

**TERMS OF SERVICE FOR SELLER**

Welcome to PGMALL ecommerce platform (“the Platform”). This is our Terms of Service for Seller (“TOS”) governing your use and access to the Platform (“the Services”) as a seller (“Seller”) on the Platform provided by PG Mall Sdn. Bhd. (Company No.: 836625-K) and its affiliates and subsidiaries (individually and collectively referred to as “PGMALL”). Every Seller who registers to use PGMALL Platform agrees to be bound by this TOS.

**1 Seller Account**

- 1.1 Every Seller who register to use the Platform will be given a Seller Account upon approval by PGMALL in accordance to the details, name and description as provided for in the registration form.
- 1.2 PGMALL reserves the right to reject any registration for a Seller Account by anyone without providing any reason or whatsoever.
- 1.3 Any person who is under the legal age of 18 years old or the legal age of entering into a validly binding contract shall not be allowed to register for a Seller Account.
- 1.4 The Seller is responsible for maintaining the confidentiality of the Seller’s respective Seller Account and password and any other security information, for restricting unauthorized access to Seller's Seller Account.
- 1.5 The Seller shall not, in the course of using the Platform,:-
  - (a) post inappropriate content or products in the categories or areas on the Platform;
  - (b) Violate any laws and infringe third party rights;
  - (c) Manipulate the price of other Sellers or interfere with other Seller's listings;
  - (e) Circumvent or manipulate the fee structure, the billing process, or fees owed to PGMALL;
  - (f) Post false, inaccurate, misleading, defamatory, or libellous content (including personal information);
  - (g) Transfer the Seller Account to another party without PGMALL's written consent;
  - (h) Distribute or post spam, chain letters, or pyramid schemes;
  - (i) Distribute viruses or any other technologies that may harm PGMALL Platform, or the interests or property of PGMALL and any user PGMALL Platform;
  - (j) Copy, modify, or distribute PGMALL’s contents from the Platform and PGMALL's copyrights and trademarks;
  - (k) Harvest or otherwise collect information about any user of the Platform, including but not limited to email addresses, without their consent;
  - (l) Use existing Seller Account or create new Seller Account with the purpose of circumventing or avoiding buying or selling limits, restrictions, or other policies as imposed by PGMALL from time to time;
  - (m) Copy or distribute unauthorized contents from other third-party sources and post them into the Platform.
- 1.6 If PGMALL is satisfied or has reasonable reason to suspect that the Seller has committed one or more of the following actions:-
  - (a) breached any terms of this TOS;

- (b) breached any policies implemented by PGMALL;
- (c) infringed the Intellectual Property Rights of third parties;
- (d) acted fraudulently;
- (e) misuse or abuse any voucher issued in the Platform;
- (f) involved in any transactions that violate any provisions of the law;
- (g) acted in a manner that is detrimental to the interest of PGMALL and any other users on the Platform;

PGMALL shall, without prior notice to the Seller, have the right to, including but not limited to the following actions:-

- (a) suspend, freeze or terminate any Seller Account without notice;
- (b) withhold any, part or all of the Settlement Amount temporarily;
- (c) limit access of to the Seller Account's features;
- (d) product listing cancellation;
- (e) forfeit Sales Payment;
- (f) place limit on Seller Account privileges;
- (g) report to authorities to procure criminal charges;
- (h) initiate civil actions to claim for damages and all other relevant reliefs;

## 2 Transaction Fee

2.1 PGMALL will charge the Seller a transaction fee for every completed transaction done by the Seller as reflected on the Platform ("Transaction Fee").

2.2 Transaction Fee rate by product category shall be as below:-

Main Category	Transaction Fee (%)
Health & Beauty	5
Kids & Baby	5
Women's Fashion	5
Men's Fashion	5
Electronic Devices	5
Electronic Accessories	5
Home Appliances	5
Kitchen & Dining	5
Home & Lifestyle	5
Books & Media	5
Sports & Travel	5
Groceries & Pets	5
Automotive & Motorbike	5
Gold, Silver & Jewellery	5
<b>E-Tickets/Vouchers</b> E-Vouchers & Top-up Admission Tickets Travel Package Malaysia Accommodations Transportation Malaysia	10

- 2.3 All Transaction Fee shall be exclusive of any sales tax, service tax, and any other duty or taxes that may be imposed by the government (“Tax”).
- 2.4 Any such Tax imposed upon the Transaction Fee shall be paid by the Seller to PGMALL over and above the Transaction Fee provided always that PG MALL has complied with the all prevailing and existing tax laws at the material time.
- 2.5 For the avoidance of doubt, Clause 2.3 and 2.4 above shall not be applicable if the Transaction Fee charged by PGMALL do not attract sales tax by virtue of an exemption pursuant to Section 35 of the Sales Tax Act 2018 and/or service tax by virtue of an exemption pursuant to Section 34 of the Service Tax Act 2018 which shall include any of its latest and updated versions.

