

TERMS AND CONDITIONS FOR USE OF THE NIKOS PHYSICAL

The use of the Nikos Gift Card is subject to the following terms and conditions ("these terms and conditions"), together with any terms and conditions appearing on such Gift Card ("the Gift Card terms and conditions"). In the event of a conflict between these terms and conditions and the Gift Card terms and conditions, these terms and conditions will prevail:

The following provisions are drawn to the attention of the user if the Consumer Protection Act 68 of 2008 ("the CPA") applies to any transaction concluded pursuant to these terms and conditions:

- **in terms of clause 5 of these terms and conditions, should the Gift Card be lost or stolen or misappropriated in any other manner whatsoever whilst in the possession of the Bearer, neither the Nikos Franchise, Nikos Advertising, nor its franchisees will be liable to the Purchaser or the Bearer for any form of reimbursement or compensation of any nature whatsoever. The effect of this clause is that the Purchaser and the Bearer will have no recourse against the Nikos Franchise, Nikos Advertising, or its franchisees in the circumstances referred to above;**
- **in terms of clause 7 of these terms and conditions, neither the Nikos Franchise nor any of its franchisees will be liable for any losses in the event that the Gift Card cannot be utilised on any specific occasion for any reason arising out of any failure, malfunction or delay in any electronic device for any reason. The effect of this clause is that the Purchaser and the Bearer will have no recourse against the Nikos Franchise, Nikos Advertising, or its franchisees in the circumstances referred to above;**
- **in terms of clause 9 of these terms and condition, to the maximum extent permitted in law, neither Nikos Franchise, Nikos Advertising, or subsidiary companies, nor any persons related or inter-related (as contemplated in section 2 of the Companies Act 71 of 2008 (as amended)) to any of the aforesaid companies, nor any of their respective directors, prescribed officers, managers, employees, agents, franchisees, or anyone associated with any of them, shall incur any liability to any person for any injury, claim, loss or damage of any nature whatsoever, whether direct, indirect, consequential or otherwise, whatsoever or howsoever arising from their purchase and/or use of the Gift Card or otherwise. The effect of this clause is that such persons may have no recourse against the parties referred to above, in the circumstances referred to above.**

1. DEFINITIONS

For the purposes of these terms and conditions, unless inconsistent with the context, the following words and expressions shall bear the meanings assigned thereto and cognate words and expressions shall bear corresponding meanings:

- 1.1. "Bearer" means the person in possession of a Physical or ;
 - 1.2. "Gift Card" means the Physical gift card;
 - 1.3. "Gift Card Website Portal" means <http://www.nikos.co.za/giftcard>;
 - 1.4. "Physical Gift Card" means the physical pre-paid Nikos gift card purchased from any Restaurant;
 - 1.5. "Card" means the digital pre-paid Nikos gift card purchased on <http://www.Nikos.co.za/giftcard>.
 - 1.6. "Purchaser" means any person who has purchased a Gift Card;
 - 1.7. "Restaurant" means any Nikos Restaurant in the Republic of South Africa;
 - 1.8. "Nikos Franchise" means Nikos Franchise (Pty) Ltd, a Company duly incorporated under the Company Laws of South Africa, with Registration Number 2004/030578/07, and whose Registered Address is situated at 14 Edison Way, Century Gate Business Park, Century City, 7441;
 - 1.9. "Nikos Advertising" means Nikos Advertising (Pty) Ltd, a Company duly incorporated under the Company Laws of South Africa, with Registration Number 1989/001918/07, and whose Registered Address is situated at 14 Edison Way, Century Gate Business Park, Century City, 7441
 - 1.10. "Website" means <http://www.nikos.co.za>.
2. The purchase and/or use of a Gift Card is deemed to constitute a binding agreement between Nikos Franchise, the Purchaser and the Bearer (to the extent that the Bearer is not the Purchaser) in accordance with these terms and conditions.

