reserve the right to report any fraudulent or inappropriate conduct to appropriate authorities at our discretion.

## i. Indemnification

You agree to indemnify, hold, and defend CloudBrands, Inc., and our officers, directors, employees, licensees, Restaurants harmless from and against any and all claims, actions, or demands, including, without limitation, reasonable legal and accounting fees, arising or resulting from your breach of this Agreement or your misuse of the Content or the Services, including allegations, losses, liabilities. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or proceeding. As such, you will indemnify Orderbyte from and pay any and all damage costs, attorney fees awarded against in any claim all out-of-pocket costs incurred by Orderbyte's party in defense of a claim and lastly the total amount you accepted to pay to a third-party for claim settlement. We reserve the right to assume the exclusive defense and control of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter. As aforementioned, we may restrict, modify, deactivate, or terminate your access to Orderbyte Platform or Services without notice and in the case of your dissatisfaction with our decision, your sole option is to stop using Orderbyte.

## j. Termination Terms

These Terms are effective as long as you use or access Orderbyte's Platform or Services. We may, in our sole discretion, restrict, suspend, or terminate this Agreement and yours and any device's access to all or any part of the Services, at any time without cause and without prior notice or liability. We reserve the right to change, suspend, or discontinue all or any part of the Services at any time without prior notice or liability. Upon termination, you will lose access to Orderbyte's Platform or Services and your information stored may be deleted.

## k. Third-Party Links

The Services may contain links to third-party websites ("Links"). We provide Links only as a convenience and the inclusion of the Link does not imply that we endorse nor accept any responsibility for the content on those Links. The content of such Links is developed and provided by others. You should contact the site administrator or webmaster for those Links if you have any concerns regarding such links or any content located on such Links. We are not responsible for the content of any Links and do not make any representations regarding the content or accuracy of materials on such Links. You should take precautions when downloading files from all websites to protect your computer from viruses and other destructive programs. If you decide to access Links, you do so at your own risk. You may not use on your site any content or trademarks appearing on Orderbyte in establishing the link.

## l. Arbitration

In the event of resolving a dispute arising under or relating to these Terms or the Services or any other products or services provided by us (each, a "Dispute"), either party may elect to finally and exclusively resolve the dispute by binding arbitration governed by the American Arbitration Association (the "AAA") pursuant to the AAA's Commercial Arbitration Rules, the Optional Rules for Emergency Measures of Protection and the Supplementary Procedures for Online Arbitration. You agree to first contact us at hello@orderbyte.io. Any election to arbitrate, at any time, shall be final and binding on the other party. All disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the AAA. Any court in Los Angeles, California may enforce the arbitrator's award. The arbitration shall be administered by the Judicial Arbitration and Mediation Services ("JAMS") pursuant to JAMS' Streamlined Arbitration Rules and Procedures, if applicable, or otherwise pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules (the "JAMS Rules"). Such disputes will be resolved by the arbitrator as determined under the JAMS Rules. The arbitration may be conducted in person, through the submission of documents, by phone or online. If conducted in person, the arbitration shall take place in Los Angeles, California. The parties may litigate in court to compel arbitration, to stay proceeding pending arbitration, or to confirm, modify, vacate or enter judgment on the award entered by the arbitrator. In addition, we may bring an action for injunctive relief in any court of competent jurisdiction.

\*\*\*Read this section carefully because it requires the parties to arbitrate their disputes

and limits the manner in which you can seek relief from Orderbyte. If either party chooses arbitration, neither party shall have the right to litigate such claim in court or to have a jury trial. Discovery and appeal rights may also be limited in arbitration.\*\*\*

## m. Class Action and Jury Trial Waiver

You agree that any arbitration or proceeding shall be limited to the Dispute between us and you individually. To the full extent permitted by law, (i) no arbitration or proceeding shall be joined with any other; (ii) there is no right or authority for any Dispute to be arbitrated or resolved on a class action-basis or to utilize class action procedures; and (iii) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

You agree that you may bring claims against us only in your individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. You agree that, by entering into this agreement, you are waiving the right to a trial by jury or to participate in a class action, collective action, private attorney general action, or other representative proceeding of any kind.

## k. Compliance

The Services are based in the United States. We make no claims concerning whether the Content may be downloaded, viewed, or be appropriate for use outside of the United States. If you access the Services or the Content from outside of the United States, you do so at your own risk. Whether inside or outside of the United States, you are solely responsible for ensuring compliance with the laws of your specific jurisdiction (including applicable federal, provincial, state, and local laws, guidance, directives, government requirements and regulations).

## l. General

You expressly acknowledge and agree that this Agreement is formed in the State of California. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California, without giving effect to its principles of conflicts of laws. If this Agreement is terminated in accordance with the Termination provision above, such termination shall not affect the validity of the following provisions of this Agreement (Terms and Conditions), which shall remain in full force and effect. This Agreement is the complete and exclusive statement of the Agreement between Orderbyte and you regarding the Platform or Services and supersedes any other agreement or proposal, oral or written (including information on the Site), and any other communications between Orderbyte and you.

Our failure to act on or enforce any provision of the Agreement shall not be construed as a

waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement constitutes the entire Agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.

Copyright 2022 CloudBrands, Inc. All rights reserved.