### **3 Seller’s Obligations**

- 3.1 Seller shall properly manage and ensure that relevant information such as the price and the details of products, inventory amount and terms and conditions for sale is updated through the Seller Account page and shall not post inaccurate information.
- 3.2 The price of Products for sale will be determined by Seller at its own discretion. Seller may wish to take into consideration all relevant factors, including but not limited to, Transaction Fee, shipping fee and other fees that may apply. The price of a Product and shipping fee shall include the entire amount to be charged to Shoppers such as Tax, tariffs, etc., if any, and Seller shall not charge Shoppers such amount additionally and separately.
- 3.3 Seller shall pay the shipping cost (if any) to PMALL for the order shipped by PG MALL’s preferred delivery company by using PGMALL’s corporate account. The Seller acknowledges that the estimated shipping costs prior to shipment are not binding. Seller agrees that it will be liable for the actual shipping costs determined by the delivery company.
- 3.4 Seller shall allow PG MALL, at its discretion, engage in promotional activities for and on behalf of the Seller to induce transactions between Shoppers and Seller by reducing, discounting or refunding the Transaction Fee; by giving free gifts or in any other ways. In no event, such adjustment or discount to Transaction Fee will affect the originally determined Settlement Amount payable to Seller. For the purpose of promoting the sales of Products listed by Seller, PGMALL may, subject to the Seller’s consent, post such products, at an adjusted price, on third-party websites, such as portal sites and price comparison sites, and other websites, operated by PG MALL and / or its affiliates. For avoidance of doubt, Seller shall be paid in accordance to price given by the Seller with no deductions or set off on any promotions, discount or refunding by PG MALL on the price and Seller shall first approve the contents and artwork of any usage of Seller's Products, brand, image, business and related identification.
- 3.5 Seller shall not sell any age-restricted products to buyer below the minimum age defined in local laws, including but not limited to: tobacco products, tobacco related accessories including e-cigarettes and alcoholic beverages.

### **4 PGMALL’s obligations**

- 4.1 PGMALL shall ensure that all legal provisions and requirements for providing the Platform be complied with.
- 4.2 PGMALL shall on best effort basis take steps to avoid delay in transaction or any disruption to the Platform that may prevent the Shoppers from being able purchase the Products from the Seller.

## **5 - Intellectual Property Rights**

- 5.1 Seller shall ensure that all contents including listings, information, specifications, photographs, and products for sale, as supplied or provided by Seller on the Platform do not infringe or violate trade mark rights, patent rights, copyrights, trade names, domain names, portrait rights, design rights, utility models, trade secrets, know-how, confidential information, database rights, software rights, semiconductor and / or circuit layout rights and all various other intellectual property rights subsisting in any part of the world belonging to third parties.
- 5.2 Seller shall also ensure that the use of such Intellectual Property Rights is with the prior, approval or consent of Intellectual Property Rights' owner. Should there be any proven claims of infringement or violation of Intellectual Property Rights made by any third-party against the Seller's use of Intellectual Property Rights on the Platform, PGMALL may at its sole discretion take down the listing, information, specification, photograph of the claimed products and/or any such infringing materials.
- 5.3 For purposes of promoting the Seller's products or services, information regarding products and services provided by Seller on the Platform may be disclosed to PGMALL 's affiliated third parties, including any platform owned by and / or affiliated to such third party, as well as blogs belonging to other Users of the Platform where disclosure of information is by another User on their blog, provided that such disclosure could only be done after Seller has consented to such disclosure and has approved the contents, artwork and information of such disclosure prior to its disclosure.
- 5.4 Seller shall indemnify and hold harmless of PGMALL from all actions, claims and demands which may be instituted or made against the PGMALL arising from the Seller's unauthorised use of Intellectual Property Rights or violation of any applicable intellectual property laws.
- 5.5 Seller shall notify PGMALL as soon as practicable of any complaints or alleged claims of infringement of Intellectual Property Rights by any third party. All losses and costs to PGMALL arising from the infringement of any Intellectual Property Rights by the Seller shall be fully compensated by the Seller.
- 5.6 Parties shall not, during or after the expiry or termination of this TOS, use the other Party's name (a) in or as the whole or part of its own trademarks, domain names and / or trade names; (b) in a manner which may be confusing, misleading and / or deceptive; and (c) in a manner that disparages the other Party.
- 5.7 Parties agree that this TOS does not give rise to one Party having any legal or beneficial rights, title, interest or claim to Intellectual Property Rights of the other Party. At all times, the Intellectual Property Rights and in particular, brand names of each Party remain the sole properties of that Party.

## **6 Product**

- 6.1 Seller shall submit all new Product for PGMALL's Product Verification Panel ("Panel") to review and approve for online display on the Platform. After Seller has submitted the new Product, the Panel shall respond to the Seller within two (2) business days. If the submission has been approved by the Panel, PGMALL shall display the Seller's Product and to publish on the Platform as directed by Seller. If the request is rejected by the Panel, Seller has to make the necessary amendments or adjustments and resubmit the same for approval.
- 6.2 Seller warrants as follows:
  - a) that the Product listed on the Platform is genuine, authorized, legitimate, does not infringe the Intellectual Property Rights of any third party, and does not violate any applicable and

prevailing laws. Seller shall furnish evidence upon request to prove that Seller is the owner and / or is allowed , permitted and / or authorized to use Intellectual Property Rights embedded in or used in conjunction with the Product listed on the Platform.

- b) that the postings of the Products sold on the Platform are in compliance with all applicable Malaysian laws, including and not limited to the Consumer Protection Act 1999, Food Act 1983 and the Sale of Drugs Act 1952. Seller shall upon request, furnish evidence such as a copy of the relevant certificate or license issued under Malaysian laws, given that Seller possesses the requisite certificate or license. Refer to Appendix 1 for list of prohibited and restricted items, which may be updated from time to time.
- c) that the postings of the Products sold on the Platform are in compliance with applicable advertising standards in Malaysia. Seller shall, where required by applicable laws and regulations, immediately furnish evidence that it has complied with the relevant requirements, such as a copy of the relevant certificate or license issued by the standards body.

