

Nestlé Dispenser Agreement – Terms and Conditions

WHERE AS:

- (A) Nestlé Singapore has appointed the Distributor to sell the Recommended Nestlé Vending Products to the Customer and the Customer agrees to purchase the Recommended Nestlé Vending Products from the Distributor. Nestlé Singapore is desirous of allowing the use of the Nestlé Dispensers by the Customer, and appointing the Distributor to manage the use of the Nestlé Dispensers by the Customer;
- (B) The Distributor is desirous of managing the use of the Nestlé Dispensers by the Customer; and
- (C) The Customer is desirous of using the Nestlé Dispensers as permitted by Nestlé Singapore hereunder, in accordance with the terms and conditions contained herein (all terms as hereinafter defined below).

THEREFORE, the parties hereto agree as follows:

1. This Agreement dated _____ (DD / MM / YYYY), as may be amended or supplemented by Nestlé Singapore at its discretion from time to time in accordance with the terms set out herein (the “Agreement”) is entered into between Nestlé Singapore (Pte) Ltd, a company incorporated in Singapore and having its registered office at 15A Changi Business Park Central 1, #05-02/03 Eightrium@Changi Business Park, Singapore 486035 (hereinafter referred to as “Nestlé Singapore”), the Customer which particulars are set out in Schedule 1 to this Agreement (hereinafter referred to as the “Customer”), and the authorized distributor which particulars are set out in Schedule 1 to this Agreement (hereinafter referred to as the “Distributor”). Therefore, in accordance with the terms and conditions contained in this Agreement, (i) Nestlé Singapore shall allow the Customer the use the Nestlé equipment and machine(s) set out in Schedule 1 to this Agreement, (the “Nestlé Dispensers”), (ii) The Customer shall use such Nestlé Dispensers; and (iii) the Distributor shall manage the arrangements between the Customer and Nestlé Singapore in respect of such Nestlé Dispensers.
2. This Agreement is effective from the date as stated above and will remain in effect indefinitely until any party terminates this Agreement by giving at least fourteen (14) days’ prior written notice to the other parties at the addresses as set out herein (or any other address as informed to it in writing by the other parties), provided always that the Distributor shall not have the right to terminate this Agreement unless it has obtained the prior written approval of Nestlé Singapore. The Customer shall give at least thirty (30) days’ prior written notice to Nestlé Singapore and the Distributor if it intends to cease using any of the Nestlé Dispensers under its care and/or custody and return such Nestlé Dispensers.
3. The Customer agrees and undertakes:-
 - a) To obtain, pay for and do all necessary acts to keep in force all necessary permits, licenses and consents required by any contract to which the Customer is a party to with respect to any laws, regulations, administrative directives or other statutory authority including the permission of the landlord whose premises the Nestlé Dispenser(s) or Recommended Nestlé Vending Products are to be situated.
 - b) To comply with the National Environment Agency’s health, sanitation and safety regulations and all other laws or regulations stipulated by any relevant statutory body from time to time in connection with the operation of the Nestlé Dispenser(s) and the sale or provision of the Recommended Nestlé Vending Products. Nestlé Singapore and the Distributor shall not be liable (except for the liability of the Distributor to Nestlé, if any) in any way for the failure of the Customer to comply with the above, or for any negligent or willful act or omission by the Customer.
 - c) To pay for all taxes, duties, permits, license fees, repair and maintenance (other than repair and maintenance provided for in the Maintenance Schedule) and installation costs and expenses payable in connection with the Nestlé Dispenser(s). The Customer shall also bear all costs and expenses incurred in connection with the installation, withdrawal, removal, replacement or relocation of the Nestlé Dispensers, where such installation, withdrawal, removal, replacement or relocation is (i) requested for or initiated by the Customer or (ii) is carried out pursuant to the breach by the Customer of the terms set out herein, as the case may be.
 - d) To provide and bear all cost for electricity and water supply (with a separate water tap cut-off) for the Nestlé Dispenser(s) placement.
