



Contribulet Merchant Terms and Conditions

Effective August 20, 2018

PLEASE READ THESE TERMS OF USE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, OBLIGATIONS, AND AVAILABLE REMEDIES RESULTING FROM YOUR USE OF THE SERVICES. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS AS DESCRIBED BELOW.

1. YOUR ACCEPTANCE OF THE TERMS

Please be aware that these Terms and Conditions constitute a binding legal agreement between you and Contribulet, Inc. (hereafter referred to as “CI”) outlining your legal rights, obligations, and remedies arising from registering with CI as a MERCHANT. By completing the on-line MERCHANT registration process and downloading/ installing the Contribulet App from the Clover App Market, you (the “MERCHANT”) signify that you have read, understand, and agree to be bound by these Terms and Conditions, and by the terms of CI’s Privacy Policy <https://www.about.contribulet.com/privacy-policy> which provides information concerning our collection and use of your personal information. These Terms and Conditions apply to anyone who accesses the CI software. By accessing the MERCHANT section of the CI software and/or using the Contribulet App on the Clover System, you are indicating your acceptance of the Terms and Conditions and Privacy Policy, including any dispute resolution, arbitration, limitation of damages, and choice of law provisions.

2. DEFINITIONS

Automated Clearing House (ACH)	An electronic network for financial transactions in the United States. ACH processes large volumes of credit and debit transactions in batches. ACH credit transfers include direct deposit, payroll and vendor payments.
Amount Paid	The amount a purchaser pays for each e-Gift Card.
Customer Data	All identifiable information about purchasers generated or collected by CI or MERCHANT, including, but not limited to, purchaser’s name, shipping addresses, email address, phone numbers and financial transaction data.
Device	Mobile, hand-held electronic device for redeeming e-Gift Cards or Vouchers.
Donation Amount	The cash value of the donation amount from the e-Gift Card or Voucher.



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Donation Percent	The percent of sales from the purchased e-Gift Card or Voucher that will be donated by the MERCHANT to the fundraising event.
Fundraising Event Period	The duration of the fundraising event or program.
e-Gift Card	A digital certificate (\$) that can be reloaded with more money during and after the Fundraising Event Period. An e-Gift Card can be used to purchase products and/or services offered by the business.
Maximum Number of e-Gift Cards or Vouchers	The maximum number e-Gift Cards or Vouchers CI is authorized to sell on behalf of the MERCHANT.
Reloading	Adding additional funds to an existing e-Gift Card.
Remittance Amount	The \$ amount due to a MERCHANT from the sale of an e-Gift Card or Voucher. The Remittance amount will be equal to the purchase amount, less 5% (Credit Card processing and handling), less the donation % (percent agreed upon by the MERCHANT) only when the e-Gift Card or Voucher is purchased during the Fundraising Event Period.
Voucher	A digital certificate for a specific amount (\$), product, or service that must be redeemed in a single visit.

3. E-GIFT CARD & VOUCHER PROGRAM

- a. CI is authorized to promote and sell e-Gift Cards or Vouchers¹ on MERCHANT's behalf for the agreed upon fundraising event(s) and/or program(s) subject to the terms of this Agreement. The e-Gift Card and/or Voucher from the MERCHANT will be sent to the purchaser electronically once payment is received. The purchaser will then redeem the e-Gift Card or Voucher with the MERCHANT by presenting it on their mobile device for manual redemption or redemption through the business's POS system². The MERCHANT is the issuer of the e-Gift Card(s) or Voucher(s).
- b. MERCHANT shall specify the Maximum Number of e-Gift Cards or Vouchers to be sold.

¹ The option to create and sell e-Gift Cards or Vouchers is dependent on the MERCHANT's POS System, Typically, only the e-Gift Card option will be available (default setting) for most MERCHANTS. The Voucher option will be available in select situations based on the POS System's functionality.

² Contribulet is working with different POS manufactures to integrate the Contribulet App with their POS system. E-Gift Card or Voucher redemption on compatible POS systems involves scanning the e-Gift Card or Voucher QR code/barcode displayed on the customer's smartphone or device.



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- c. CI reserves the continuing right to reject or discontinue any MERCHANT e-Gift Card or Voucher Offering, at any time and for any reason at CI's sole discretion. Termination of the e-Gift Card or Voucher will result in the removal of all references to the MERCHANT's business along with any associated URL or social media links.
- d. MERCHANT shall honor the e-Gift Card(s) and/or Voucher(s) for the MERCHANT's business. When an e-Gift Card is redeemed, MERCHANT AGREES TO REDEEM THE E-GIFT CARD FOR THE FULL-FACE VALUE shown on the e-Gift Card or Voucher.
- e. MERCHANT is responsible for all customer service for goods and/or services purchased from MERCHANT.
- f. If MERCHANT terminates the Agreement with CI, MERCHANT shall honor all purchased e-Gift Cards and/or Vouchers for MERCHANT's business according to the terms of this Agreement.