6.3 If the Seller violates any of its warranty as provided herein and such violation is not remedied within thirty (30) days of Seller's receipt of written notice thereof from PGMALL, PGMALL may cease all kinds of advertisement listing, information, specifications, photographs, and / or announcement with regards to Seller along with the Product related to Seller's Seller Account and exercise any of the rights provided in Clause 1.6.

## **7 Order Fulfilment**

- 7.1 Upon receipt of the payment from the Shoppers, Seller will receive an auto generated email notification to process the order(s). Seller shall take necessary actions to ensure delivery within Days to Ship. Should the Seller failed to do so without prior written approval from PGMALL, PGMALL shall be entitled to cancel the order on behalf Seller after seven (7) days from the day payment is received from the Shoppers. PGMALL shall impose a cancellation administration fee in the amount equivalent to 5% of the order amount excluding shipping fees on the Seller for every transaction cancelled by PGMALL pursuant to this clause or failure by the Seller to fulfil delivery of the order within Days to Ship.
- 7.2 Seller shall ship and enter delivery information including the name of the delivery company, the tracking number, and other particulars pertaining to the order through the Platform within Days to Ship (DTS), excluding pre-order and cross border orders. Before the Product is shipped, Shopper is given the chance to cancel order with Seller's approval. If the Seller fails to ship out the Product after Days to Ship (DTS), PGMALL may cancel the transaction before the Product has been shipped. PGMALL shall not be responsible or liable for any losses or damages to the corresponding Seller due to such cancellation, provided that PG MALL, its representatives or related personnel has not contributed to such delay.
- 7.3 Seller shall take all reasonable actions to ensure the Shopper receives the Product within the time period (Shipment Estimated Time Arrival) specified on the Product detail page. If Seller fails to deliver the Product within such period or the Product was not received by the Shopper due to, reasons not attributable to the Shopper but due to the Seller's negligence, act or omission, such as delivering to wrong address, the Seller shall bear all liabilities relating thereto.

## **8 Cancellation, Exchange, Return, and Refund**

- 8.1 Shoppers may cancel the purchase at any time before the Product shows "Shipped" status. Once the purchased Product shows "Shipped" status, cancellation will be subjected to Seller's and PGMALL's

approval. In the event there is conflict as to the decision to allow or reject such cancellation, PGMALL's decision shall prevail. Shoppers may report non-arrival, request for the return, or exchange of the Product at any time within Order Finalization Period (OFP). Order Finalization Period (OFP) ends at 24 hours after Shipment Estimated Time Arrival, which is determined by Seller.

- 8.2 With respect to a return-related matters, Seller is required to provide goods return address and contact on any Product sold. Seller agrees to handle all goods return issue and PGMALL shall not serve as handling agent.
- 8.3 After receiving returns-exchange requests from Shoppers, Seller must respond with either approval or rejection within two (2) business days. Should the Seller failed to do so, PGMALL may assume that the Seller has accepted the Shopper's request and shall automatically proceed with the refunds. Once the request for returns-exchange has been followed up by the Seller and the Seller has received the Products returned by the Shopper, Seller shall verify the conditions of returned goods and confirm the returns-exchange is successful. However, in the case where the Seller wishes to dispute Shopper's return of the Products and request for refunds, or exchange, PGMALL may postpone the refunds upon the Seller's requests with evidence on reasonable reason.
- 8.4 Returns costs shall be borne by the party attributable to the returns request, such as:
  - a. Shopper, where the return is due to his / her action, omission and/or change of mind; and
  - b. Seller, where the return is due to the defects in the Product, delivery delay by Seller, and / or delivery of the wrong or different product.
- 8.5 For exchange of the Product(s) due to defects in the Product or delivery of wrong Product, the Shopper must return the Product to the Seller. The Seller will deliver the replacement Product to the Shopper after the Seller receives the returned Product. Seller is obligated to use delivery company that provides tracking system and Seller must inform the new tracking number to the Shopper. For exchange of the Product(s) due to the Shopper's change of his / her mind, the exchange must be pre-approved by the Seller and re-delivery charges will be completely borne by the Shopper. The re-delivery payment charges must be paid by the Shopper to the Seller after the Seller agrees to exchange the Product(s) and Seller has received the return Product(s) from the Shopper.

## **9 Settlement**

- 9.1 Seller shall submit the Seller's business identification information such as a copy of business licenses or company documents, business representative's identity document (My Kad/Passport), and any other required supporting documents by PG MALL, evidencing that the bank account is owned by and in the name of the Seller.
- 9.2 The amount payable by PG MALL to the Seller for successful sale on the Platform ("Settlement Amount") shall be calculated and directly transferred to Seller's registered Bank Account within ten (10) business days after the Order Finalization Period ends.
- 9.3 The Settlement Amount shall be paid in the following manner:
  - a) For all orders where the status have been updated to "Shipment Received" between 6<sup>th</sup> day to the 20<sup>th</sup> day of the same calendar month, the Settlement Amount shall be paid to the Seller on the 1<sup>st</sup> day of the following calendar month;
  - b) For all others where the status have been updated to "Shipment Received" between the 21<sup>st</sup> day of a calendar month to the 5<sup>th</sup> day of the next calendar month, the Settlement Amount shall be paid to the Seller on immediate following the 16<sup>th</sup> day of the calendar month.