3. PURCHASE, ISSUE AND RECHARGING OF GIFT CARDS

- 3.1. The full terms and conditions governing the purchase and recharging of Gift Cards are available on the Gift Card Website Portal ("Purchase and Recharge terms and conditions"). In the event of a conflict between these terms and conditions and any Purchase and Recharge terms and conditions, the Purchase and Recharge terms and conditions will prevail.
- 3.2. A Gift Card may be purchased as follows:
 - 3.2.1. A Physical Gift Card may be purchased from any Restaurant. Once payment has been received by the Restaurant, a Physical Gift Card will be issued to the Purchaser by the Restaurant, for and on behalf of Nikos Franchise.

- 3.3. The Gift Card will be loaded with a pre-paid amount purchased ("the pre-paid amount") and may be utilised at Restaurant in accordance with these terms and conditions.
- 3.4. The Physical Gift Card may be reloaded with additional pre-paid amounts by the Purchaser or the Bearer thereof at any Restaurant after the initial issue date (as defined below).
- 3.5. The minimum pre-paid amount that a Gift Card may be initially loaded, or reloaded (in the case of a Physical Gift Card), with at any time is R50.00 (Fifty Rand). The maximum aggregate pre-paid amount that may be loaded or reloaded (in the case of a Physical Gift Card) onto a Gift Card at any time is R2 000.00 (Two Thousand Rand). Pre-paid amounts may only be loaded onto Gift Cards in increments of R50.00 (Fifty Rand).
- 3.6. The pre-paid amounts loaded onto a Gift Card from time to time will not accrue any interest.
- 3.7. The balance remaining on the Gift Card from time to time can be checked at any Restaurant, subject to the provisions of clause 3.8 below.
- 3.8. Bearers of Physical Gift Cards will not be able to check their balances online. They will be able to check their balances through the restaurant.

4. ISSUE, VALIDITY AND USE OF GIFT CARDS

- 4.1. The Gift Card may be utilised by the Bearer at any Restaurant as payment, or part payment (as the case may be) of the purchase price of goods ordered at such Restaurant ("the order"). The Gift Card may also be used to pay a gratuity to a waitron ("the gratuity"). A maximum of 2 (Two) Gift Cards may be utilised as payment, or part payment (as the case may be), of the purchase price of an order and to pay any gratuity in respect of such order.
- 4.2. The date of first issue of the Gift Card shall be the date on which an initial pre-paid amount is loaded onto the Gift Card ("the initial issue date") in accordance with these terms and conditions.
- 4.3. The prepaid amounts loaded onto a Gift Card are valid for a period of 3 (three) years from the initial issue date or the date that the last pre-paid amount was loaded onto such Gift Card, whichever is the later, whereafter such pre-paid amounts, and consequently the Gift Card, will expire.
- 4.4. Pre-paid amounts loaded onto a Gift Card may not be refunded or exchanged for cash or credit.
- 4.5. In order to utilise the Gift Card as payment for, or towards, the purchase price of an order and/or any gratuity (subject to the provisions of clause 4.1 above):
 - 4.5.1. in relation to a Physical Gift Card, the Bearer will be required to:

