

# NEARST SHOPKEEPER TERMS AND CONDITIONS

As of 31.10.2019

## IMPORTANT NOTICE

These terms and conditions (the “**Terms and Conditions**”) set out the basis on which we, NearSt Limited (“**we**”, “**us**” or “**NearSt**”), provide our services to you (“**you**”, “**your**” or “**the Shop**”) through the NearSt Website (as defined below).

Please carefully read these Terms and Conditions before signing up to the NearSt service. We recommend that you print and keep a copy of these Terms and Conditions for future reference.

These Terms and Conditions form part of each individual agreement (the “**Agreement**”) between NearSt and the shops that use our services to supply goods to customers of the Website.

The basis on which any personal data we collect from you, or that you provide to us via the Website, is governed by our privacy policy which can be found here <https://near.st/privacy>.

Any changes we may make to these Terms and Conditions in the future will be posted on this page and, where appropriate, notified to you via e-mail or via post at the address provided by you. Please check back to this page frequently to see whether any updates or changes to these Terms and Conditions have been implemented.

**If you do not agree to these Terms and Conditions, you must not use our Website.**

## 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Terms and Conditions:

- 1.1.1 “**Customer**” means a person who uses the Website or Platform Partners to search for a product;
  - 1.1.2 “**NearSt Plus**” means NearSt’s premium subscription service offering additional functionality beyond NearSt’s base offering, as set forth in **clause 3** below;
  - 1.1.3 “**NearSt Services**” means the services supplied by NearSt through the Website which provides the means for the Shop to display information relating to the availability of Products on the Website or on Platform Partners, and to communicate with Customers who use the Website (directly or via Platform Partners) to search for Products;
  - 1.1.4 “**Online Payment Provider**” means Stripe Payments UK Ltd whose registered office is at 7th Floor, The Bower Warehouse, 211 Old Street, London EC1V 9NR or such other payment provider nominated by NearSt from time to time which provides NearSt with the ability to accept credit and debit card payments on the Website;
  - 1.1.5 “**Platform Partners**” means third party online search engines, e-commerce platforms, or other online services with whom NearSt has entered into an agreement to display and/or promote Products;
  - 1.1.6 “**Product**” means a product or products which you have indicated to us, via the information uploaded to the Shop’s inventory system, that you sell and which you are able to sell to a Customer; and
  - 1.1.7 “**Website**” means NearSt’s website <http://near.st> and any NearSt mobile application through which access is made to our website or services or any replacement or updated website as nominated by NearSt from time to time.
- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.
- 1.3 A reference to **writing** or **written** in these Terms and Conditions includes e-mail.

1.4 Headings are included for convenience only and will not affect the interpretation of the Agreement.

## **2. INFORMATION ABOUT NEARST**

2.1 NearSt is a private limited company registered in England and Wales with company number 09524010, whose registered office is at 51 Hoxton Square, London, N1 6PB.

2.2 NearSt's Value Added Tax ("**VAT**") number is GB 219 9102 09.

2.3 The NearSt Services provide the means for you to provide information relating to the availability of Products to Customers who use the Website or Platform Partners to search for Products.

## **3. OUR CONTRACT WITH YOU**

3.1 By accepting these Terms and Conditions via the Website (whether now or in the future) you warrant that:

3.1.1 you are legally capable of entering into binding contracts; and

3.1.2 you are at least 18 years old.

3.2 Furthermore you acknowledge and agree that the sale of certain items (including, but not limited to, alcohol, cigarettes, fireworks, intoxicating substances, DVDs, knives or dangerous items, poisons and pharmaceuticals) is illegal to certain persons. It is the responsibility of the Shop to validate the age of any persons attempting to collect or purchase any such restricted item from you at the point of collection.