## **10 Privacy or Personal Data Protection**

- 10.1 PGMALL views protection of Shoppers' and Sellers' privacy as a very important community principle. User information is stored and processed on computers protected by physical as well as technological security devices.
- 10.2 PGMALL does not sell or lease-out Seller's personal information to third parties for marketing or business reviews purposes without consent from the Seller. Usage of Seller information will be limited to purposes as described herein. Seller can access and modify the information provided to PGMALL and choose not to receive certain communications by signing-in to Seller's account in the Platform.
- 10.3 If PGMALL has reason to believe that any Seller is in breach of any of the terms of this TOS, PG MALL reserves the right to cooperate fully with governmental authorities in the investigation of any potential or ongoing criminal or civil wrongdoing. Further, PG MALL may disclose the Seller's identity and contact information, or such other transaction-related data if requested by a government or law enforcement body as a result of a subpoena or other legal action. PGMALL shall not be liable for damages or results arising from such disclosure, and the Seller(s) agrees not to bring an action or claim against PGMALL for such disclosure.
- 10.4 By agreeing to this TOS, the Seller consents that the personal information collected will be processed in accordance with the privacy policy and the data protection laws of Malaysia.
- 10.5 PGMALL hereby represents, warrants and undertakes to fully comply with the provisions of the Personal Data Protection Act 2010 of Malaysia ("the Act") and any other laws applicable to the processing (as defined in the Act) of any information in respect of commercial transaction, that relates directly or indirectly to an individual who is identified or identifiable from that information or from that and any other information in the possession of PGMALL in connection with this TOS, including any sensitive personal data and expression of opinion about such individual ("Personal Data").
- 10.6 PGMALL agrees to process the Personal Data to which this TOS applies in accordance with the terms and conditions set out in this TOS, and in particular PGMALL agrees that it shall:
- (a) collect Personal Data from individuals and/or third parties pursuant to its obligations under this TOS, PGMALL undertakes and warrants that it shall, as far as practicable, ensure that appropriate consents in accordance with all applicable laws, including without limitation the Act, have been obtained from the individuals and/or third parties, and that proof of such consents shall be produced by PGMALL upon reasonable request by the Seller;
  - (b) process the Personal Data at all times in accordance with the Act and solely for the purposes of fulfilling its obligations under this TOS and in the manner specified from time to time by the Seller in writing and for no other purpose or in any manner except with the express prior written consent of the Seller;
  - (c) in a manner consistent with the Act and with any guidance issued by the Personal Data Protection Commissioner, put appropriate technical and operational processes and procedures in place to safeguard against unauthorised or unlawful processing of the Personal Data and protect the security, integrity, confidentiality of the Personal Data and will not permit any unauthorised access to, or use, disclosure, publication or dissemination of, the Personal Data, PGMALL will use the same degree of care and scrutiny as PGMALL use and to protect and secure its own Personal Data, but in no event will PGMALL use less than a commercially reasonable degree of care;

(d) ensure that PGMALL's personnel (namely employees, representatives, agents and/or subcontractors) are made aware of and are trained in, its obligations under this TOS with regard to the security, handling and protection of the Personal Data and PG MALL shall warrant that all its personnel comply with the Act and prevent any collections, uses or disclosures of Personal Data that may cause PGMALL, directly or indirectly, to violate its obligations under the Act;

(e) except in response to a valid court order, to the extent legally required in response to a request from a law enforcement agency or in order to comply with applicable laws or strictly for the purposes of executing its obligations under this TOS, PGMALL shall not, without the written authority of the Seller and in any such cases only to the minimum extent required, disclose to any third party any Personal Data which has been obtained by it in accordance with the terms and conditions of this TOS. PGMALL shall immediately notify the Seller when it becomes aware that a disclosure of Personal Data may be required in order to comply with applicable laws;

(f) to the extent that PGMALL transfers Personal Data out of Malaysia in accordance with the terms and conditions of this TOS, such transfer shall not be effected without prior written approval of the Seller and subject to any further terms and conditions which the Seller may choose to impose upon PGMALL at the Seller's sole discretion;

(g) if PGMALL receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data or to either Party's compliance with the Act, PGMALL shall immediately notify the Seller and it shall provide the Seller with full co-operation and assistance in relation to any complaints, notice and communications;

(h) in the event of the exercise by Data Subject (as defined in the Act) of any of their rights under the Act in relation to the Personal Data, PGMALL to inform the Seller as soon as possible, and PGMALL further agrees to assist the Seller with all the Data Subject information requests which may be received from any Data Subject in relation to any Personal Data;

(i) in the event of breach of the security of PGMALL's system, servers and/or facilities, or any unauthorised access to, or use and/or disclosure of, the Personal Data ("Security Breach"), while in PGMALL's possession, PGMALL will promptly notify the Seller after PGMALL first learn of or discover the Security Breach.

(j) in the event of a Security Breach, PGMALL will:

- i. use its best efforts to mitigate any harmful effect(s) of the Security Breach;
- ii. use commercially reasonable efforts to make available sufficient resources and data for the Seller to determine the full impact and root cause of the Security Breach;
- iii. fully co-operate with the Seller in investigating the cause(s) of the Security Breach and in providing notice to affected individuals and/or appropriate legal and/or regulatory agencies, as required by the laws; and

(k) allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the Seller or its representatives in order to ascertain compliance with the terms of this TOS.

10.7 PG MALL shall only retain Personal Data for as long as is reasonably necessary for the purposes for which it is disclosed to PG MALL. Following such time, PG MALL shall return or destroy any Personal Data that it has received from the Seller. At the Seller's request, PG MALL shall forthwith provide the Seller with a statutory declaration, sworn by an officer or director of PG MALL, certifying whether its obligations under this clause have been fulfilled.

