

# Gogocater Merchant Agreement

This policy was last updated September 1, 2015.

This Merchant Agreement (“Agreement”) is a contract between your company (the “Company”) and Gogocater. (“Gogocater”) and applies to your Company’s use of the Gogocater merchant network and commerce processing system (collectively the “Service”). By activating the Service, you acknowledge that you have read and understood, and you agree, to the terms of this Agreement. You represent that you are of legal age to enter this Agreement and have the authority to represent the Company to become bound by its terms.

**1. Service.** Gogocater has the right at any time to change or discontinue any aspect or feature of the site, including, without limitation, its content and hours of availability. Gogocater serves as hosting and commerce processing provider for our merchant members’ product and services. We make every effort to maintain a 24/7 operation site and mobile ordering solution for our merchants and customers. However, the site and mobile ordering system may become unavailable due to scheduled maintenance and unforeseen outages due to problems such as hardware, software, and network problems. For scheduled maintenance that will cause system downtime or performance issues, we intend to provide ample notice to customers and merchants of the maintenance plans. That being said, Gogocater shall have no liability for any failure to do so. Problems with orders and other customer service issues should be sent to the email [support@Gogocater.com](mailto:support@Gogocater.com).

**2. Participating on the Gogocater Network.** We will do our best to monitor the site to insure that only reputable merchants are participating, and that the merchant content is accurate and clearly represented. As a Gogocater merchant you agree the Company will not:

- post content or items in an inappropriate category or areas on the site;
- violate any laws, third party rights, or our policies as stated in this Agreement;
- use the Site if you are not able to form legally binding contracts or are temporarily or indefinitely suspended from our site;
- fail to complete customer orders requested from you;
- manipulate the price of any item or interfere with other user’s listings;
- circumvent or manipulate our fee structure, the billing process, or fees owed to Gogocater;
- post false, inaccurate, misleading, defamatory, or libelous content;
- take any action that may undermine the feedback or rating systems (such as displaying, importing or exporting feedback information off of the site or for using it for purposes unrelated to Gogocater);
- copy, modify, or distribute content from the site and Gogocater’s copyrights and trademarks; or
- list any content that violates copyright or trademark laws.

We work collectively with our merchants and users to insure a properly working site. If you become aware of problems created by other Gogocater users or merchants, please inform us at [support@Gogocater.com](mailto:support@Gogocater.com). For example, if you are aware of customers who are submitting orders without picking up or taking delivery of these orders, please notify us of these problems. We will do our best to remedy the situation, without limiting other remedies, we may suspend, terminate or take legal action against offending users or merchants.

**3. Agency Relationship.** Gogocater acts a facilitator to help you accept orders and payments from third parties. We act as your agent based upon your direction and your request to use our Services that require us to perform tasks on your behalf. You agree that Gogocater has the authority to collect payment transactions directly from customers on your behalf. Gogocater will reimburse the Company for these transactions less any fees or payments due to Gogocater on a semi-monthly basis. You agree that you will not receive interested or other earnings on any account credits you may hold in your Gogocater account.

**4.1 Pricing and Service Quality.** The accuracy of information regarding price, product specifications and availability contained on this site for your company is the responsibility of the Company. The Company agrees to make their best effort to insure that prices listed on the site and those posted in the stores on the date they are viewed on the site are the same, and that out-of-stock items are clearly marked or removed from the inventory. In the event that the in-store price and the price posted on the site are different, the Gogocater site price will prevail in every case. The Company agrees to make their best effort to provide an accurate hours of operation schedule on the site.

The Company agrees to make a best effort to provide timely, accurate, reliable and high quality products and services for orders sent through the Gogocater system. Gogocater reserves the right to suspend or terminate a merchant who has a consistently poor customer rating or unusually high number of complaints. Gogocater will work with merchants in an attempt to remedy these problems prior to taking these actions.

**4.2 Transaction Fees.** Gogocater earns revenues from transaction fees. A merchant's transaction fee schedule is based on the arrangement made between Gogocater and the merchant. Questions about Gogocater fees should be addressed to [support@Gogocater.com](mailto:support@Gogocater.com). By accepting orders through the Service, you agree to pay the specified transaction fee to Gogocater.

