



TERMS AND CONDITIONS OF USE

LAST UPDATED: July 01, 2021

Your use of the Au Pain Doré mobile application (the “**App**”) and the Au Pain Doré “Ma Carte Gourmande” card, whether physical or digital (the “**Card**”) and any content, services or features associated therewith, including the Rewards Program (as defined below) (altogether, the “**Materials**”) are subject to these terms and conditions, as amended from time to time (the “**Terms and Condition**”). Please note that the App is created and maintained by Nexus Digital Marketing (nexustargeting.com). In the event there is any conflict or inconsistency between these Terms and Conditions and any other applicable terms and conditions, these Terms and Conditions will govern. Any rights not expressly granted in these Terms and Conditions are reserved.

1. ACCEPTANCE OF TERMS AND CONDITIONS

- 1.1. By accessing, downloading, viewing or using (collectively, the “**Use**” or “**Using**”) the Materials, you agree to these Terms and Conditions and to any additional terms and conditions, and amendments thereto, that BD APD Inc., doing business as “Au Pain Doré”, and its affiliates (altogether “**Au Pain Doré**”, “**we**”, “**us**” or “**our**”) may post from time to time on its website (the “**Site**”). These Terms and Conditions represent an ongoing contract between you and Au Pain Doré and apply for the duration of your use of the Materials. Do not Use the Materials if you are unwilling or unable to be bound by the Terms and Conditions.
- 1.2. Communication between us will be mainly electronic. We may contact you by email to the email you have provided while registering the App or provide you with information by posting notices on our Site. You agree to this electronic means of communication and you hereby consent and acknowledge that all notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing.
- 1.3. The Materials are not targeted towards, nor intended for Use by, anyone under the age of thirteen (13). If you are between the ages of thirteen (13) and the age of majority in your jurisdiction of residence, you may Use the Materials only under the supervision of a parent or legal guardian who agrees to be bound by these Terms and Conditions.

2. RIGHTS TO CONTENT

- 2.1. Au Pain Doré may make available via the App and the Card content, including, but not limited to, information, comments, photographs and graphical images (collectively, the “**Content**”). Unless otherwise stated, all intellectual property rights in the App and the Content are owned by Au Pain Doré or other licensors of Au Pain Doré. The App and the Content are protected by copyright laws, trade-mark laws and other intellectual property laws and treaties, both in Canada and world-wide, and all rights thereto are reserved.
- 2.2. No part of the App or the Content may be reproduced, copied, or stored in by any means or included in any public or private electronic retrieval system or service without Au Pain Doré’s prior written permission.

3. USING THE APP

- 3.1. To Use the features offered through the App, you must create an account (the “**Account**”) and provide certain information about yourself. In creating your Account, we ask that you provide complete and accurate information. You may not impersonate someone else, create or use an account for anyone other than yourself, provide an email address other than your own, or create multiple accounts.
- 3.2. You are solely responsible for maintaining the confidentiality of your Account including your sign-in information and password, and for restricting access to your Account, mobile device and the App, and you agree to accept responsibility for all activities that occur under your Account or password.
- 3.3. By Using the App, you agree that Nexus Digital Marketing and Au Pain Doré may collect and share your location information for the purpose of making the App features available to you. If you do not want your location information collected or shared, either do not Use the App or you may modify your device settings to disable collection of your location information.
- 3.4. You may not misuse the App or any of its Content or features (including by hacking). Au Pain Doré will fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or location of anyone using the App in breach of these Terms and Conditions.

