

2018

MontaRosi Pty Ltd t/a
BOCCA FOODS

Ross Montalti

**TERMS
AND CONDITIONS
OF USE FOR
BOCCA FOODS
ON-LINE
ORDERING SYSTEM**

[BOCCA FOODS SCHOOL CANTEEN ON-LINE ORDERING SYSTEM]

This document outlines the Terms and Conditions associated with the use of the BOCCA FOODS On-Line Ordering system available in all of BOCCA FOODS managed Secondary School Canteens. June 2018

TERMS AND CONDITIONS

BOCCA FOODS hereby declares these terms and conditions and you hereby agree to the usage of the website acknowledging that you do so with the complete understanding and acceptance of these said terms and conditions freely and without duress.

MONTAROSI PTY LTD (trading as BOCCA FOODS) is a registered company with the ABN 35 121 901 666 ACN 35 121 901 666

Upon completion of the online registration as an Authorised User of the System by you, you agree to be subject to these terms. By completing the online registration process, you represent and warrant that you have the right, authority and capacity to accept these terms and conditions and agree to abide by the terms. If you do not agree to these terms, you must not use or access the System.

By taking the affirmative act of logging in and using the BOCCA FOODS On-line Ordering system, the user has taken to have read, understood and accepted the terms of this Agreement. If the user is not willing to be bound by the terms of this Agreement, the user should not continue with the login and usage of the BOCCA FOODS system.

Definitions

In this Agreement unless the context requires otherwise:

"Account" means your account on the BOCCA FOODS Online System protected by password and username which will be opened for you on registration;

"Account Holder" means a member of the School community who has created an account to enable a person to utilise the BOCCA FOODS Online System;

"Goods" means food, beverages or any other items supplied by BOCCA FOODS as listed on the menu;

"Intellectual Property" means all trademarks or names and service marks (whether or not registered) registered designs, design rights, copyrights, website domain names, email addresses, telephone and facsimile numbers, sales database, the right to apply for and applications for any of the preceding items, together with the rights in inventions, processes, software, know-how, trade or business secrets, confidential information or any process or other similar right or asset capable of protection enjoyed, owned, used by or licensed to BOCCA FOODS;

"Menu" means the menu compiled by BOCCA FOODS outlining Goods for Order as amended from time to time;

"Online System" means an online ordering website developed and owned by BOCCA FOODS for the provision of Goods to Recipients in Schools;

"Order" means a request made through the Online System to supply Goods to a Recipient on a particular day and Orders means a request made through the Online System to supply Goods to more than 1 Recipient on a particular day or to supply Goods to the same Recipient on different days;

"Prescribed Time" means the time by which you must place an Order as outlined on the Menu or as notified to you from time to time;

"Recipient" means the person nominated by you for whom the Order is for;

"Sale Price" means the prices for the Goods in Australian Dollars which will include GST;

"Schedule" means the schedule forming part of this Agreement;

"School" means a school which has agreed to adopt the Online System which you have nominated when you registered as an Account Holder;

"You" means the Account Holder.

The parties agree as follows:

1. Agreement and your account

- 1.1 Subject to your School accepting our Online System, BOCCA FOODS grants you the non-transferrable licence to participate in the Online System.
- 1.2 You must ensure that all information provided to BOCCA FOODS is correct and update it if any detail changes.
- 1.3 You may purchase Goods from BOCCA FOODS using the Online System. An Account will be opened for you.
- 1.4 Orders must be placed by the Prescribed Time. An Order is deemed to be placed by the Prescribed Time if payment has been made and you have received an electronic confirmation from BOCCA FOODS by email or SMS. We cannot warrant that you will be able to place and order after this time has lapsed.
- 1.5 BOCCA FOODS will prepare the Orders and make available at the time mentioned on your request form.
- 1.6 BOCCA FOODS encourages nutritious Goods but you acknowledge that BOCCA FOODS will not be responsible for any representations made by the Supplier in respect to the Goods.
- 1.7 BOCCA FOODS does not accept any liability for any ordering that may cause an allergic reaction to a child. It is solely the parent or guardian's responsibility to ensure the order fits in with the child's health requirements as they are known to them.

2. Fees and charges

- 2.1 When you place an Order the charge for the Goods and the Fees will be debited from your Account.
- 2.2 You are responsible for paying the total Sale Price for all Orders you submit on the Online System.
- 2.3 You are also responsible for paying all taxes including GST on any Order which will be included in the Sale Price.

3. Disputes

- 3.1 You agree to first raise any complaint regarding the Goods provided with local BOCCA FOODS staff who may provide you with a refund or replacement.

3.2 If the BOCCA FOODS Staff fails to address your complaint to your satisfaction, BOCCA FOODS management may at its discretion provide you with a credit by way of compensation.

4. Privacy

4.1 BOCCA FOODS may utilise the information provided by you to enable BOCCA FOODS to perform the services outlined in this Agreement, to notify you of changes to services, changes to conditions.

