

## TOPS Business Plus™ - Terms and Conditions

These terms and conditions (“Terms and Conditions”), together with (a) your TOPS Business Plus™ Credit Application, (b) any account confirmation letter we issue in response to your application, and (c) any periodic statements or letters that we send to you in administering your TOPS Business Plus™ account, comprise the entire agreement (the “Agreement”) between your organization (hereinafter referred to as “you” and/or the “Customer”) and Tops Markets, LLC and its affiliates and franchisees (collectively “we” and/or “Tops Markets”) concerning the TOPS Business Plus™ charge card program (the “Program”). Subject in all cases to these Terms and Conditions, the Program will allow your organization to purchase goods and services on credit from participating grocery stores operated by Tops Markets (the “Stores”). This Agreement becomes effective when you activate your TOPS Business Plus™ card (the “Card”) and these Terms and Conditions (as same may be amended from time to time . . . See Section 1 below) shall apply to each purchase that is made by your organization with the Card in one of the Stores.

### **1. Changes to these Terms and Conditions:**

Tops Markets may change these Terms and Conditions from time to time, subject to applicable law. Some changes may be made by us immediately and will become binding on you if you use the Card in a Store after such change is made. Other changes (including a change that is deemed to be a “significant change”) may require us to provide you with advance written notice of such change, which notice will allow you time to opt out and reject such a proposed change before it automatically applies to your account. Subject to applicable law, you may lose your right to opt out of certain changes if you fail to make a required minimum payment within sixty (60) days after the due date for such required payment. This Agreement (inclusive of these Terms and Conditions) may not be changed or contradicted orally.

### **2. Suspension or Cancellation of the Program or Your Account (including individual transactions):**

Tops Markets reserves the right to suspend, cancel or discontinue the Program or your account (including individual transactions in our Stores) in part or in its entirety at any time and from time to time. This may occur even if you pay on time and your account is not in default. The reasons we might suspend, cancel or discontinue the Program or your account (including individual transactions) may include suspected fraud, previous defaults in the administration of the Program and/or your account, our assessment of your creditworthiness, and/or the economy generally. We are not responsible for any losses or damages you might incur if we suspend, cancel or discontinue the Program or your account (including individual transactions in our Stores). We also reserve the right to reinstate your account.

### **3. Contact Us:**

If you have questions regarding your Account, the Program, or these Terms and Conditions, you may contact us as follows:

(a) By telephone:

Please call the **TOPS Business Plus™ Service Team** at:  
1-800-806-1273 (24 hours per day)

(b) Via Email, please address your e-mail correspondence to:

[BusinessPlus@TopsMarkets.com](mailto:BusinessPlus@TopsMarkets.com)

(c) For written notices of any kind (such as a change of address) or for written inquiries concerning an invoice, the Program generally, or these Terms and Conditions, please address your correspondence to:

**TOPS Business Plus™**  
PO Box 1027  
Buffalo, NY 14240-1027  
Attn: TOPS Business Plus™

(d) Online at [www.topsmarkets.com/business](http://www.topsmarkets.com/business)

### **4. Changes in Your Account Information:**

Changes in your Account information (such as a change in your mailing or billing address or a change in the name of your primary contact person) should be submitted to Tops Markets online at [www.topsmarkets.com/business](http://www.topsmarkets.com/business), via email or mail, or by calling the **TOPS Business Plus™ hotline** (see Section 3 above . . . Contact Us).

**5. Obligation of Payment:**

Except as expressly provided to the contrary under law or elsewhere in these Terms and Conditions, your use of the Card and your participation in the Program means that you promise and agree to pay for: (a) all goods and services that are purchased by anyone who uses your Card in our Stores and (b) all fees and/or charges that are properly assessed against your TOPS Business Plus™ account in accordance with law and/or these Terms and Conditions. Your monthly billing statement will show the total amount due, your payment due date (which is usually ten (10) days after the date of your monthly billing statement), as well as any charges, service fees, and/or finance charges (if any) that have been applied and assessed against your Account. You must pay the total amount due each month as shown on your monthly billing statement.

**6. Charging Limit:**

Tops Markets reserves the right to establish a maximum charging limit or limits on your account (including, for example, a per transaction limit, a daily overall maximum limit that applies across multiple stores, and/or a total monthly outstanding credit limit), which limit or limits may be adjusted by Tops Markets in its discretion from time to time. A failure by Tops Markets to enforce a charging limit of any kind shall not serve as a continuing waiver by Tops Markets of its right to impose and enforce charging limits on your account in the future. If we decrease your maximum total charging limit and want to impose an over-the-limit fee or a penalty rate for exceeding such newly established limit at the same time, we will provide you with advance notice (orally or in writing) of the decrease in your charging limit at least 45 days prior to imposing the over-the-limit fee or penalty rate. Changes that we make to your charging limit or limits will NOT serve to cancel, void, modify or amend your obligation to Tops Markets to make payment in full on your account as described in section 5 above.