 - e) To provide Nestlé Singapore and the Distributor (only where expressly authorized by Nestlé), with all reasonable assistance in moving the Nestlé Dispenser(s) from the premises. The Customer acknowledges that Nestlé Singapore and the Distributor (only where expressly authorized by Nestlé) shall be entitled to remove any or all of the Nestlé Dispenser(s) immediately:
 - i) upon termination of this Agreement; or
 - ii) in the event of any breach of this Agreement by the Customer, whereby Nestlé Singapore and the Distributor (only where expressly authorized by Nestlé) shall have the right to recover from the Customer through any means any reasonable costs and expenses incurred by Nestlé Singapore or the Distributor (only where expressly authorized by Nestlé) in connection with such removal.
 - f) To allow render reasonable assistance and access to Nestlé Singapore’s representatives (including the Distributor or its permitted agents or subcontractors) to inspect, service, repair and maintain the Nestlé Dispenser(s), and to exercise daily care and all other hygienic maintenance of the Nestlé Dispenser(s) as deemed necessary by Nestlé Singapore from time to time, including but not limited to the daily maintenance of flushing the Nestlé Dispenser(s). The Nestlé Dispenser(s) should not be defaced, adjusted, repaired, moved or removed from its original location by the Customer without the prior written consent from Nestlé Singapore.
 - g) To prepare and dispense the “Recommended Nestlé Vending Products” as stated in the “Installation Data and Conditions for Installation”, and to advertise Nestlé Singapore’s products, only in the manner as prescribed and approved by Nestlé Singapore. The Customer shall not prepare or dispense via the Nestlé Dispenser(s) any product sold by parties other than Nestlé Singapore (either sold directly by Nestlé Singapore or through its authorized distributors), unless the prior written consent of Nestlé Singapore has been obtained on a case-by-case basis.
 - h) To allow only all advertising and communication from Nestlé Singapore to be placed on the Nestlé Dispenser(s). No other forms of advertising or communication from any other parties or brands shall be placed or associated with the Nestlé Dispenser(s), unless prior written consent of Nestlé Singapore has been obtained.
 - i) **To exercise daily care and all other hygienic maintenance of the Nestlé Dispenser(s) as deemed necessary by Nestlé Singapore from time to time, including but not limited to the daily maintenance of flushing the Nestlé Dispenser(s). The Nestlé Dispenser(s) should not be defaced, adjusted, repaired, moved or removed from its original location by the Customer without the prior written consent from Nestlé Singapore.**
 - j) To exercise at all times, proper care and control of the Nestlé Dispenser(s) from the time of delivery of the Nestlé Dispenser(s) to the Customer by Nestlé Singapore (and/or its agents, distributors or contractors).
 - k) Each of the Customer and the Distributor shall be jointly and severally liable to Nestlé Singapore for, and the Customer shall indemnify Nestlé Singapore and the Distributor against, any loss of or damage caused to the Nestlé Dispenser(s) after acceptance by the Customer of the Nestlé Dispenser(s) (as evidenced by the execution of this Agreement or any related documentation) up to the point of withdrawal, removal, replacement or relocation of the Nestlé Dispensers from the Customer’s premises and the execution of relevant documentation in connection therewith, and the Customer may be invoiced accordingly for and shall pay for all parts and labour costs involved in any repairs arising from such loss or damage. Any loss of or damage caused to the Nestlé Dispensers shall be calculated based on the prevailing book value (as determined by Nestlé Singapore) at time of loss or damage. In the event where, in the view of Nestlé Singapore, the damage caused to the Nestlé Dispenser(s) is too severe to be repaired, Nestlé Singapore shall replace the damaged Nestlé Dispenser(s) with other working Nestlé Dispenser(s), and the Customer shall be liable to compensate Nestlé Singapore as if it were a case of a loss of the Nestlé Dispenser(s).
 - l) **Not to loan, sell, pledge, mortgage, dispose, part with possession of the Nestlé Dispenser(s) or permit so in any manner whatsoever. The Customer acknowledges that Nestlé Singapore at all times is and remains the sole unencumbered owner of the Nestlé Dispenser(s). The Customer shall also display prominent signs in the premises and on the Nestlé Dispenser(s) clearly identifying Nestlé Singapore as the owner of the Nestlé Dispenser(s).**

