

Tayble App

TAYBLE APP PTY LTD ABN 52 608 870 168

TERMS OF SERVICE

INTRODUCTION

The Company provides the Tayble App digital platform for ordering at restaurants and bars. Use of Tayble App is subject to these Terms of Service.

DEFINITIONS

The following terms are used regularly throughout these Terms of Service and have a particular meaning:

- (a) **ABN** means Australian Business Number.
- (b) **Agreement** means the agreement formed between the Users and the Company under, and on the terms of, this Terms of Service.
- (c) **Business** means a party that has entered into a Service Agreement with the Company that uses the features associated with a Business account, including (without limitation) to accept Orders and payments from Customers.
- (d) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.
- (e) **Company** means Dealztap Pty Ltd ABN 52 608 870 168.
- (f) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (g) **Customer** means a registered user of Tayble App that uses the features associated with a Customer account.
- (h) **Fee** means any fee charged by the Company for use of Tayble App.
- (i) **GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (j) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property;
- (k) **Item** means an item of food, drink or other goods sold by a Business at a Venue.
- (l) **Menu** means the list of Items that can be purchased from a Venue via Tayble App.
- (m) **Order** means an order of an Item from a Business entered into Tayble App.
- (n) **Order Fee** means the amount the Customer is charged for an Order.
- (o) **Privacy Act** means the *Privacy Act 1989* (Cth).
- (p) **Privacy Policy** means the Company's privacy policy as updated from time-to-time, which can be found at <http://www.tayble.co/public-privacy>.

- (q) **Service Agreement** means an agreement between the Company and a Business setting out the terms on which the Business may provide goods and services to Customers via Tayble App.
- (r) **Table Number** means the unique name or number used to identify the location within a Venue where an Order is to be delivered.
- (s) **Tax Invoice** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (t) **Tayble App** means:
- i Tayble App digital platform;
 - ii Any Tayble App mobile application; and/or
 - iii The website accessible at <http://www.tayble.co>.
- (u) **Terms of Service** means the terms and conditions of using Tayble App, as updated from time-to-time, which can be found at <https://tayble.co/public-terms-and-conditions>.
- (v) **TPS** means an online third-party service provider with whom a User holds an account.
- (w) **User** means any Customer or Business that uses Tayble App.
- (x) **Venue** means a venue operated by a Business where a Customer can place an Order.

1 USING TAYBLE APP

1.1 General

- (a) To use Tayble App, the User must log into Tayble App and have set up their account. The User acknowledges that any personal information supplied by the User may be used by the Company in order to create the account for the User.
- (b) The User agrees that all use of Tayble App is subject to these Terms of Service.
- (c) The Customer must provide valid credit card details in order to place an Order. Credit card details supplied by the User are securely held by the Company in accordance with the Privacy Policy.
- (d) When a Customer places an Order, that forms an independent agreement between the Business and the Customer on the terms set out in this Agreement.
- (e) Anyone over the age of 18 may use Tayble App to place an Order.
- (f) Only businesses with a current Service Agreement with the Company may use Tayble App as Business.
- (g) The Customer acknowledges that all Orders are provided independently by the

Business, and that the Company does not provide any Order directly to the Customer.

- (h) The User may be required to verify their identity by (without limitation) email, telephone, residential or business address, social media, referrals, references and/or formal photographic identification. The User agrees to provide the Company with all necessary verifications the Company requires to provide the User with access to Tayble App.

1.2 Features

- (a) Tayble App may allow a Customer to:

- i Create a Customer account;
- ii Check-in at a Venue;
- iii Place an Order;
- iv Pay the Order Fee;
- v Rate the Venue;
- vi Receive notifications, and recommendations of Venues;
- vii Use such other features, as the Company may allow from time-to-time.

- (b) Tayble App may allow a Business to:

- i Receive notifications, including for check-ins and Orders;
- ii Accept Orders;
- iii Accept payment for Orders; and
- iv Use such other features, as the Company may allow from time-to-time subject to a Services Agreement.

1.3 Orders

- (a) To place an Order, the Customer must supply such information as is required to identify where the Order is to be delivered within the Venue, such as the Table Number (or equivalent details).

- (b) The Customer is advised to use a pick-up option, and pick the Items up at the Venue if:

- i The Customer wishes to pick the items up, or otherwise does not want table service;
- ii No Table Number is visible at the location within the Venue where the Customer would like Order delivered; or
- iii The Customer wishes to pick the Order up for consumption at a

location other than the Venue.

- (c) The Customer acknowledges that any Item of alcohol subject to an Order shall only be served by the Business in accordance with applicable laws, and the Business may refuse service if it considers serving the Customer would contravene their legal responsibilities.
- (d) The Customer shall pay for the Order at the time they place the Order.
- (e) Tayble App does not support delivery of Orders to locations other than at the relevant Venue.
- (f) Tayble App will automatically process the Order Fee when the Order is placed.
- (g) The Business is responsible for ensuring that all information it enters into Tayble App is accurate and up-to-date, including with regard to (without limitation):
 - i The location, opening hours and other information relative to a Venue;
 - ii The Menu;
 - iii All Items on the Menu are available to be ordered by a Customer;
 - iv Pricing of Items; and
 - v Ensuring that each Item is as described within Tayble App when provided to a Customer subject to an Order.