10.8 Notwithstanding any term in this TOS, both Parties hereto agree to submit and adhere to the privacy laws of Malaysia governed by the Act and any other relevant statute or regulation and this shall accordingly extend to any re-enactment, modification or amendment thereto.

## **11 Content**

11.1 Seller may post reviews, comments, photos and other content; and also submit suggestions, ideas, comments, questions, or other information, so long as the content is not illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties or objectionable and does not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings or any form of "spam." Seller may not use a false e-mail address, impersonate any person or entity, or otherwise mislead as to the origin or other content. PGMALL reserves the right, but not the obligation, to remove or edit reviews of such content, but does not regularly review posted content.

11.2 Subject to the Seller's consent, PGMALL is granted a non-exclusive, royalty-free, and fully sub-licensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content posted by the Sellers throughout the world in any media for the purpose of this TOS. PGMALL is granted the right to use the name that the Seller submitted in connection with such content, provided that the Seller has approved such content, artwork and information prior to its public display by PGMALL. Seller warrants that the Seller owns or otherwise controls all of the rights to the corresponding contents posted in the Platform; that the content is accurate; and that use of the content supplied does not violate any of the terms of this TOS or such other policies implemented by PGMALL on the Platform and will not cause injury to any person or entity. PGMALL has the right but not the obligation to monitor and edit any activity or content.

## **12 Other Businesses**

12.1 PGMALL and Seller's engagement herein is on a non-exclusive basis. Parties other than PGMALL may, operate stores, provide services, sell products or list advertisement on the Platform and the Platform may link to any other platform of affiliated companies and on certain other companies. PGMALL is not responsible for examining or evaluating, and also does not provide any representations or warranties on the Products or businesses or individuals or the contents of their platform. PGMALL does not assume any responsibility or liability for the actions, Product and contents of any such affiliated companies and any other third parties.

12.2 PGMALL is allowed at its own cost participate in digital advertisement at all Seller's retail outlet nationwide in Malaysia as approved by Seller. Parties shall properly manage and ensure that relevant information such as the price and the details of products, and terms and conditions for sales is updated. Seller shall approve the outlet, the designated area in the outlet, the art work and all relevant contents of the advertisement prior to its publication. PGMALL shall furnish Seller with all valid licenses, approvals, consents and relevant documentations pertaining to the advertisement and PGMALL shall adhere to all of Seller's policies and rules towards the installation, maintenance, removal, transfer and all relevant matters concerning the advertisement.

## **13 Access and Interference**

The Platform may contain robot exclusion headers. Much of the information on the sites is updated on a real-time basis and is proprietary or is licensed to PGMALL by the Platform Users or third parties. Seller agrees not to use any robot, spider, scraper or other automated means to access the Platform for any purpose without the prior written permission from PGMALL. Additionally, Seller agrees that it will not:

- a) take any action that imposes or may impose, an unreasonable or disproportionately large load on the Platform's infrastructure;
- b) copy, reproduce, modify, create derivative works from, distribute, or publicly display any content, except for Seller's own information, from the Platform without the prior written permission of PGMALL;
- c) Interfere or attempt to interfere with the proper working of the Platform or any activities conducted on the Platform; or
- d) Bypass PGMALL robot exclusion headers or other measures PG MALL may use to prevent or restrict access to the Platform.

## **14 Indemnity**

- 14.1 Seller shall indemnify, defend and hold PGMALL and its shareholders, directors, officers, employees, agents, affiliates, employees, agents, officers and representatives harmless from any costs, claims, losses, fines, penalties, settlement, damages (either to property or body injury) and/or expenses (including but not limited to all dispute resolution expenses, attorney fees) incurred or suffered by PGMALL attributed by the Seller and/or arising out of any transaction made on the Platform, use or misuse of the Platform, breach of any laws or infringement of any third party rights, any breach by the Seller its obligations under this TOS, provided that the breach is not contributed by the PG MALL, its representatives or its related personnel.

## **15 Disclaimer**

- 15.1 PGMALL shall not be responsible for other Users' content, actions or inactions, or Product listed by other sellers, including content posted by such seller. Seller acknowledges that PGMALL and the Platform are not a traditional online shopping service provider or auctioneer. Instead, PGMALL and the Platform provide an electronic marketplace for Shoppers and Seller to carry out transactions between Shoppers and Seller. PGMALL is only responsible for operating and managing the Platform and making reasonable efforts in order to maintain efficient services on the Platform. PGMALL and the Platform are not involved in the actual transaction between Shoppers and Seller.

- 15.2 PGMALL shall not be responsible for :-

- (a) unauthorized access to or alteration of Seller's transmissions or data, any material or data sent or received or not sent or received, or any transactions entered into through the Platform
- (b) any threatening, defamatory, obscene, offensive or illegal content or conduct of any other party or any infringement of another right, including Intellectual Property Rights.
- (c) any content sent using the communication services and / or included in the Platform by any third party.

- 15.3 PGMALL and the Platform have no control over and do not guarantee the quality, safety or legality of products advertised, the truth or accuracy of Users' content or listings, the ability of Seller to sell products to Shoppers, the ability of Shoppers to pay for Product, or that a Shopper or Seller will actually complete a transaction. PGMALL and the Platform do not transfer legal ownership of products from Seller to the Shopper. Unless Shoppers and Seller agree otherwise, the Shopper will become the Product's lawful owner upon physical receipt of the Product from the Seller. PG MALL cannot guarantee continuous or secured access to its services, and operation of the Platform may be interfered with by numerous factors out of PGMALL's control and PGMALL shall not be liable for any delay in transaction, any disruption to the Platform that is capable of preventing the Shoppers to purchase the Products.