4. USING “MA CARTE GOURMANDE”

- 4.1. You may use the Card to purchase goods and services at participating Au Pain Doré retail locations (the “**Retail Locations**”) and/or participate in the Au Pain Doré Rewards Program (as defined below). To find the Retail Location nearest you, visit the Au Pain Doré locator available in the App and on the Site, or inquire at one of Retail Locations.
- 4.2. We do not charge any activation, service, dormancy or inactivity fees in connection with your Card. Your Card has no expiration date. The dollar value that you load onto your Card is a prepayment for the goods and services available at Retail Locations; it is not insured, either by the Canada Deposit Insurance Corporation (CDIC) or otherwise; it does not expire nor does it earn interest.
- 4.3. Unless otherwise required by law, the dollar value on your Card is non-refundable and non-transferable. You should treat your Card like cash and not disclose your Card information to anyone. If your Card or Card information is lost or stolen, it will not be replaced and anyone who obtains possession of your Card may use it. You are responsible for all transactions on your Card, including unauthorized transactions. In case of errors, we may correct the balance of your Card if we believe that a clerical, billing or accounting error occurred. We have no obligation to review or correct any billing error unless you provide us, within ten (10) days of the date of the transaction in question, the original receipt and sufficient notice for us to review your claim.
- 4.4. You can have both physical Cards and digital Cards (the digital card can solely be used through the App), but each Card remains independent in terms of loading dollar value, past transactions, and participation in the Rewards Program. You can load dollar value on your physical Card by visiting any Retail Location. You can load value on your digital Card by (a) visiting any Retail Location; (b) by using the App; (c) by transferring the loaded value of your physical Card into your digital Card through the App; (d) or by transferring the loaded value of a physical Card you were gifted to your digital Card through the App. The money loaded directly via the App on your digital Card can only be added using a credit card. There may be a delay from the time you pay the amount to be loaded onto your Card and those funds being available for use. There is a minimum amount that you may load on your Card at any given time, and that amount is typically \$10. We may change this amount at any time without notice to you.
- 4.5. The use of Cards (and the associated Rewards Program) by business or for commercial purposes, including by restaurateurs (such as Resto Club members) and catering customers, is strictly prohibited. To learn more about the programs intended for business, please inquire on our Site or at the Retail Locations.

5. USING THE AU PAIN DORÉ REWARDS PROGRAM

- 5.1. Au Pain Doré offers a loyalty program (the “**Rewards Program**”) that allows its participants to earn and accumulate points that can be redeemed for Au Pain Doré products and benefits (“**Rewards**”) at Retail Locations. The Rewards Program exists solely in connection with retail sales intended directly for individual consumers and their personal use.
- 5.2. Rewards that are available to you through the Rewards Program are based on the number of points that you have earned and accumulated. You earn and accumulate points by making purchases while using a Card at Retail Locations. If you return merchandise, food or other products that you purchased using a Card (note: an original receipt is required), your funds will be returned to you and Au Pain Doré will deduct the associated points from

your Rewards account. Each Card is linked to its own, single Rewards account which accumulates points associated with the purchases made with that Card. Taxes, tips, donations, and fees, including without limitation, delivery fees, and bag fees, are excluded and ineligible for points accrual.

- 5.3. There are no participation or membership fees associated with the Rewards Program. Points accrued in your Rewards accounts don't have an expiry date. Details relating to point accrual, redemption and Rewards is available on the App, the Site and at Retail Locations.
- 5.4. Points accrued in connection with the Rewards Program are promotional, non-transferrable, have no cash value, and cannot be redeemed for cash. Your redemption of points accrued in connection with the Rewards Program cannot be combined with any other offers or discounts that are applicable to the Rewards for which you are redeeming such points, unless otherwise expressly indicated by Au Pain Doré.
- 5.5. You must present the Card linked to the account at a Retail Location to redeem points on that account at the time of redemption. The maximum value for any individual redemption is \$50 CAD per day. Au Pain Doré reserves the right to change, modify, discontinue or cancel the Rewards Program or any part thereof at any time and in its sole discretion, without notice to you.

6. DISCLAIMERS

- 6.1. The Materials and all Content, information, services and other features made available in connection therewith are provided to you "as is" and "as available" and, to the maximum extent permitted by law, we explicitly exclude all representations, warranties, conditions and other terms (including any implied by law) of any kind.
- 6.2. Au Pain Doré does not warrant that the Use or features of the Materials will be uninterrupted or error-free, that defects will be corrected or that the Materials or the servers hosting the Materials will be free of viruses or other harmful components.
- 6.3. As the transmission of information via the Internet is not completely secure, we cannot guarantee the security of the data transmitted by Using the Materials and any and all transmission of information is at your own risk. You may stop Using the Materials at any time without prior notice to us.

7. ARBITRATION:

Please read this section carefully, as it provides for resolution of most disputes through arbitration instead of through court trials and class actions. Arbitration is more informal than proceedings in court, uses a neutral arbitrator instead of a judge, and discovery is more limited. Arbitration is final and binding and subject to only very limited review by a court. This arbitration clause shall survive termination of these Terms and Conditions.