Gogocater will deduct fees from a merchant's payments, unless otherwise specified. All transactions are made and displayed in U.S. dollars unless otherwise specified.

**4.3 Custom Integration.** Gogocater has developed our system to be easily integrated with our merchant's back-end point-of-sale (POS) systems. However, technical and business challenges for integrations can vary widely from one merchant to another. We have the expertise to assist with an integration effort. We will provide you with a quote proposal and timeline for such integration efforts. Email [support@Gogocater.com](mailto:support@Gogocater.com) if you wish to explore integration options.

**4.4 Telephone Charges.** The company is liable for any telephone charges and any charges made by your telephone service provider or similar or associated charges as a result of use of the Gogocater system. This may include the cost of national or international calls and sending or receiving SMS messages, data packets, accessing the web via your mobile device, or sending and receiving fax transmissions. There may be other costs or taxes imposed by third parties in connection with your access and use of Gogocater for which you will be solely liable.

**4.5 Payments.** Payments to merchants are made on a semi-monthly basis. We will mail you a check for the payments due to the Company. You must provide us a valid remit to address or bank account for payments. Any questions regarding payments should be addressed to [billing@Gogocater.com](mailto:billing@Gogocater.com). For any special marketing, advertising or integration projects, Gogocater will provide your company a payment plan (NET30, credit card, etc.) to pay Gogocater for such work and services.

**4.5 Billing Disputes.** From the merchant tool's reports section on the Gogocater web-site, you will be able to view your transaction information and details. From the transaction details information, the Company will be able to create a transaction dispute.

**4.6 Termination/Discontinuance of Service.** Gogocater may terminate or suspend your Service at any time in its sole discretion, if a) the Company breaches this Agreement or the documents it incorporates by reference; b) the Company provides a consistently sub-standard level of quality or service even after remedy efforts; or c) we believe that your merchant service pose a significant credit or fraud risk to us.

**4.7 Taxes.** Gogocater will calculate and charge user's for any applicable sales, use, excise, public utility or other taxes, fees or charges imposed on Gogocater as a result of providing the Service. Although we are acting as an agent to collect these taxes on your behalf, it does not relieve the Company from the responsibility of accurately recording, reporting, and paying any applicable taxes.

**5. Acceptable Use.** The Company agrees to use the Service only for lawful purposes. The Company shall comply with all applicable U.S. and international laws, statutes, ordinances, regulations, contracts and applicable licenses regarding your use of our Services. The Company's information and activities through our Service shall not contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or other personal information. If the Company uses, or attempt to use the Service other than its intended use, to tamper, hack, modify or corrupt the security or functionality of the Service, the Company's account will be terminated and the Company will be subject to damages and other penalties, including criminal prosecution where available.

**6. Content License.** When you give us content, you grant us a non-exclusive, worldwide, perpetual irrevocable, royalty-free, sublicensable (through multiple tiers) right to exercise the copyright, publicity, and database rights (but no other rights) you have in the content, in any media known now or in the future. (We need these rights to host and display your content.)

**7. Trademarks.** The site contains copyrighted material, trademarks and other proprietary information, including, without limitation, text, software, photos, video, graphics, music and sound, and the contents of the site are copyrighted under the United States copyright laws. The Company may not modify, publish, transmit, display, participate in the transfer or sale, create derivative works, or in any way exploit, any of the content of this site, in whole or in part. Except as otherwise expressly permitted under copyright law, no copying, redistribution, retransmission, publication or commercial exploitation of downloaded material will be permitted without the express written permission of Gogocater. In the event of any permitted copying, redistribution or publication of

copyrighted material, no changes in or deletion of author attribution, trademark legend or copyright notice shall be made. The Company acknowledges that they do not acquire any ownership rights by downloading copyrighted material.

The foregoing provisions are for the benefit of Gogocater, its subsidiaries, affiliates and its third party content providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf.