(a) You are responsible for keeping your Account details including your username and password confidential.

(b) You must immediately report any unauthorised use of your Account to BOCCA FOODS.

(c) In the event that BOCCA FOODS transfers or in any way assigns or disposes of its interest in the Online System, BOCCA FOODS reserves the right to transfer its user database together with all personal and non-personal information which may include your details supplied to BOCCA FOODS to the party acquiring an interest in BOCCA FOODS or the Online System.

4.2 BOCCA FOODS may access your personal details at times in regards to orders been placed but no personal details are ever provided to any other party.

5. Closure of account and termination

5.1 BOCCA FOODS will close your Account:

(a) On receiving a written request from you;

(b) If you have not accessed the Online System for a period of 6 months; and

(c) If BOCCA FOODS wishes to terminate this Agreement.

5.2 BOCCA FOODS may terminate your licence and this Agreement at any time and remove your access to the Online System for any reason which may include if you breach the provisions of this Agreement.

5.3 On termination of this Agreement or closure of your account:

(a) You must cease using the Online System;

(b) Your access to the Online System will be removed; and

(c) Any outstanding balance in your account less any Fee will be credited back to your credit card. If BOCCA FOODS does not have your current credit card or nominated bank account details then the funds will remain in credit and available for 6 months for them to claim back, BOCCA FOODS will send notification emails so that the clients are aware of this cancellation and rebate owing.

6. Refunds

6.1 In the event of an Authorised User reporting to BOCCA FOODS either
a). a failure of the School Canteen to supply the Goods, or

b). the Goods being unsatisfactory upon receipt;

BOCCA FOODS will pass the details of the Authorised User complaint to the School Canteen. If the School Canteen wishes to grant a full or partial refund, it is the responsibility of the School Canteen to either refund the customer directly, or provide the refund value to BOCCA FOODS and have BOCCA FOODS credit the customer's account.

6.2 If there is an issue with an order BOCCA FOODS will issue a cash refund to the value of the non-available Good.

7. Liability

7.1 You agree and acknowledge:

We offer a 99.9% time online live if this is outside we will prorate any loss of income made, however;

(a) BOCCA FOODS is not liable to you if the Online System is offline or not working properly;

(b) Unless required by law, BOCCA FOODS is not liable for any loss or damage arising out of the terms and conditions of this Agreement or the breach of them by any other third party;

(c) BOCCA FOODS provides the Online System to School Canteen and is responsible for the content of Menus, pricing, packaging, delivery, food description ingredients or any other matter relating to the provision of the Goods or their delivery;

(d) If BOCCA FOODS has breached a law which it cannot contract out of, you agree that the extent of any liability of BOCCA FOODS to you is limited to:

- (i) Replacing or repairing the Goods;
- (ii) Reimbursing any Fee paid by you.

8. Indemnity

You indemnify and agree to keep BOCCA FOODS indemnified against any loss suffered by BOCCA FOODS as a result of your breach of the terms and conditions of this Agreement, including all costs and expenses.

9. Assignment

9.1 You may not assign or transfer your Account to any other party without BOCCA FOODS prior written consent.

9.2 BOCCA FOODS can assign or transfer all right title and interest in this Agreement and the Online System to any third party that acquires BOCCA FOODS business.

10. Your obligations

10.1 You are responsible for maintaining the confidentiality of the Account identification, password, security questions and answers and any other information specific to your Account. This includes ensuring the ongoing security of such items by regularly updating your security information.

10.2 You must immediately report any unauthorised use of the Account to BOCCA FOODS.

11. Miscellaneous

11.1 Any prices included as part of the Materials will be your sole responsibility and risk.

11.2 BOCCA FOODS will use reasonable commercial efforts to maintain the BOCCA FOODS System.

11.3 BOCCA FOODS whilst holding relevant security does not guarantee continuous, uninterrupted or secure access to the BOCCA FOODS System, and the operation of the System may be interfered with by numerous factors outside of our control.

11.4 You acknowledge that you are responsible for your network security.

11.5 BOCCA FOODS cannot guarantee that the BOCCA FOODS System and Materials will be free of errors or viruses.

11.6 BOCCA FOODS does not guarantee or warrant that your existing equipment, hardware or software is compatible with the BOCCA FOODS System.

11.7 This document sets out the entire agreement between the parties in relation to its subject matter and all prior representations are excluded.

11.8 BOCCA FOODS may suspend your access to the BOCCA FOODS System in whole or in part at any time without notice or compensation where deemed necessary in BOCCA FOODS' sole discretion.

11.9 You cannot assign or otherwise transfer the benefit of this Agreement without the prior written consent of BOCCA FOODS. BOCCA FOODS may assign or otherwise transfer the benefit of this Agreement to any third party that purchases or acquires the business which conducts the System.