- 7.1. To the fullest extent permissible by law, any dispute or claim arising out of or relating to these Terms and Conditions, of your Use of the Materials will be resolved by binding arbitration.
- 7.2. In all cases, you must first send a written description of your claim to our Customer Service department to allow us an opportunity to resolve the dispute. You and we each agree to negotiate the claim in good faith. Either party may request arbitration if the claim or dispute cannot be resolved within 90 days.
- 7.3. Any arbitration will be held in a reasonably convenient or mutually agreed location. An arbitrator may award on an individual basis any relief that would be available in a court, including injunctive or declaratory relief to the extent required to satisfy your individual claim, and must follow and enforce these Terms and Conditions as a court would. Any arbitration shall be confidential, and neither you nor we may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. Judgment on any arbitration award may be entered in any court having proper jurisdiction.

8. SUSPENSION AND TERMINATION:

If Au Pain Doré discovers that any Card was Used in breach of these Terms and Conditions or if a cash balance, points or Rewards associated therewith were sourced or derived in an unauthorized, fraudulent or otherwise unlawful manner, we may, in our sole discretion and without notice to you, cancel or limit the use of all impacted Cards, retain all cash balances and void all point balances or Rewards associated therewith.

9. LIABILITY: Au Pain Doré, its affiliates and the officers, directors, employees, shareholders, franchisees or agents of any of them (the “**Au Pain Doré Parties**”) shall not be liable or responsible for any amount or kind of cost, including legal fees, loss or damage that may result to you or to a third party (including but not limited to any direct, indirect, punitive or consequential loss or damages, or any loss of income, profits, goodwill, data, contracts, or loss or damages arising from or connected in any way to business interruption, loss of opportunity and loss of anticipated savings, and whether in tort (including negligence), contract or otherwise, even if foreseeable or if Au Pain Doré Parties are expressly advised of the possibility of such damage) in connection with the Use, the termination of Use or inability to Use the Materials or the Content. Au Pain Doré Parties’ total aggregate liability in relation to the Materials, the Content and the Rewards Program including (but not limited to) liability for breach of these Terms and Conditions and tort (including but not limited to negligence) is limited to an amount equivalent to twice the value of the cash balance on your principal Card or CDN \$50.00, whichever is the lower.

10. INDEMNITY : You agree to fully indemnify and hold harmless Au Pain Doré Parties, their agents and licensors from and against any loss, liability, threatened or actual claim, demand, damages, costs and expenses (including but not limited to any direct, indirect, punitive or consequential loss or damages, or any loss of income, profits, goodwill, data, contracts, or loss or damages arising from or connected in any way to business interruption, loss of opportunity, loss of anticipated savings, wasted management or office time and whether in tort (including negligence), contract or otherwise), including reasonable legal fees, arising out of or in connection with your Use of the Materials or the Content, your breach of these Terms and Conditions or your violation of any law or the rights of any third party with respect to the Materials or Content.

11. ADDITIONAL TERMS AND CONDITIONS

- 11.1. You may not transfer any of your rights or obligations under these Terms and Conditions without our prior written consent. We may transfer any of our rights or obligations under these Terms and Conditions at our sole discretion.
- 11.2. These Terms and Conditions shall be governed by and construed in accordance with the laws of the Province of Quebec and the federal laws of Canada applicable therein, notwithstanding any conflicts of laws provisions. Disputes arising in connection with these Terms and Conditions (including non-contractual disputes) shall be subject to the exclusive jurisdiction of the courts of Quebec.
- 11.3. If any of these Terms and Conditions are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining Terms and Conditions, conditions and provisions which will continue to be valid.
- 11.4. To the fullest extent permissible by law, these Terms and Conditions and any document expressly referred to in them constitute the whole agreement between us and supersede all previous discussions, correspondence, negotiations, previous arrangement, understanding or agreement between us relating to the subject matter.
- 11.5. Clauses **Erreur ! Source du renvoi introuvable.**, **Erreur ! Source du renvoi introuvable.**, **Erreur ! Source du renvoi introuvable.** and **Erreur ! Source du renvoi introuvable.** shall survive the termination of these Terms and Conditions.