- 15.4 Accordingly, to the extent that is legally permitted, PGMALL is not liable for any loss of money, goodwill, or reputation, or any special, indirect, or consequential damages arising out of Seller's negligent use of the Platform. All materials, information, software and other content on the Platform is on "as is" basis without warranty or conditions of any kind, express or whether implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose, title, non-infringement, security or accuracy. PGMALL has made reasonable efforts to post current and accurate information on the Platform; however, PGMALL assumes no responsibility for any errors, inaccuracies or omissions whatsoever in the information provided by the Seller on the Platform. Under no circumstances will PGMALL be liable for any loss or damage to the Shoppers caused by reliance on information provided by the Seller and obtained through the Platform.
- 15.5 In furtherance to the above, PGMALL shall not, to the full extent permitted by the law and in the absence of any gross negligent and/or wilful act PGMALL, be liable to the Seller in contract, tort or otherwise for any loss of revenue, opportunity, goodwill, reputation or any type of special indirect or consequential loss.
- 15.6 In no event shall PGMALL be liable for any consequential damages of any kind, including those resulting from: (1) Reliance on the materials presented, (2) Costs of replacement Products, (3) Loss of use, data or profits, (4) Delays or business interruptions, and (5) The use of, or inability to use the Platform, whether or not PGMALL has been advised of the possibility of such damages, provided that PGMALL, its representatives or related personnel has not contributed to such damages.

## **16 Limitation of Liability**

- 16.1 Notwithstanding Clause 15 above, if PGMALL is nevertheless found liable to the Seller to the extent permitted by applicable laws, the aggregate liability of PGMALL and its affiliates and its shareholders, directors, officers, employees, agents, affiliates, employees, agents, officers and representatives towards the Seller or anyone claiming through the Seller for all claims arising from contract, tort or equity or any other causes of action shall not exceed RINGGIT MALAYSIA THREE HUNDRED (RM300.00) ONLY.

## **17 Termination**

- 17.1 The Services provided by PGMALL pursuant to this TOS may be terminated forthwith by either Party by giving written notice in any of following events:
- a) If Seller's Seller Account is terminated by PGMALL for whatever reason;
  - b) If the other Party is in breach of any of the Terms and Conditions of this TOS and/or the related Policies imposed by PGMALL from time to time and fails to remedy the same within 60 (sixty) calendar days from the other Party's notice in writing; or
  - c) If either Party is unable to pay its debts or a petition for winding up is presented or it goes into liquidation or judicial management or compounds with its creditors or a receiver generally is appointed over all or any part of its assets or suffers any execution over such assets; or
  - d) If either Party unable comply with, or obtain or maintain any necessary authorizations, licenses or registrations required from the authorities for the performance of its duties as stipulated hereunder.
- 17.2 Notwithstanding anything stated herein, Seller may terminate the Services provided by PGMALL pursuant to this TOS by providing at least thirty (30) days' prior written notice of termination to PG Mall without assigning any reasons.
- 17.3 Upon termination:
- a) Within twenty-four (24) hours from the termination date, PGMALL shall remove all listings,

- Goods and Intellectual Property Rights of the Seller from the Platform;
- b) Within seven (7) calendar days of the termination date, PGMALL shall provide the Seller with a final summary of the total value of Settlement Amount transacted together with the outstanding Settlement Amount. All orders that have yet to be processed by the Seller and that such Product has not been shipped out by the Seller shall be cancelled and any payments received from Shoppers shall be refunded accordingly;
  - c) Within seven (7) calendar days of the termination date as instructed by the Seller, PGMALL shall delete, destroy or purge all photographs and information provided by the Seller pursuant to this TOS

17.4 Notwithstanding any termination for any reason, Parties shall remain responsible for the fulfilment of any claims, payment, debts or matters that by its nature is meant to survive the term of termination.

## **18 Anti Corruption**

18.1 Either Party shall not receive or agree to receive from the other Party or offer or give or agree to give to the other Party and/or any public officials any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the execution of this TOS. A breach of this condition by either Party or by anyone employed by it or acting on its behalf which it has reason to believe has or has attempted to commit an act which is an offence under the Malaysian Anti-Corruption Commission Act 2009 shall entitle the other Party to forthwith terminate the Services at any time by giving immediate written notice to that effect and recover the amount of any loss resulting from such termination.

18.2 Either Party shall comply at all times with the applicable laws in Malaysia including, without limitation to Malaysian Anti-Corruption Commission Act 2009, which shall include any of its latest and updated versions and/or those pertaining to anti-corruption and shall inform the other Party in reasonable manner if it learns, or has any reason to know of any violation of such applicable laws that occurred or may have occurred in performing its obligations under this TOS.

## **19 Miscellaneous**

19.1 If any provision of this TOS is declared void, invalid illegal or unenforceable by any competent Court of jurisdiction or arbitration, such provision shall be deemed severable and the remaining provisions contained herein shall not in any way be affected or impaired thereby.

19.2 Headings are for reference purposes only and do not limit the scope or extent of the relevant section.

19.3 Failure to exercise, or any delay in exercising, at any time, any right or remedy provided under this TOS shall not constitute a waiver of that or any other right to enforce the breach of such provision or any of the provision in this TOS or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of this TOS and it shall not preclude or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this TOS or by law shall preclude or restrict the further exercise of that or any other right or remedy.