12. Links to Third Parties Websites

The BOCCA FOODS Website may contain links and pointers to internet sites maintained by third parties. MontaRosi Pty Ltd does not operate or control in any respect any information, products or services on such third-party sites. Third-party links are included solely for the convenience of users, and do not constitute any endorsement by MontaRosi Pty Ltd and/or its suppliers. Users assume sole responsibility for use of third-party links and pointers and disclaimers set forth herein are equally applicable to such third-party sites.

13. No Unlawful or Prohibited Use

As a condition of your use of the Application, you warrant to MontaRosi Pty Ltd that you will not use the BOCCA FOODS Website for any purpose that is unlawful or prohibited by these terms, conditions, and notices. You may not use the BOCCA FOODS Website in any manner which could damage, disable, overburden, or impair the BOCCA FOODS Website or interfere with any other party's use and enjoyment of the BOCCA FOODS Website. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the BOCCA FOODS Websites.

14. Use of Forums

14.1 MontaRosi Pty Ltd does not control or regularly review the messages, information or files delivered to Forums. It is a condition of your use of the Forums and the BOCCA FOODS Website that you do not upload to, post, distribute or transmit to or through this site any messages, information or materials which violate or infringe in any way the rights of others, or which are libellous, defamatory, obscene, pornographic, threatening, abusive, unlawful or

would otherwise violate any law, or encourage such conduct, or which, without MontaRosi Pty Ltd's express prior consent, contains advertising or any commercial solicitation; post or transmit any material that contains a virus or other harmful component; restrict or inhibit anyone from using and enjoying the bulletin boards.

14.2 MontaRosi Pty Ltd has no responsibility for the content of any messages, information or materials uploaded, posted, distributed, or transmitted by Users of the BOCCA FOODS Website. However, MontaRosi Pty Ltd retains the right, but not the obligation in its sole discretion, to monitor, review, edit, delete or refuse to post any third-party content that MontaRosi Pty Ltd deems to be objectionable or in violation of these Terms and Conditions. MontaRosi Pty Ltd reserves the right to disclose any information as necessary to satisfy any law, regulation or governmental request.

14.3 By submitting messages, information and material to any public area of this site, you are granting MontaRosi Pty Ltd a perpetual royalty-free license to reproduce, edit, modify, publish, transmit and display, transmit, create derivative works from, distribute or perform it in whole or in part or incorporate it in any form, medium or technology now known or later developed.

Users agree to indemnify and hold harmless MontaRosi Pty Ltd and all officers, directors, shareholders, employees, authorised representatives and agents from and against all claims and expenses, including attorneys' fees, arising out of any messages, information or materials uploaded, posted, distributed, or transmitted to or through this site by you.

15. Disclaimer

15.1 The information, software, products and services included in or available through The BOCCA FOODS Website may include inaccuracies or typographical errors. Changes are periodically added to the information herein. MontaRosi Pty Ltd and/or its suppliers may make improvements and/or changes in the BOCCA FOODS Website at any time. Advice received via the BOCCA FOODS Website should not be relied upon for personal, medical, legal or financial decisions and you should consult an appropriate professional for specific advice tailored to your personal situation.

15.2 MontaRosi Pty Ltd and/or its suppliers make no representations about the suitability, reliability, availability, timelines and accuracy of the information, software, products, services and related graphics contained on the BOCCA FOODS Website for any purpose to the maximum extent permitted by applicable law, all such information, software, products, services and related graphics are provided 'as is' without warranty or condition of any kind. MontaRosi Pty Ltd and/or its suppliers hereby disclaim all warranties and conditions with regard to this information, software, products, services and related graphics, including all implied warranties or conditions of merchantability, fitness for a particular purpose, title and non-infringement.

15.3 To the maximum extent permitted by law, the Application and the services are provided "as is" with all faults and all implied or statutory warranties are excluded. MontaRosi Pty Ltd shall not be liable for any special, indirect, consequential or incidental loss or damage including but not limited to loss of business opportunity, business interruption, lost profits or for punitive or exemplary damages. The BOCCA FOODS total liability to you or your employer (if applicable) in respect of all claims relating to these terms and conditions, the BOCCA FOODS application, and the services shall be strictly limited to the greater of the amount actually paid by you for the services.

16. Use

MontaRosi Pty Ltd owns all the intellectual property rights in the BOCCA FOODS Software. The Software is licensed, not sold. Subject to compliance with the terms of this Agreement, MontaRosi Pty Ltd grants a license to use the Software as per the entitlement set out in the Payment Schedule.

17. Upgrades

At its discretion, MontaRosi Pty Ltd may provide upgrades of Software and/or documentation. Any major changes will be complete in the school holidays and /or after a 21 day notice to users

18. Variation

BOCCA FOODS may vary the terms of this Agreement but must first give you notice of any changes or amendments.

19. Governing Law

This Agreement is governed by, and is to be construed in accordance with, the law of Australia and where applicable the laws of the State in Australia where the School is located and the parties submit to the nonexclusive jurisdiction of the courts of that State.