**7. Charges and Service Fees:**

(a) Charges: We reserve the right to impose the following charges on your account, which (if permitted under law and assessed by us) will be posted on your invoice and will become due and payable by you along with all other charges, service fees, and assessments that have been properly posted against your account:

- (i) Insufficient Check and/or Returned Check Charges: If you pay all or any portion of your account balance by check and your check is not honored by your financial institution when your check is first presented, our bank will charge us a returned item fee and you agree to reimburse us for any returned item fee that is charged to us by our bank for each check that is not honored (which fee is currently \$20 in New York and \$25 in Pennsylvania and Vermont). **FOR NEW YORK RESIDENTS: If any check issued by you is not paid in full by your bank when first presented, and you knew or should have known that payment of the check would be refused because you either had no account with such bank or you had insufficient funds on deposit in the account; then, in either event, and except as provided in Section 11-104 of the General Obligations Law of New York, you shall be liable to us for the following amounts (provided we comply with the notice and demand provisions of said Section 11-104): (1) the face amount of the check and (2) additional, liquidated damages, which damages shall be determined as follows: (A) If you knew or should have known that you had no account with such bank (for example, your account was closed), then you shall be liable for additional charges in an amount to be determined by the court in light of the circumstances but in no event shall such amount be greater than twice the face amount of your check or \$750.00, whichever is less, or (B) If you knew or should have known that you had insufficient funds on deposit in the account, then you shall be liable for additional charges in an amount to be determined by the court in light of the circumstances but in no event shall such amount be greater than twice the face amount of your check or \$400.00, whichever is less. Your participation in the Program means that you agree that this paragraph constitutes conspicuous notice as required by Subdivision (6) of Section 11-104 of the General Obligations Law of New York, which statute also provides you with certain exceptions and certain defenses.**
- (ii) Collection Costs and Legal Charges: If we need to commence legal proceedings against you to enforce this Agreement, these Terms and Conditions, and/or to collect any amounts owed by you hereunder, you agree to pay for all of our reasonable legal fees and costs that we incur in connection with such legal proceedings

(inclusive of any and all applicable costs for legal process and court filing fees, attorney fees, collections costs and/or enforcement charges of any kind)

(iii) **Finance Charge on Delinquent Accounts:** If your account becomes delinquent and your then outstanding balance remains unpaid for 90 days or more; then, in such event, and in addition to our continuing and absolute right to cancel, suspend or discontinue your account at any time and from time to time, Tops Markets reserves the right to assess a finance charge against your outstanding balance, which finance charge shall be assessed at an annual percentage rate ("APR") that is equal to the then prime rate (herein the "Prime Rate", as such prime rate is published from time to time in the "Money Rates" section of the *Wall Street Journal* or in a substantially equivalent publication if the *Wall Street Journal* is no longer being published) plus five (5) percent (also known as "prime plus 5%") or the highest finance rate allowed by law, whichever is lower (herein the "Delinquent Account Finance Charge"). If we impose a Delinquent Account Finance Charge on your account, we will calculate the interest charge on your account as follows:

- (1) The interest charge for each billing period shall be equal to: (I) the "average daily balance" times (II) the "daily periodic rate" times (III) the number of days in each billing period.
- (2) To get the "average daily balance" of your Account, we first determine each day's "daily balance", which is established by taking the beginning balance of your Account each day, we then add any new purchases, charges, and/or fees that have been properly assessed against your Account, and we then subtract any payments or credits that have been received and properly applied to your Account. Once we have a "daily balance" of your Account for each day in the billing cycle, we then add together all of the daily balances for each day in the billing cycle and divide the total by the number of days in each billing cycle to determine the "average daily balance" of your Account.
- (3) The "daily periodic rate" is  $1/365^{\text{th}}$  of the APR, rounded to one ten thousandth of a percentage point.
- (4) The following is an EXAMPLE how we will calculate your Delinquent Account Finance Charge:  

Assume that the Prime Rate is 3.25%, your "average daily balance" is \$2,250.00, and there are 30 days in the billing cycle. In this EXAMPLE, the applicable APR is 8.25% (3.25% plus 5% = 8.25%), the "daily periodic rate" is 0.0226% (8.25% divided by 365 days = 0.0226%), which means that your finance charge is \$15.26 (\$2,250.00 times 0.0226% times 30 days = \$15.255 which is rounded up to \$15.26).
- (5) We reserve the right to use other formulas and other methods from time to time to determine your Delinquent Account Finance Charge provided the end result produces similar or substantially similar results. Changes to the method of calculation may also occur if the Prime Rate changes during a billing cycle.