19.4 Any dispute, difference or claim between the Parties hereto, arising out of or in any way relating to this TOS, or any breach or alleged breach thereof, shall be settled between the Parties by mutual discussion, negotiation and amicable solution, within 30 (thirty) business days ("Dispute Resolution Period") of such dispute being brought to the notice of the Parties.

- 19.5 Failure to resolve the dispute within the Dispute Resolution Period will be referred to arbitration, in accordance with the arbitration rules of the Asian International Arbitration Centre, by a sole arbitrator. The arbitration proceedings shall be held in Malaysia. The proceedings of the arbitration are to be held in English.
- 19.6 The non-prevailing Party, as determined by the arbitrator, shall pay all reasonable out-of-pocket expenses (including, without limitation, reasonable attorneys' fees) incurred by the prevailing Party, as determined by the arbitrator, in connection with any dispute unless the arbitrator directs otherwise.
- 19.7 Nothing shall preclude a Party from seeking interim or permanent equitable or injunctive relief, or both, from any court having jurisdiction to grant the same. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the Parties to pursue any remedy for all claims through the arbitration described in this Clause.
- 19.8 Each Party may only assign any rights or obligations to its affiliates, subject to the terms of this TOS with prior written consent of the other Party.
- 19.9 Neither Party shall be liable for any loss, damage or penalty resulting from delays or failures in the performance of their obligations under this TOS if the delay or failure results from any act of God, war, riot, strike, lockout, industrial action, fire, flood, drought, storm, epidemic, pandemic, technical or system failure, governmental laws or regulations, or any other event beyond the reasonable control of the Parties ("Force Majeure Event(s)"), provided that the Party affected by Force Majeure Event(s) has complied with its obligation under Clause 19.11 below.
- 19.10 The Parties hereto agree to notify the other Party promptly of any such circumstances delaying its performance and to resume performance as soon thereafter as is reasonably practicable. If any Force Majeure Event shall continue for a period exceeding fourteen (14) days, then either Party may at any time thereafter, upon giving notice to the other, elect to terminate the Services.
- 19.11 For the avoidance of doubt, the Parties shall for the duration of such Force Majeure Event(s), be relieved of any obligation under this TOS as is affected by the Force Majeure Event(s) except that the provisions of the TOS shall remain in force with regard to all other obligations under this TOS which are not affected thereby.
- 19.12 The Parties shall, during the term of this TOS and at any time after its termination, not exploit or disclose to any third party any Confidential Information concerning the relations between the Parties, or any confidential information concerning the business and the operating procedures of the Seller or other confidential information which has been obtained as a result of entering into this TOS, except to the extent that such information is in the public domain otherwise than as a result of breach of the provisions of this Clause, provided always that this Clause shall not prevent disclosure of Confidential Information in compliance with any orders from the authorities or to the Party's professional service provider such as lawyers, auditors and consultants.
- 19.13 Parties' engagement under this TOS is on a non-exclusivity basis and the Seller may at any time as it deems fit appoint or engage other entities to provide similar services at its absolute discretion and nothing in this TOS shall create any partnership, joint venture, agency, franchise or sales representative relationship between the Parties.
- 19.14 All schedules and/or appendixes hereto shall be taken, read and construed as an integral part of this TOS. In the event of inconsistency between the Terms and Conditions of this TOS and the schedules

and/or appendixes, the Terms and Conditions of this TOS shall prevail.

19.15 This TOS and any updated version of this TOS duly communicated contains the entire agreement between the Parties and supersedes all previous agreements, arrangements and/or understanding between the Parties, and may not be modified or amended except by an instrument in writing signed by the duly authorized representatives of the Parties.

19.16 Time, whenever mentioned in this TOS, shall be of the essence.

19.17 Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa.

19.18 Notices, request or demands.

- (a) Any notice required to be served by either Party hereto on the other Party shall be in writing and shall be deemed sufficiently served if sent by registered post addressed to such other Party at its respective address stated herein or at its last known address in Malaysia or sent by email to the last known email address provided by the Party
- (b) Any notice, demand or request delivered personally shall be delivered to the relevant address specified herein or such other addresses subsequently discovered thereof and shall be deemed to be given at the time of such delivery.
- (c) Any notice, demand or request dispatched by post shall be deemed to have been given forty eight (48) hours after posting .

19.19 Any reference in this TOS to “writing” or cognate expressions includes a reference to facsimile transmission, letter, email or comparable means of communication.

19.20 Each Party acknowledges that, in entering into this TOS, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

**20 Definition**

<b>Confidential Information</b>	-	means any information which is disclosed by a Party to the other Party pursuant to or in connection with this TOS or obtained or received by a Party as a result of entering into or performing its obligations under this TOS and the negotiations relating to, or the provisions or subject matter of this TOS, whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such, and shall exclude information that is readily available from public domain or received from a third party prior to the disclosure by the Party
<b>Days to Ship</b>	-	means three (3) working days from the date payment status shows “payment accepted”.
<b>Intellectual Property Rights</b>	-	all trade mark rights, patent rights, copyrights, trade names, domain names, portrait rights, design rights, utility models, trade secrets, know-how, confidential information, database rights, software rights, semiconductor and / or circuit layout rights and all various other intellectual property rights
<b>Platform</b>	-	means PGMALL mobile applications and PGMALL website where the advertising and business activities, including selling and buying of Seller’s Products, are being conducted
<b>Product</b>	-	means the Seller’s product for sale as posted on the Platform
<b>Settlement Amount</b>	-	refers to the amount payable to Seller after deducting Transaction Fee and Tax (if applicable)
<b>Shipment Estimated Time Arrival</b>	-	means the estimated time for delivery of the Product to the Shopper by the assigned delivery company.
<b>Shoppers</b>	-	means the purchasers of the Products who make the purchase through the Platform
<b>User</b>	-	means any party using the Platform