1.4 **Cancelling an Order**

- (a) The Customer cannot cancel an Order within Tayble App once placed.
- (b) If the User wishes to cancel an order and/or request a refund, the Customer must arrange this directly with the Business at the Venue.

1.5 **Reviews and Ratings**

- (a) Users may use the rating system and other features of Tayble App to rate and provide feedback on Venues.
- (b) The rating system may allow the User to provide a rating on more than one aspect (e.g. service, quality and price etc.).
- (c) The User agrees to provide accurate information and to not:
 - i Unreasonably give a Venue a low rating or negative review; or
 - ii Provide an inaccurately high rating or positive review for a Venue, in order to gain a benefit of themselves or others from the Business that operates that Venue.
- (d) No User may provide reviews or ratings of a Venue that the User has not attended.

- (e) The Company may remove any review or rating that does not comply with this clause 1.5.

2 FEES, PAYMENTS & REFUNDS

- 2.1 The Customer that places an Order shall pay the Company the Order Fee for the full amount of an Order.
- 2.2 The Company may charge the User any additional Fees as described within Tayble App, or as otherwise agreed with the Company.
- 2.3 The Company will issue a Tax Invoice to the Customer for all Fees paid via Tayble App and/or email.
- 2.4 All payments for an Order must be made through Tayble App.
- 2.5 Payment of the Order Fee will be charged to the Customer's credit card when the Customer confirms the Order.
- 2.6 Payment of Order Fees shall be made by the Company to the Business in accordance with the Service Agreement.
- 2.7 The Company does not provide refunds except where required by law. If a Customer is entitled to a Refund for an Order, the Customer must arrange the refund directly with the relevant Business.

3 RELATIONSHIP

- 3.1 The parties agree that the Business is an independent supplier to the Customer. Each Business and Customer is responsible to each other with respect to each Order or other interaction conducted via Tayble App. The parties acknowledge and agree that:
 - (a) The Business is not an subsidiary or subcontractor of the Company, and the Business does not provide any goods or services to Customers on behalf of the Company;
 - (b) The Business is not an employee of the Customer or the Company;
 - (c) The Company is not an agent of the Business or the Customer; and
 - (d) The Company makes no representation as to the quality of any Business or Venue. The Customer places each Order at its own risk.

4 THIRD PARTY LOGIN

4.1 Registration & Login.

- (a) A Customer may be able to register as a Customer, and access Tayble App, by using their account with certain third party services (**TPS**) (e.g, Facebook, Twitter, Google etc);

- (b)** As part of the functionality of Tayble App the Customer may connect their profile with a TPS by:
 - i Providing their TPS login information to the Company through Tayble App; or
 - ii Allowing the Company to access their TPS in accordance with its terms & conditions of service; and
- (c)** When connecting to Tayble App using a TPS the Customer warrants that they are not in breach any of the TPS' terms & conditions of service.

4.2 **Ongoing Availability.**

- (a)** The Customer agrees that Customer access to Tayble App may be unavailable if the TPS becomes unavailable, and that the Customer may lose functionality or content that is shared between the TPS and Tayble App;
- (b)** The Customer may disconnect the connection between Tayble App and the TPS at any time.
- (c)** The Company has no relationship with any TPS and cannot guarantee the efficacy of any TPS connection.

4.3 **Data from TPS.**

Where a Customer connects and or registers their profile using a TPS, the Customer authorises the Company to use data from that TPS to create the Customer's profile within Tayble App.

5 **GENERAL CONDITIONS**

5.1 **Licence**

- (a)** By accepting the terms and conditions of this Agreement, the User is granted a limited, non-exclusive and revocable licence to access and use Tayble App for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.
- (b)** The Company may issue the licence to the User on the further terms or limitations (including the number of users or volume of use or transactions) as it sees fit.
- (c)** The Company may revoke or suspend the User's licence(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in this Agreement by the User.

5.2 **Modification of Terms**

- (a)** The terms of this Agreement may be updated by the Company from time-to-time.

- (b) Where the Company modifies the terms, it will provide the User with written notice, and the User will be required to accept the modified terms in order to continue using Tayble App.

5.3 Software-as-a-Service

- (a) The User agrees and accepts that Tayble App is:
 - i Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and
 - ii Managed and supported exclusively by the Company from the Company servers and that no 'back-end' access to Tayble App is available to the User unless expressly agreed in writing.
- (b) As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter Tayble App.

5.4 Support

- (a) The Company provides user support for Tayble App via the email address support@tayble.co.
- (b) The Company shall endeavour to respond to all support requests within 2 Business Days.