(b) **Service Fees:** We reserve the right to impose service fees on your account in the future, which (if permitted under law and assessed by us) will be posted on your invoice and will become due and payable along with all other charges, service fees, and assessments that have been properly posted against your account. If we decide to impose service fees on your account in the future, we will provide you with advance notice (orally or in writing) of these new fees at least 45 days prior to imposing the new fees, which notice will allow you time to opt out and reject such new fees before they automatically apply to your account.

## 8. **Default:**

Your account will be in default if:

- (a) You violate any one or more of these Terms and Conditions, including but not limited to a failure by you to pay make timely and full payment of all amounts due hereunder;
- (b) You provide us with false information on your application or in connection with the administration of your account; and/or
- (c) You file for bankruptcy

Subject to applicable law and these Terms and Conditions, if your account is in default, we reserve the right to do the following (which actions may be taken by us without prior notice to you):

(aa) Suspend, cancel or discontinue your account (including individual transactions in our Stores); and/or

(bb) Require you to pay immediately (and in full) any outstanding balance on your account (including any unpaid charges, service fees, and/or finance charges that have been properly assessed against your account).

#### **9. Your liability for Unauthorized Transactions:**

If your Card is lost, stolen or used without your permission, you will not be liable for any unauthorized charges that occur after you notify us. You may, however, be liable for unauthorized use that occurs before you notify us. In any case, your liability will not exceed \$50 or the lesser amount of any transaction(s) that occurred from “unauthorized use” of the Card before you provided us with notice. Notification to us, as required hereunder, is given when reasonable steps have been taken by you in the ordinary course of business to provide us with pertinent information about the loss, theft or possible unauthorized use of your Card. Notification to us, at your option, may be given by you in person, by telephone, or in writing (SEE SECTION 3, “CONTACT US”). For purposes of these Terms and Conditions, the term “unauthorized use” means the use of your Card by a person, other than someone who is authorized by you, who does not have actual, implied, or apparent authority to use the Card and your business or organization received no benefit from such use of the Card.

#### **10. YOUR BILLING RIGHTS – PLEASE KEEP THIS NOTICE FOR FUTURE USE:**

The following contains important information about your rights and our responsibilities under the Fair Credit Billing Act – Notify us in case of errors or questions.

If you think there is an error on your statement, please contact us as follows:

(a) You may write a letter to us at:

TOPS Business Plus™  
PO Box 1027  
Buffalo, NY 14240-1027  
Attn: TOPS Business Plus™

(b) You may contact us via Email at:

[BusinessPlus@Topsmarkets.com](mailto:BusinessPlus@Topsmarkets.com)

In your letter or communication to us, please give us the following information:

- Account Information: Your name and account number
- Dollar Amount: The dollar amount of the suspected error
- Description of the problem: If you think there is an error on your bill or statement, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.

You must notify us of any potential errors in writing or via e-mail as provided herein. You may also contact us by calling the **TOPS Business Plus™ hotline** at 1-800-806-1273 (24 hours per day); however, if you call us by telephone and do not take the extra step of providing us with a written notice or e-mail concerning the potential error, we are not required under law to investigate any potential errors and you may have to pay the amount in question.

#### **WHAT WILL HAPPEN AFTER WE RECEIVE YOUR NOTICE**

While we investigate whether or not there has been an error in your Account, the following are true:

- We cannot try to collect the amount in question, or report you as delinquent on that amount
- The charge in question may remain on your Account and, if your account is subject to finance charges, we may continue to charge you interest on that amount; however, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
- While you do not have to pay the amount in question, you are responsible for the remainder of your Account balance.

- We may apply any unpaid amount against your credit limit.
- We will acknowledge in writing your complaint within 30 business days after we receive your letter or e-mail.
- We will investigate your complaint and tell you the result of our investigation in no more than 60 days after you notify us of the reported error in writing.

If we determine that there was no error, we will send you a written explanation after we finish our investigation and you will be responsible for all applicable charges and fees as described in section 7 “Charges and Service Fees”. If we determined that we have made a mistake, then the charge will be removed from your statement. If you receive our explanation but still believe the bill is wrong, you must write to us within 10 days telling us that you refuse to pay and, if your letter requests documentation supporting our decision, we will provide you with the documents we used in our investigation. During this subsequent review of your Account, we cannot report you as delinquent without also reporting that you are questioning your bill. We must also tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been finally settled between us.