## APPENDIX 1

### PROHIBITED AND RESTRICTED ITEMS

Type	Particulars and Examples
1. Tobacco, tobacco-related products and nicotine products	(a) Cigarettes including kretek, cigars and e-cigarettes (b) Nicotine liquids (c) Non-SIRIM certified kits (d) Atomisers, tanks, mods and other accessories (e) Tobacco or herb grinder
2. Alcoholic drinks	(a) A valid license must be submitted to, and approved by, PGMall (b) Wine, beer, champagne and other spirits which subject to terms and conditions
3. Pharmaceutical products	(a) Pharmaceutical products containing substances banned by the Ministry of Health including slimming pill, sensual pills, etc (b) Unregistered pharmaceutical products where such products require registration
4. Medical devices	(a) Unregistered medical devices (b) HIV test kits, virus test kits (c) Dental medical devices including dentist equipment, teeth implants, etc (d) Infusion and protective instruments including syringes, IV tubing, etc (e) Medical imaging equipment including x-ray machine, etc (f) Surgical equipment including bone wax, implantable bone screw, etc
5. Drugs	(a) Natural drug including marijuana, opium, poppy seed, etc (b) Steroids including testosterone, nandrolone, trenbolone, etc (c) Drug paraphernalia including bong, vaporizer, glass pipe, etc (d) Drug packaging including marijuana leaf images or text, etc (e) Illicit drugs (f) Synthetic drugs (g) Drug precursors
6. Adult materials	(a) Sex product including sex dolls, realistic looking baby doll, sadomasochism products, used underwear, etc (b) Information containing profane or vulgar language (c) Items depicting or suggestive of bestiality, rape sex, incest or sex with graphic violence including pornography, adult video game, adult service, child pornography, etc
7. Weapons	(a) Spear and spear head, tear gas spray, pepper spray, chain whip, batons, nightsticks, truncheons, catapult, knives longer than 7.6 cm (3 inches), sword, dagger, concealed knives and weapons, automatic knife, lock knife, wasp knife, etc (b) Throwing knife, bayonet, etc (c) Bow and arrows, crossbows, airsoft guns, blaster guns, slingshots (for sports purposes), etc (d) Other prohibited weapons
8. Firearms and ammunitions	(a) Firearms, munitions, military ordnance and heavy weapons including heavy ammo weapons, metal bullet, bomb, blank and dummy cartridges, other ammunition, etc (b) Replica and other firearms including airsoft gun, paintball guns (require license if imported), guns and accessories, tear gas gun, cap gun, starting pistol, other lethal guns, antique firearms, toy guns (must not resemble real gun), foam-darts gun (must not resemble real gun) (c) Firearm accessories including outside appurtenances, inside accessories, etc
9. Toys	(a) Toys without Malaysian Conformity (MC) mark (b) Realistic replicas of guns and accessories

10. Animal and wildlife products (Flora and Fauna)	(a) Wildlife animals (b) Products made using wildlife animals (c) Prohibition only for unfinished or raw wood including timber logs, veneer sheet, sawn wood, etc (d) Hunting and processing machine
11. Food	(a) Expired food items (b) Food containing medical claims or health benefits not allowed by the Ministry of Health (c) Noxious food items including food which contains any prohibited substances, etc (b) Non-pasteurized dairy products (c) Wild mushrooms (d) Other food items hazardous to human health
12. Collection, artifacts and precious metals	(a) Precious metals including gold bar, silver bar, platinum bar, conflict minerals, conflict diamond, etc (b) Nationally protected artifacts
13. Product infringing a third party's Intellectual Property Rights	(a) Replicas, counterfeits or pirated versions of an original products
14. Telecommunications equipment	(a) Non-standard or non-certified telecommunications equipment which do not comply with Malaysian Communications and Multimedia Commission (MCMC)
15. Electric and electronics equipment	(a) Non-standard or non-certified electric and electronics equipment which do not comply with Malaysian Communications and Multimedia Commission (MCMC) (b) Electronic surveillance equipment and other similar devices including cable TV descramblers, radar scanners, etc
16. Gambling products	(a) Gambling and gaming equipment including slot machine, scratch cards and lottery, etc (b) Online gambling services
17. Uncertified Halal products	(a) Halal products or services which do not comply with the Department of Islamic Development Malaysia's regulations
18. Financial products	(a) Products and services requiring license from Bank Negara including insurance, unit trust, stockbroking, FOREX trading, loans, etc (b) Store valued cards, digital currency or credit cards, etc (c) Lottery tickets
19. Used and rejected items	(a) Used cosmetics (b) Recalled items
20. Coin and currency	(a) E-currency, crypto currency or token, counterfeit currency, etc (b) Counterfeit currency machine
21. Other items prohibited by the laws	(a) Government and Law Enforcement items, Offensive material and information detrimental National Security, multi-level marketing (MLM) schemes or pyramid schemes (b) Human parts or remains and child exploitation (c) Any dangerous, hazardous or combustible materials (d) Any items which is prohibited by any law and regulations

\*The list is not exhaustive and subject to be updated from time to time.