3.3 If the Shop subscribes to NearSt Plus, the following additional terms shall apply:

3.3.1 NearSt shall list the Shop's current inventory of Products on Google as paid product ads, and in the future may provide other services for the same fees and commissions (the "**Fees and Commissions**") set out in the Front Sheet;

3.3.2 NearSt shall provide estimated results in the Shop's dashboard accessible on the Website (including such metrics as clicks and footfall); and

3.3.3 the Shop is responsible for updating, activating and deactivating the NearSt Plus service each week via their MyShop NearSt management page available on the Website, and any changes must be made before Sunday at 11:59 pm to take effect the following week. By way of illustration, if the Shop is running a £3 per day campaign, it will continue to run such campaign in blocks of 1-week until such time as NearSt is informed otherwise. If the Shop deactivates the campaign on Monday morning at 8:00 am, the campaign will continue to run until Sunday 11:59 pm and the Shop will be charged for the full week accordingly.

## **4. OUR COMMISSIONS, CHARGES AND FEES**

### **4.1 Commission and Fees**

4.1.1 The Shop will pay the Fees and Commissions (at the rates set out in the Front Sheet and/or the Agreement.

4.1.2 NearSt may change the rate of any Fees and Commissions payable by the Shop in its absolute discretion. NearSt will use its reasonable endeavours to notify you of any such changes at least fourteen working days ahead of the changes.

4.1.3 Where the changes referred to in **clause 4.1.2** will increase the amount regularly payable by you to NearSt, NearSt will not charge you the additional amount until you have agreed to the changes. NearSt reserves the right to terminate this Agreement and suspend your use of the NearSt Services if you do not agree to the changes.

### **4.2 Additional costs**

4.2.1 You assume full and sole responsibility for any additional or associated costs that you may incur in connection with or as a result of your use of the Website and the NearSt Services, including without limitation, costs relating to the servicing, repair or adaptation of any equipment, software or data that you may own, lease, license or otherwise use in connection with the Website or your use of the NearSt Services.

## **5. OUR WEBSITE**

### **5.1 Accessing the Website**

- 5.1.1 You may access some areas of the Website without registering your details with NearSt.
- 5.1.2 We may update the Website from time to time, and may change the content at any time. However, please note that any of the content on the Website (or any content appearing via NearSt on Platform Providers) may be out of date at any given time, and we are under no obligation to update it.
- 5.1.3 We do not guarantee that the Website, or any content appearing on it or on Platform Providers, will be free from errors or omissions.
- 5.1.4 We do not guarantee that the Website, or any content appearing on it or on Platform Providers, will always be available or be uninterrupted. Access to the Website is permitted on a temporary basis. NearSt may suspend, withdraw, discontinue or change all or any part of the Website functionality without notice. NearSt will not be liable to you if for any reason the Website, or access to Platform Providers via the Website, is unavailable at any time or for any period.
- 5.1.5 You are responsible for making all arrangements necessary for you to have access to the Website. You are also responsible for ensuring that all persons who access the Website through your internet connection are aware of these Terms and Conditions and that they comply with them.
- 5.1.6 You must not misuse the Website, including but not limited to, hacking or "scraping".

### **5.2 Linking to the Website**

- 5.2.1 You may link to the home page of the Website and your own shop page on the Website, provided you do so in a way that is fair and legal and does not damage the reputation of NearSt or take advantage of it.
- 5.2.2 You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists.
- 5.2.3 You must not establish a link to the Website on any website which is not owned by you; *provided however* that you can link to the Website on established search engines, including but not limited to Google and Bing.
- 5.2.4 The Website must not be framed on any other site, nor may you create a link to any part of the Website other than the home page, the Shop's page or a Product page.
- 5.2.5 NearSt reserves the right to withdraw linking permission without notice.

### **5.3 Third party links**

- 5.3.1 Where the Website contains links to other sites and resources provided by third parties, these links are provided for your information only. NearSt make no representation about those sites or resources.
- 5.3.2 NearSt has no control over the contents of those sites or resources and if you decide to access any of them by clicking on the links, you do so entirely at your own risk.

### **5.4 Intellectual Property Rights**

- 5.4.1 NearSt is, to the best of its knowledge, the owner or the licensee of all intellectual property rights on the Website, and in the material published on it. Those works are protected by copyright laws and treaties around the world. All such rights are reserved.
- 5.4.2 You may print off one copy, and may download extracts, of any page(s) from the Website for your personal use and you may draw the attention of others within your organisation to content posted on the Website.
- 5.4.3 You must not modify the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text.
- 5.4.4 The status of NearSt (and that of any identified contributors) as the authors of content on the Website must always be acknowledged.