**8. Safe Use/Unauthorized Use.** Gogocater may provides you with a login and password authentication process for our web-site usage. In order to minimize the risk of unauthorized use of your account, please do not share your password with anyone. If you do believe there is unauthorized use of your Gogocater account, please call or email [support@Gogocater.com](mailto:support@Gogocater.com) immediately in order that we can research the unauthorized activity and suspend any further unauthorized usage of your account.

**9.1 No Warranty.** Gogocater, our subsidiaries, employees and our merchants provide our services “AS IS” and without any warranty or condition, express, implied or statutory. Gogocater, our subsidiaries, employees, and our merchants disclaim any implied warranties of title, merchantability, fitness for a particular purpose. Additionally, there are no warranties as to the results obtained from the use of this site. The Company expressly agrees that use of this site is at their sole risk. Gogocater, our subsidiaries, employees and our merchants do not warrant that the site will be uninterrupted or error free, nor do they make any warranty as to the results that may be obtained from the use of this site, or as to the accuracy or reliability of any information, service, or merchandise provided through the site.

**9.2 Limit of Liability.** In no event shall Gogocater, its subsidiaries, employees or our merchants be liable in contract, in tort (including for its own negligence), or under any other legal theory (including strict liability) for any damages, including, without limitation, lost profits or revenues, loss of use or similar economic loss, arising out of the use or inability to user this site, our Service, or this Agreement. The Company hereby acknowledges that the provisions of this section shall apply to all use and content on this site. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to the Company. Our liability, and the liability of our parent, subsidiaries, employees, and merchants, to the Company or any third parties in any circumstance is limited to the actual amount of direct damages.

**9.3 Changes to this Agreement.** Gogocater may change the terms of this Agreement from time to time. We may give the Company notice either by posting the information to our site. All amended terms shall be effective 30 days after they are initially posted to our site. Any use of the site by the Company 30 days after such notice have been posted to our site shall be deemed to constitute acceptance of such amended terms.

**9. Privacy.** We do not sell or rent your information to third parties for marketing purposes without your consent. The only time that we share your information with third parties is for the purpose of identity, payment, and credit verification purposes required for the appropriate use of the Gogocater site. Any questions regarding our privacy policy should be addressed to [support@Gogocater.com](mailto:support@Gogocater.com).

**10.1 Legal Disputes.** In the event a dispute arises between the Company and Gogocater, our goal is to provide a neutral and cost effective means of resolving the dispute quickly. Accordingly, the Company and Gogocater agree that any controversy or claim at law or equity that arises out of this Agreement or Gogocater’s services (“Claims”) shall be resolved in accordance with one of the subsections below, or as otherwise mutually agreed upon in writing by the parties. Please contact Gogocater directly prior to resorting to these legal channels. We prefer to handle reasonable requests to revolve a dispute using methods such as mediation over litigation.

**10.2 Arbitration.** For any Claim (excluding Claims for injunctive or other equitable relief) where the total amount of the award is sought is less than \$10,000 USD, the Company or Gogocater agreed to resolve the dispute through binding arbitration conducted by telephone, on-line and/or based solely upon written submissions where no inperson appearance is required. In such cases, the arbitration shall be administered by the American Arbitration Association or JAMS, in accordance with their applicable rules, or any other established ADR provider mutually agreed upon by the parties. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

**10.3 Court.** Alternatively, any Claim may be adjudicated by a court of competent jurisdiction located in Santa Clara , California or where the defendant is located (in Gogocater’s case, Sunnyvale, CA , and in the Company’s case, your principal place of business). The Company and Gogocater agree to submit to the personal jurisdiction of the courts located within the county of Santa Clara , CA.

**10.4 Alternative Dispute Resolution.** Gogocater will consider use of other alternative forms of dispute resolution, such as binding arbitration to be held in Santa Clara County, CA or another location mutually agreed upon by the

parties.

**11. General.** These terms of use constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all previous written or oral agreements between the parties with respect to such subject matter. These terms of use shall be construed in accordance with the laws of the State of California , without regard to its conflict of laws rules. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import.

Should you have any questions concerning this Agreement, or if you desire to contact Gogocater for any reason, please email [support@Gogocater.com](mailto:support@Gogocater.com).