If we do not follow these rules, you do not have to pay the first \$50 of the amount you question even if your bill is correct.

**11. Termination or Suspension of Your Account:**

(a) Termination or suspension of your Account by Tops Markets: We may terminate, suspend, cancel or discontinue your account (including individual transactions in our Stores) if you are in default as described in Section 8 without notice from us. We may also terminate, suspend, cancel or discontinue your account (including individual transactions in our Stores) at any time for any reason. We may do this without prior notice to you. If we terminate, suspend, cancel or discontinue your account, you must still repay any outstanding balance due on your account (including any unpaid charges, service fees, and/or finance charges that have been properly assessed against your account in accordance with this Agreement).

(b) Termination or suspension of your account by you: You may terminate, suspend, cancel or discontinue your account by notifying us via email or mail, or by calling the TOPS Business Plus™ **hotline** (see Section 3 above . . . Contact Us). If you terminate, suspend, cancel or discontinue your account, you must still repay any outstanding balance due on your account (including any unpaid charges, service fees, and/or finance charges that have been properly assessed against your account in accordance with this Agreement).

**12. Your rights if you are dissatisfied with your Charge Card Purchase:**

If you are dissatisfied with the goods or services that you have purchased under this Program, and you have tried in good faith to correct the problem with Tops Markets, you may have the right not to pay the remaining amount due on your purchase. To use this right, all of the following must be true:

- (a) You used the Card to make the purchase. Purchases made by cash or check do not qualify.
- (b) You must have not paid yet for the purchase in full.

**13. Severability:**

If any part of these Terms and Conditions is later held to be invalid or illegal by any court or agency of competent jurisdiction, then that part shall be limited or curtailed to the extent necessary to make such provision valid, and all other remaining terms and provisions of these Terms and Conditions shall remain in full force and effect.

**14. Entire Agreement:**

This Agreement constitutes the entire agreement between the parties hereto and supersedes all agreements and understandings, whether written or oral, between the parties with respect to the Program. Headings used in these Terms and Conditions are for reference only and shall not be given any substantive effect.

**15. Governing Law:**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the choice or conflict of law provisions of such state.

**16. No Assignment:**

We may assign our rights under this Agreement to any subsidiary, affiliate, and/or any other company of our choosing at any time without notice to you. Your rights and obligations under this Agreement may not be assigned or transferred without our consent and these Terms and Conditions will be binding upon your permitted successors or assigns.

**17. Goods or Services Not Eligible for Purchase with Your Card:**

You may not use your Card to purchase the following goods or services:

- Lottery tickets
- Telephone, gas or electric utility payments at our Customer Service Desk
- Gasoline
- Western Union offerings such as money orders and money transfer

**18. Authorization to Obtain a Credit Report:**

By submitting an application for participation in the Program, and in compliance with the Fair Credit Reporting Act (15 U.S.C.A. §§1681, *et seq.*), you hereby authorize Tops Markets to obtain a credit report that will provide Tops Markets with information about your organization's creditworthiness, credit standing, credit capacity, character, general reputation, or personal characteristics (collectively a "Credit Report"). If a Credit Report is obtained by Tops Markets, it will not be used in violation of any federal or state law or regulation. Upon request, you will be informed whether or not a Credit Report was obtained and, if a Credit Report was obtained, you may be informed of the name, address and telephone number of the company that furnished the Credit Report.

**19. Privacy Policy:**

TOPS Markets® (TOPS) believes in the importance of protecting our customers' information. TOPS values your business and the trust you place in us. To help you better understand how customer information is collected, used and protected at TOPS, this Privacy Policy outlines: (a) our definition of customer information, (b) how customer information is collected, (c) how customer information is used, (d) how you may prevent your customer information from being collected, and (e) the measures we take to safeguard customer information.

Our primary reasons for collecting customer information is to help us deliver greater value to you and to improve your shopping experience with us. For example, we may use customer information to advise you about products, services, special savings, coupons and discounts we believe may be of interest to you, and to advise you of important information such as product recalls.

**What is Customer Information?**

Customer Information is information that is obtained by TOPS when our customers purchase a product or service in our stores, or when our customers interact with us as described in this Privacy Policy. Customer Information includes both generic information that does not contain any specific information about you, as well as Customer Identifiable Information which is information that identifies or is specific to you. Customer Identifiable Information typically includes your name, address, email address, telephone number and purchasing information. If you elect to have check-cashing privileges at our stores, it may also include your social security number, checking account number and/or driver's license number.