- 4.5.1.1. hand same to the waitron/cashier at a Restaurant when settling the purchase price of such order and/or paying such gratuity; and
 - 4.5.1.2. indicate the portion of the purchase price of such order to be discharged utilising the Physical Gift Card and/or the quantum of any gratuity that will be paid utilising the Physical Gift Card.
 - 4.5.2. In relation to a Digital gift voucher, the Bearer will be required to:
 - 4.5.2.1 write down the Unique Code which was sms'ed to the Bearer when settling the purchase price of such order and/or paying such gratuity; and
 - 4.5.2.2 indicate the portion of the purchase price of such order to be discharged utilising the Unique Code and/or the quantum of any gratuity that will be paid utilising the Digital gift voucher.
- 4.6. When the Bearer tenders the Gift Card as payment for, or towards, the purchase price of an order and/or as payment for any gratuity, an amount equal to, or towards, the purchase price of the order (or portion thereof) and/or to such gratuity (or portion thereof) will be deducted from the Gift Card. No cash refunds will be given in the event of any pre-paid amounts remaining on the Gift Card after the payment as aforesaid.
- 4.7. In the event of the Gift Card being used to make part payment of any order and/or gratuity, the balance of such order is to be paid in full in cash or using any major credit cards accepted by such Restaurant.
5. Should the Gift Card be lost or stolen or misappropriated in any other manner whatsoever whilst in the possession of the Bearer, neither Nikos Franchise nor its franchisees ("the franchisees") will be liable to the Purchaser or the Bearer for any form of reimbursement or compensation of any nature whatsoever.
6. Misuse of the Gift Card may constitute fraud and the Gift Card may not be used for any unlawful purpose.
7. Neither Nikos Franchise, Nikos Advertising, nor any of its franchisees will be liable for any losses in the event that the Gift Card cannot be utilised on any specific occasion for any reason arising out of any failure, malfunction or delay in any electronic device for any reason.
8. These terms and conditions may be amended, varied and/or modified by the Nikos Franchise at any time and such amendment, variation and/or modification shall be effective immediately upon posting of the amended, varied and/or modified terms and conditions on the Website. Accordingly, the continued use by a Bearer of the Gift Card shall be deemed to be the Bearer's acceptance of any such modified terms and conditions.
9. To the maximum extent permitted in law, neither Nikos Franchise, Nikos Advertising, nor their holding or subsidiary companies (collectively, "the Companies"), nor any persons related or inter-related (as contemplated in section 2 of the Companies Act 71 of 2008 (as amended)) to any of the Nikos Companies, nor any of their respective directors, prescribed

officers, managers, employees, agents, franchisees, or anyone associated with any of them (collectively, "Nikos parties"), shall incur any liability to any person for any injury, claim, loss or damage of any nature whatsoever, whether direct, indirect, consequential or otherwise, whatsoever or howsoever arising from their purchase and/or use of the Gift Card or otherwise. To the extent necessary in law the provisions of this clause 9 shall constitute a stipulatio alteri (i.e. a contract in favour of a third party) in favour of the Nikos parties, the benefit whereof may be accepted by any or all of them at any time, from time to time.

10. These terms and conditions shall comply with, and will be subject to, any peremptory provisions of the Consumer Protection Act 68 of 2008 ("the CPA") and the regulations promulgated thereunder, which are deemed to be incorporated therein ("Peremptory Provisions"). In the event of any conflict between these terms and conditions and the Peremptory Provisions, the latter shall prevail. Furthermore, no term or condition of these terms and conditions is intended to breach any Peremptory Provisions. Any breach of any such Peremptory Provision shall be governed by the provisions of clause 12 mutatis mutandis (i.e. subject to changing those things which need to be changed).
11. This document, together with the Gift Card terms and conditions and any Purchase and Recharge terms and conditions, contains the entire agreement between the parties in relation to the subject matter hereof. Save as contemplated in these terms and conditions (including clause 8 above) no alteration, cancellation, variation of, or addition hereto will be of any force or effect.
12. Each sentence, paragraph, term, clause and provision of these terms and conditions and any portion thereof shall be considered severable and if, for any reason, any such sentence, paragraph, term, clause or provision is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation (including, without limitation, the CPA and any Regulations thereto) or in terms of a final, binding judgment issued by any court, it shall to that extent be deemed not to form part hereof and shall not impair the operation of, or have any effect upon such other sentence, paragraph, term, clause or provision hereof as may otherwise remain valid or intelligible, which shall continue to be given full force and effect and bind the parties hereto. If any provision of these terms and conditions is found by any Court to be unfair as contemplated in Regulation 44 to the CPA, then that provision will apply to the maximum extent permitted under the CPA and will further be governed by the provisions of this clause 12 mutatis mutandis.