- 5.4.5 You must not use any part of the content of the Website for commercial purposes without obtaining a licence to do so from us or our licensors.
- 5.4.6 Other than in accordance with this **clause 5.4** the Website may not be used, and no part of the Website may be reproduced or stored in any other website or included in any public or private electronic retrieval system or service, without the prior written consent of NearSt.
- 5.5 Please refer to NearSt's privacy policy for important information about the ways in which your data is handled by NearSt.

## **6. INVENTORY DATA**

### **6.1 The Shop's inventory**

- 6.1.1 Upon entering into the Agreement to use the NearSt Services, you will be required to add the Shop's current inventory of Products to the Website by providing an up-to-date database file to NearSt.
- 6.1.2 You warrant that the contents of the database are accurate to the best of your knowledge at the time of providing it to NearSt.
- 6.1.3 You agree to notify NearSt via email at [support@near.st](mailto:support@near.st) or by post at 51 Hoxton Square, London, N1 6PB of any significant changes to the Products.
- 6.1.4 You are responsible for the accuracy of the quantity of Products listed by you on the Website (and via NearSt on Partner Platforms).
- 6.1.5 It is acknowledged that due to possible limits of the capabilities of the Shop's inventory system, the exact quantity of Products the Shops has in stock may be different to the quantity according to the database file provided to NearSt. However, if NearSt becomes aware of any suspected attempt by you to manufacture falsely the Shop's current inventory as used for the Website, whether in an attempt to improve the Shop's visibility on the Website or otherwise, NearSt will be entitled to terminate the Agreement immediately without notice.
- 6.1.6 The Shop is responsible for complying at all times with all applicable laws and regulations and trading standards requirements in force from time to time which relate to the Products and to the sale of the Products. NearSt accepts no responsibility for the quality of Products available through the Website.
- 6.1.7 All Products offered for sale by the Shop are not replica or design copies of any other brand, designer or manufacturer.
- 6.1.8 Where applicable, the prices of Products provided to NearSt must be inclusive of VAT and all other taxes.

## **7. EXCLUSION AND LIMITATION OF LIABILITY**

- 7.1 NearSt provides the NearSt Services on the basis that, to the maximum extent permitted by law, we exclude all representations, warranties, conditions, undertakings and other terms in relation to the Website and the NearSt Services (including any representations, warranties, conditions, undertakings and other terms which might otherwise apply to the Website or the NearSt Services, or be otherwise implied or incorporated in to these Terms and Conditions, by statute, common law or otherwise).
- 7.2 Nothing in these Terms and Conditions shall limit or exclude NearSt's liability for death or personal injury caused by its negligence or fraud or fraudulent misrepresentation, or any other liability which cannot be excluded by law.
- 7.3 Subject to **clause 7.1**, NearSt shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
  - 7.3.1 loss of profits;
  - 7.3.2 loss of sales or business;
  - 7.3.3 loss of agreements or contracts;
  - 7.3.4 loss of anticipated savings;
  - 7.3.5 loss of or damage to goodwill;

7.3.6 loss of use or corruption of software, data or information; and

7.3.7 any indirect or consequential loss.

7.4 Subject to **clause 7.1**, NearSt's total liability to the Shop, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to £1,000, or 50 per cent of the average annual charges (calculated by reference to the charges in successive 12 month periods from the date of this Agreement) paid by the Shop under this Agreement, whichever is lower.

## 8. TERMINATION

8.1 Without prejudice to either party's right to terminate the agreement under the remainder of this **clause 8**, this Agreement shall continue in force unless and until either party notifies the other in writing via email at [support@near.st](mailto:support@near.st) or by post to 51 Hoxton Square, London, N1 6PB giving not less than one week's notice.