4. PAYMENT

- a. CI will pay MERCHANT for each properly activated e-Gift Card and Voucher sold on MERCHANT's behalf for which a purchaser has fully paid Contribulet, less 5.0% of total sales (for credit card processing and handling fees), and less the agreed upon donation amount (the donation amount only applies when the e-Gift Card or Voucher is purchased during the Event Fundraising Period). If an e-Gift Card is reloaded after the Fundraising Event Period has ended, CI will pay the Merchant 95% of the sales amount added to the e-Gift Card.
- b. MERCHANT is registered for sales and use tax collection purposes and shall be responsible for paying all sales and use taxes related to the goods and services sold. The portion which is donated to a non-profit organization is tax deductible. CI will provide the receipt and evidence for MERCHANT.
- c. For the avoidance of confusion, and as an example: A customer purchases an e-Gift Card or Voucher for \$50 during the Fundraising Event Period and MERCHANT agrees to donate 20% of the sales revenue (\$10). After subtracting the sales credit card processing and handling fees of 5%, CI will disperse \$47.50 in aggregate - \$10 to the fundraising organization (donation) and \$37.50 to the MERCHANT (Payment for goods or services).
- d. CI is authorized to initiate ACH credit transaction entries to MERCHANT's depository account at the depository financial institution as provided to CI by MERCHANT in writing ("MERCHANT Bank Account"). Only in the event of an error, CI is authorized to initiate debit entry adjustments to the MERCHANT Bank Account to correct any error. MERCHANT hereby acknowledges that CI's origination of all ACH transactions to MERCHANT Bank Account must comply with provisions of U.S. law. ACH payments take up to five (5) business days to become available in the MERCHANT Bank Account after processing.



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5. CUSTOMER DATA RESTRICTION

MERCHANT shall use Customer Data only to fulfill its redemption obligations in connection with the MERCHANT Offering. MERCHANT represents, warrants and covenants that it will not resell, broker or otherwise disclose any Customer Data to any third party, in whole or in part, for any purpose, unless required by applicable law.

6. TERM AND TERMINATION

This Agreement will continue in effect until terminated by either party in accordance with this Section ("Term"). CI is authorized to terminate this Agreement, at any time for any reason, upon written notice to MERCHANT. MERCHANT is authorized to terminate this Agreement upon seven (7) business days prior written notice to CI. Termination of this Agreement will not in any way affect MERCHANT's obligation to redeem any e-Gift Card or Voucher according to the terms of this Agreement, including the obligation to honor the e-Gift Card or Voucher. Provisions in this Agreement that are intended to survive termination will continue in full force and effect after the Term.

7. INDEMNIFICATION

To the extent allowed under applicable law, MERCHANT agrees to defend, indemnify and hold CI, its affiliated and related entities, and any of its respective officers, directors, agents and employees, harmless from and against any claims, lawsuits, investigations, penalties, damages, losses or expenses (including but not limited to reasonable attorneys' fees and costs) arising out of or relating to any of the following: (a) any breach or alleged breach by MERCHANT of this Agreement, or the representations and warranties made in this Agreement; (b) any claim for state sales, use, or similar tax obligations of MERCHANT arising from the sale and redemption of an e-Gift Card or Voucher; (c) any claim by any local, state, provincial, territorial or federal governmental entity for unredeemed e-Gift Cards/Vouchers or unredeemed cash values of e-Gift Cards/Vouchers or any other amounts under any applicable abandoned or unclaimed property or escheat law, including but not limited to any claims for penalties and interest; (d) any claim arising out of a violation of any law or regulation by MERCHANT or governing MERCHANT's goods and/or services; (e) any claim arising out of MERCHANT's violation of law or regulation governing the use, sale, and distribution of alcohol; (f) any claim by a purchaser or anyone else arising out of or relating to the goods and services provided by MERCHANT and/or pick up of the goods and services at the location such goods and services are redeemed, including but not limited to, any claims for false advertising, product defects, personal injury, death, or property damages; (g) any claim by a purchaser for the Amount Paid; (h) any claim arising out of MERCHANT's misuse of Customer Data, or any violation of an applicable data privacy or security law; and (i) any claim arising out of MERCHANT's negligence, fraud or willful misconduct. CI maintains the right to control its own defense and to choose and appoint its own defense counsel, regardless of the presence or absence of a conflict of interest between CI and MERCHANT.



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MERCHANT's duty to defend and indemnify CI includes the duty to pay CI's reasonable attorneys' fees and costs, including any expert fees.

8. LIMITATION OF LIABILITY

POS MANUFACTURER IS NOT RESPONSIBLE AND DOES NOT HAVE ANY LIABILITY FOR THE CONTRIBUTLET APP REQUIRED FOR POS INTEGRATION.