- m) To pay any other fees or consideration payable by the Customer to the Distributor, and comply with such other requirements in connection with its use of the Nestlé Dispensers and/or the purchase of the Recommended Nestlé Vending Products (including the volume of purchase), in accordance with the terms set out herein or in any separate written agreements entered into independently between Customer and the Distributor.
- n) That Nestlé Singapore shall have the sole discretion during the term of this Agreement to determine (i) whether to continue the provision of any or all of the Nestlé Dispenser(s) to the Customer, and (ii) the number of Nestlé Dispensers to be provided to the Customer.
- o) That it shall not allow any person (including the Distributor) to remove or take possession of the Nestlé Dispenser(s), unless such removal/taking of possession has been authorized in writing by Nestlé.
- p) That it shall ensure that each Nestlé Dispenser is configured, and the Recommended Nestlé Vending Products be dispensed via such Nestlé Dispenser, in accordance with the instructions and/or specifications of Nestlé Singapore as notified to the Customer from time to time, either by Nestlé Singapore or through its Distributor.
- q) That by choosing to use the Nestlé Dispensers, the Customer acknowledges and expressly agrees that the Nestlé Dispensers may include telemetry technology, which possesses the capability to transmit use and malfunctions data which Nestlé Singapore and/or Nestlé's Distributors have access to improve product and service quality. No personal data will be collected via telemetry. The Customer shall notify Nestlé where it is not suitable or safe to activate such telemetry technology in view of the Customer's operations**
- 4) a) To the fullest extent permitted by law, Nestlé and the Distributor (except for the liability of the Distributor to Nestlé, if any) shall not be liable for:
- any claim, loss, damage, costs or expenses suffered or incurred by the Customer or any third party arising out of or in connection with the Nestlé Dispensers or the products used in the Nestlé Dispensers; or
 - any indirect, special or consequential loss or damage (including but not limited to any loss of profit, revenues or prospective advantage) howsoever arising hereunder.
- b) The Customer shall fully indemnify and hold harmless Nestlé Singapore and the Distributor against all claims, losses or damages suffered by Nestlé Singapore and the Distributor, as the case may be, in connection with the willful or negligent acts or omissions of the Customer or the breach and enforcement of this Agreement and any other agreements contemplated hereunder entered into between the Customer and Nestlé Singapore or the Distributor.
- c) Clauses 4(a) and (b) shall survive the termination or expiry of this Agreement.
- 5) The Distributor agrees:-
- To provide, at the cost agreed between the Distributor and the Customer, services for installation and adjustments of the Nestlé Dispenser(s) in accordance with Nestlé's operating requirements.
 - To provide at no additional cost relevant advertising materials provided by Nestlé Singapore on the product type used in the Nestlé Dispenser(s) to encourage consumer awareness and increase consumption.
 - To provide maintenance and repair services to the Nestlé Dispensers in accordance with Nestlé Singapore's schedule of maintenance as informed to the Customer (the "Maintenance Schedule"). Any costs or expenses incurred by Nestlé Singapore or the Distributor, (at the request of the Customer) in connection with the maintenance or other repairs or loss of the Nestlé Dispensers which are not provided for in the Maintenance Schedule are chargeable by Nestlé Singapore or its Distributor to the Customer.
 - To use its best endeavors to ensure compliance by the Customer of the Customer's obligations hereunder.
- 6) Minimum Order Quantity. In consideration of the free placement of the Nestlé Dispensers, the Customer irrevocably undertakes to purchase from Distributor at least the agreed minimum consumption of Recommended Nestlé Vending Products.**
- 7) Consumption Requirements. From time to time, the Distributor will monitor the consumption of Recommended Nestlé Vending Products of the Customer. If for a period of three (3) consecutive months, the Customer fails to meet the minimum order quantity, the Customer agrees to convert to the Nestlé Rental Model and undertakes to execute a supplemental rental agreement as may be necessary or appropriate to effectuate such rental terms. Any extensions of this aforementioned period shall be subjected to Nestlé Singapore's sole discretion.**
- 8) The relationship of the parties to this Agreement shall be that of independent contractors. Save as expressly provided for herein, nothing in this Agreement shall be construed as creating any other relationship of agency or partnership between the parties.
- 9) Nestlé Singapore reserves the right to terminate the Agreement with immediate effect and/or to proceed without notice to repossess any or all of the Nestlé Dispenser(s) in the premises occupied, in the event that:
- The Customer has breached any of the terms and conditions contained herein;
 - The Customer is facing a bankruptcy liquidation or any legal proceeding, action of repossession in respect of its goods, or is unable to pay its debts as they fall due;
 - The Customer has committed an act that in Nestlé Singapore's opinion is against its interest; or
 - The Customer has temporarily or permanently ceased or changed business operations or, in the opinion of Nestlé Singapore, there is a material adverse change in the business of the Customer.
- Except for the scenarios set out above, Nestlé Singapore shall give the Customer at least fourteen (14) days' written notice prior to any removal/repossession of Nestlé Dispensers, if Nestlé Singapore exercises its sole discretion to discontinue or terminate the provision of any or all of the Nestlé Dispenser(s) provided to the Customer.
- 10) This Agreement shall not be assignable in whole or in part by the Customer without Nestlé Singapore's prior written consent and shall be binding on the heirs, personal representatives, successors in title and permitted assignees of the Customer. The rights and obligations under this Agreement shall be assignable by Nestlé Singapore without the consent of the Customer.
- 11) This Agreement shall be governed by the laws of the Republic of Singapore, and the Customer and Nestlé Singapore agree to submit to the exclusive jurisdiction of the courts of the Republic of Singapore.
- 12) The terms contained in Schedule 1 of this Agreement (including any supplements and amendments thereto) shall constitute an integral part of the Terms and Conditions of this Agreement.**
- 13) This Agreement supersedes any prior agreement and/or arrangement in any form made between the parties hereto with regard to the subject matter hereof, and any such prior agreements and/or arrangements shall be deemed to be mutually terminated by all parties as at the date of this Agreement.
- 14) If there are any inconsistencies between the terms of this Agreement and the terms contained elsewhere in other documents as agreed by or notified to the parties hereto (the "Other Terms"), the terms of this Dispenser Agreement shall prevail to the fullest extent over such Other Terms, unless Nestlé Singapore determines otherwise in writing.