8.2 Without prejudice to any other provisions in this Agreement, NearSt may immediately suspend provision of the NearSt Services or terminate the agreement with you without liability to NearSt by notifying you in writing if:

8.2.1 you commit a material breach of these Terms and Conditions (including a material breach of any other policies which are provided on the Website) and if the breach is capable of remedy, you fail to remedy the breach within 14 days of a written notice from us to do so;

8.2.2 you fail to pay any Commissions, charges or fees payable to NearSt under the terms of the agreement within seven working days of its due date for payment;

8.2.3 you are the subject of a bankruptcy order, or become insolvent, or make any arrangement or composition with or assignment for the benefit of your creditors, or go into voluntary liquidation or compulsory liquidation, or a receiver or administrator is appointed over your assets; or

8.2.4 in NearSt's sole discretion, the Shop's eligibility or suitability to use the Website and the NearSt Services, changes (including the Shop's inability to maintain a suitable quality of inventory).

8.3 In case of a termination of this Agreement pursuant to **clause 8.2.4**, you shall be given 30 days to remedy the situation. If, in the reasonable opinion of NearSt, the situation is not cured within 30 days and NearSt terminates this Agreement, you shall be entitled to either (a) a 75% refund of the one-time sign up fee detailed in the Front Sheet if the termination occurs within one month of the date of this Agreement or (b) a 0% refund of the one-time sign up fee detailed in the Front Sheet if the termination occurs after one month of the date of this Agreement.

8.4 Termination of the Agreement will not affect any accrued rights or liabilities of either party nor will it affect the coming into force, or the continuance in force, of any provision of the Agreement which is expressly or by implication intended to come into or continue in force after such termination.

8.5 Upon termination of the Agreement or suspension of the NearSt Services you must immediately destroy any downloaded or printed extracts from the Website.

## 9. MARKETING

9.1 You shall permit, comply and co-operate with all activities undertaken by NearSt to promote, sell or market the Products, in such form and manner as NearSt in its sole discretion deems appropriate, whether directly through the Website, through any offline publications produced by NearSt, or through websites or offline publications not produced, owned or operated by NearSt, including the Partner Platforms.

9.2 The Shop grants to NearSt a non-exclusive, perpetual, irrevocable, royalty-free and worldwide licence to use, disclose and distribute any information, data, comments, or images provided by you to NearSt for any purpose (including disclosing information to third party service providers so that they can contact you directly about their products and/or services). You hereby waive your rights to be acknowledged as the author of your Shop information and to object to the use, in whatever form, of your Shop information by NearSt in relation to the Website or the NearSt Services.

## 10. CONFIDENTIALITY

10.1 The Shop undertakes that it will not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of NearSt, except as permitted by

**clause 10.2.** For the avoidance of doubt, “**confidential information**” shall include any information that was reasonably conveyed as being confidential when shared by NearSt with the Shop.

- 10.2 The Shop may disclose NearSt’s confidential information:
- 10.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Shop's rights or carrying out its obligations under or in connection with this Agreement. The Shop shall ensure that its employees, officers, representatives or advisers to whom it discloses confidential information comply with this **clause 10**; and
- 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 The Shop will not use NearSt’s confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## **11. ADDITIONAL TERMS**

### **11.1 Force Majeure**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

### **11.2 Privacy policy**

NearSt is committed to protecting your privacy and security. All personal data that we collect from you will be processed in accordance with our privacy policy. You should review our privacy policy which is incorporated into these Terms and Conditions by this reference and which is available at <https://near.st/privacy>.

### **11.3 Severability**

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

### **11.4 Entire agreement**

These Terms and Conditions and any document or policy expressly referred to in them constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

### **11.5 No waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **11.6 Assignment**

You may not transfer any of your rights or obligations under the Agreement without NearSt’s prior written consent. We may transfer any of our rights or obligations under this Agreement without your prior written consent to any of our affiliates or any business that we enter into a joint venture with, purchase or are sold to.

### **11.7 Governing Law and Jurisdiction**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England. The courts of England shall have exclusive jurisdiction over any dispute, for which purpose the parties irrevocably agree to submit to such jurisdiction.