EXCEPT FOR MERCHANT'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT IS EITHER PARTY LIABLE OR OBLIGATED TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST BUSINESS, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE. CI'S SOLE AND COMPLETE LIABILITY TO MERCHANT FOR ANY CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY ERRORS, OMISSIONS OR MISPLACEMENTS OF ANY E-GIFT CARD OR VOUCHER IS LIMITED TO THE AMOUNT OF FEES RETAINED BY CI HEREUNDER FOR THE PRECEDING SIX (6) MONTHS AFTER FINAL CALCULATION AND RECONCILIATION OF ALL REFUNDS. THIS LIMITATION OF LIABILITY APPLIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY. IN ADDITION, ANY CLAIM BY OR ON BEHALF OF A MERCHANT IN CONNECTION WITH ANY PAYMENT MADE BY CI, INCLUDING, BUT NOT LIMITED TO, CLAIMS ALLEGING THAT A MERCHANT WAS UNDERPAID, MUST BE MADE IN WRITING TO CI WITHIN NINETY (90) DAYS FROM THE DATE CI REMITS THE PAYMENT AT ISSUE. ALL CLAIMS NOT MADE IN ACCORDANCE WITH THE FOREGOING SHALL BE DEEMED WAIVED, RELEASED AND DISCHARGED BY MERCHANT.

9. GOVERNING LAW

This Agreement shall be governed in all respects by the internal laws of the State of California as applied to agreements entered into among California residents to be performed entirely within California, without regard to principles of conflicts of law.

10. DISPUTE RESOLUTION

All disputes arising out of, or relating in any way to this Agreement, shall be resolved pursuant to this Section 10 Dispute Resolution. If CI and MERCHANT are unable to resolve a dispute, both parties agree to Binding Arbitration as detailed below:

Binding Arbitration

EXCEPT AS SPECIFICALLY STATED HEREIN, ANY DISPUTE OR CLAIM BETWEEN MERCHANT AND CI ARISING OUT OF, OR RELATING IN ANY WAY TO, THIS



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AGREEMENT (“**DISPUTES**”) SHALL BE RESOLVED EXCLUSIVELY BY FINAL, BINDING ARBITRATION. BY VIRTUE OF THE AGREEMENT IN THIS SECTION 10 TO ARBITRATE, MERCHANT AND CI ARE EACH GIVING UP THE RIGHT TO GO TO COURT AND HAVE A DISPUTE HEARD BY A JUDGE OR JURY (EXCEPT AS OTHERWISE SET FORTH IN THIS SECTION 10). The provisions of this Section 10 shall constitute MERCHANT’s and CI’s written agreement to arbitrate Disputes under the Federal Arbitration Act. The arbitration will be administered by the American Arbitration Association (“**AAA**”) and conducted before a single arbitrator pursuant to its applicable rules, including those applicable to commercial disputes, available at <http://www.adr.org> or by calling 800-778-7879. The arbitrator will apply and be bound by this Agreement, apply applicable law and the facts, and issue a reasoned award.

To begin an arbitration proceeding, MERCHANT or CI must comply with the limitations provision set forth in Section 8 and submit the Dispute by making a demand for arbitration as detailed at <http://www.adr.org>. If MERCHANT demands arbitration, it shall simultaneously email a copy of the completed demand to info@contribulet.com. If CI demands arbitration, it shall simultaneously send a copy of the completed demand to the MERCHANT's address of record. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. CI will reimburse those fees for Disputes totaling less than \$10,000 if MERCHANT is the prevailing party in such arbitration. CI will not seek attorneys' fees and costs in arbitration unless the arbitrator determines that a MERCHANT Dispute is frivolous. The arbitration will be conducted based upon written submissions unless MERCHANT requests and/or the arbitrator determines that a telephone or in-person hearing is necessary. If the arbitrator grants the request or determines an in-person hearing is necessary, the hearing will proceed in San Jose, CA unless the arbitrator determines, or we agree that the matter should proceed in the county of MERCHANT's principal place of business.

11. OTHER

- a. This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter.
- b. If any provision of this Agreement should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement are not affected.
- c. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS NOR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. CI DOES NOT WARRANT OR GUARANTEE THAT THE SERVICES OFFERED ON OR THROUGH THE WEBSITE



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WILL BE UNINTERRUPTED OR ERROR-FREE, THAT THE E-GIFT CARDS AND VOUCHERS ARE ERROR-FREE, OR THAT ANY MERCHANT OFFERING WILL RESULT IN ANY REVENUE OR PROFIT FOR MERCHANT.

12. HOW TO CONTACT US

If there are any questions regarding these Terms and Conditions, you may contact us using the information below.

Contribulet, Inc.
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USA
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