5.5 Use & Availability

- (a) The User agrees that it shall only use Tayble App for legal purposes and shall not use it to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.
- (b) The User is solely responsible for the security of its username and password for access to Tayble App. The User shall notify the Company as soon as it becomes aware of any unauthorised access of its Tayble App account.
- (c) The User agrees that the Company shall provide access to Tayble App to the best of its abilities, however:
 - i Access to Tayble App may be prevented by issues outside of its control; and
 - ii It accepts no responsibility for ongoing access to Tayble App.

5.6 Privacy

- (a) The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and other customers.
- (b) The Privacy Policy does not apply to how a Business handles personal

information. If necessary under the Privacy Act, it is the Business's responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.

- (c) Tayble App may use cookies (a small electronic tracking code) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.

5.7 Security and Data Retention

- (a) **Security.** The Company takes the security of Tayble App and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
- (b) **Transmission.** The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.
- (c) **Storage.** Data that is stored by the Company shall be stored according to accepted industry standards.
- (d) **Backup.** The Company shall perform backups of its entire systems in as reasonable manner at such times and intervals as is reasonable for its business purposes. The Company does not warrant that it is able to backup or recover specific User Data from any period of time unless so stated in writing by the Company.

5.8 Intellectual Property

- (a) **Trademarks.** The Company has moral & registered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- (b) **Proprietary Information.** The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of Tayble App.
- (c) **The Tayble App Application.** The User agrees and accepts that Tayble App is the Intellectual Property of the Company and the User further warrants that by using Tayble App the User will not:
 - i Copy Tayble App or the services that it provides for the User's own commercial purposes; and
 - ii Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in Tayble App or any documentation associated with it.

- (d) **Content.** All content submitted to the Company, whether via Tayble App or directly by other means, becomes and remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to Tayble App.

5.9 **Disclaimer of Third Party Services & Information**

- (a) The User acknowledges that Tayble App is dependent on third-party services, including but not limited to:
 - i Banks, credit card providers and merchant gateway providers;
 - ii Telecommunications services;
 - iii Hosting services;
 - iv Email services; and
 - v Analytics services.
- (b) The User agrees that the Company shall not be responsible or liable in any way for:
 - i Interruptions to the availability of Tayble App due to third-party services; or
 - ii Information contained on any linked third party website.
- (c) The Tayble App payment gateway is provided by Braintree (a PayPal company), which is used by Uber and AirBnB. Any User payment details will be used and stored in accordance with PayPal's privacy Policy accessible at https://www.paypal.com/au/webapps/mpp/ua/privacy-full#int_3.

5.10 **Liability & Indemnity**

- (a) The User agrees that it uses Tayble App at its own risk.
- (b) The User acknowledges that Tayble App does not sell any goods or services on its own behalf.
- (c) The User acknowledges that the Company is not responsible for the conduct or activities of any User and that the Company is not liable for such under any circumstances.
- (d) The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with Tayble App, including any breach by the User of these Terms of Service.
- (e) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, illness, personal injury, death, damage to

property, loss of property, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use Tayble App, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, loss, illness, personal injury or death, or business interruption of any type, whether in tort, contract or otherwise.

(f) Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:

- i The re-supply of services or payment of the cost of re-supply of services; or
- ii The replacement or repair of goods or payment of the cost of replacement or repair.

5.11 Termination

- (a) Either party may terminate this Agreement by giving the other party written notice.
- (b) Termination of this agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this agreement up to the date of expiry or termination.
- (c) Termination does not affect any of the rights accrued by a party prior to termination, and the rights and obligations under clauses 5.9, 5.12 and 5.13 survive termination of this Agreement.

5.12 Dispute Resolution

- (a) If any dispute arises between the parties in connection with this Agreement (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:
 - i Includes or is accompanied by full and detailed particulars of the Dispute; and
 - ii Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.
- (b) Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) parties must meet (virtually or otherwise) and seek to resolve the Dispute.
- (c) Subject to clause (d), a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.

- (d) Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- (e) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

5.13 Electronic Communication, Amendment & Assignment

- (a) The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- (b) The User can direct notices, enquiries, complaints and so forth to the Company as set out in this Agreement. The Company will notify the User of a change of details from time-to-time.
- (c) The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.
- (d) A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- (e) Notices must be sent to the parties' most recent known contact details.
- (f) The User may not assign or otherwise create an interest in this Agreement.
- (g) The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the User.

5.14 General

- (a) **Special Conditions.** The parties may agree to any Special Conditions to this Agreement in writing.
- (b) **Prevalence.** To the extent this Agreement is in conflict with, or inconsistent with, the terms of a Service Agreement, or any Special Conditions made under this Agreement, as relevant, the terms of those other agreements or Special Conditions shall prevail.
- (c) **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- (d) **Relationship.** The relationship of the parties to this Agreement does not form a joint venture or partnership.
- (e) **Waiver.** No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- (f) **Further Assurances.** Each party must do anything necessary (including

executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.

- (g) Governing Law.** This Agreement is governed by the laws of New South Wales, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- (h) Severability.** Any clause of this Agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.