Generic information is information concerning sales in general, which does not contain any specific information about you or others ("Generic Information"). Because Generic Information cannot be linked to you or any other specific individual, it is not covered by this Privacy Policy and it may be used by TOPS or others for any purpose.

Customer Information, as defined in this Privacy Policy, does not include any of your pharmacy records. Your pharmacy records are kept separate and apart from other Customer Information. Importantly, all pharmacy records are kept and maintained in strict accordance with the privacy and confidentiality requirements mandated by Federal and state law. Our privacy policy for pharmacy records is described in the TOPS Notice of Privacy Practices, which is available on our website or at any of our pharmacy locations. Please speak to your pharmacist for additional information.

**How is Customer Identifiable Information Collected?**

We collect Customer Identifiable Information from various sources, including the following:

- Information we receive when you use your TOPS BonusPlus® and/or your **TOPS Business Plus™**
- Information you give us on application forms, customer surveys, store kiosks, sweepstakes, contests and coupon rebate entries;
- Information you provide to us over the phone, through the mail, or via email;
- Information we collect through your browser when you visit our website and your browser interacts with our computer systems; and
- Information provided to us by other companies that have collected information about you and that have the lawful right to give this information to us.

#### **How is Customer Identifiable Information used?**

In order to provide you with products and services we believe may meet your needs and interests, TOPS may disclose Customer Identifiable Information about you, your purchases and your shopping experiences with TOPS to marketing service providers that are utilized by TOPS to perform services for us, such as sending a direct mail offer from us to you. Importantly, we require these marketing service providers to sign a confidentiality agreement that prohibits them from using your Customer Identifiable Information for other purposes and/or from disclosing your Customer Identifiable Information to anyone else.

TOPS may also disclose Customer Identifiable Information to third party companies who accumulate and combine data to produce aggregated information that is not identifiable to you or any other specific individual (“Aggregated Information”). Importantly, we require these third party companies to sign a confidentiality agreement that prohibits them from using your Customer Identifiable Information for other purposes and/or from disclosing your Customer Identifiable Information to anyone else. Aggregated Information, like Generic Information, cannot be linked to you or any other specific individual, and is therefore not covered by this Privacy Policy, and may be used by TOPS or others for any purpose.

We may also provide your Customer Identifiable Information to a third party to complete your purchases. For example, if you use a credit or debit card to pay for your purchases at TOPS your card number and transaction information will be shared with the payment processor or card issuer. In addition, TOPS may disclose Customer Identifiable Information as required by law, as required to protect the rights or safety of TOPS or our customers, or in response to a specific law enforcement request. TOPS may also disclose Customer Identifiable Information to our affiliates, and may transfer Customer Identifiable Information in connection with a sale of its business operations, reorganization, merger, sale, joint venture or other disposition of the assets or stock of (or membership interest in) TOPS.

#### **How can you prevent your Customer Identifiable Information from being collected?**

You consent to us collecting and using your Customer Identifiable Information in accordance with this Privacy Policy by (a) signing up for and using a **TOPS Business Plus™**, (b) registering on our website, (c) interacting with us via phone, mail or e-mail, or (d) otherwise voluntarily providing us with your Customer Identifiable Information.

You may elect not to receive special offers by mail or e-mail. You may also prevent your Customer Identifiable Information from being collected if you shop without a **TOPS Business Plus™**. Please keep in mind that if you elect not to use a **TOPS Business Plus™** you may not be eligible for **TOPS Business Plus™** savings or other **TOPS Business Plus™**-based promotions such as TOPS GasPoints® and other continuity and savings programs, including certain sweepstakes that require the use of a **TOPS Business Plus™**.

#### **What measures have been designed to safeguard Customer Identifiable Information?**

Protecting Customer Identifiable Information is a priority for TOPS. Our employee Code of Ethics and this Privacy Policy emphasize this priority. TOPS employees who violate our policies and procedures are subject to disciplinary action. Marketing services providers and other third parties that receive Customer Identifiable Information are required to preserve the confidentiality of that information under the terms of our contracts with them. TOPS also maintains physical, electronic and procedural safeguards that meet or exceed industry standards that are designed to keep unauthorized persons from accessing Customer Identifiable Information stored on our systems.

#### **Will the Privacy Policy change?**

TOPS may modify this Privacy Policy from time to time. Our current Privacy Policy can be viewed on our website at [www.topsmarkets.com](http://www.topsmarkets.com).