

## **OVERVIEW**

Welcome to **Kind A Blue Jazz Club & Restaurant**. This website is operated by Asia We (M) Sdn. Bhd. (1075586-W). By accessing, browsing and registering through **www.kindablue.com.my**, you are deemed to have acknowledged, read, understood and accepted these Terms & Conditions (as defined below). These Terms & Conditions are applicable to all registrations and related transactions carried out on this site. If you do not wish to accept these Terms and Conditions, you shall not access and shall immediately cease browsing the Site.

Asia We (M) Sdn. Bhd. ("Asia We"), a private company limited by shares and incorporated under the laws of Malaysia.

---

## **SECTION I** **GENERAL TERMS AND CONDITIONS**

### **1.0 INTERPRETATIONS AND DEFINITIONS**

- 1.1 Unless the context otherwise requires, the following words and expressions have the meanings set out below:

"Asia We", "we", "us", and/or "ours" refers to Asia We (M) Sdn. Bhd., the Company that sells Products to the User through this website.

"You" or "Buyer" or "User" refers to the owner of the User's Account making the purchase from the website.

"Party" or "Parties" means Asia We and the User (as the case may be) collectively.

"User's Account" means the personalised account where permission is granted to the User to access the Site by keying in its username and password onto the designated page of the Site and matches the records of Asia We. The Users' Account will be activated upon the submission by the User.

"Products" means the products marketed, promoted and put on sale on the Site.

"Website" or "Site" refers to **www.kindablue.com.my**.

- 1.2 The User (as the case may be) hereby agree that Asia We shall under no circumstance be held liable or responsible, directly or indirectly, for any loss or damage incurred or suffered by any third party arising from any act of delays, inaccuracies or omissions occurring during and in connection with the use of the Site.

*~ The remainder of this page has been intentionally left blank ~*

## **2.0 GENERAL TERMS**

- 2.1 These Terms and Conditions shall include all terms and conditions set out herein and any terms and conditions that have been or will be published, announced or declared by Asia We in any means of communication or announcement ("Terms and Conditions"). These Terms and Conditions shall be inclusive of the terms of registration in Section II, terms of use in Section III, and returns, refund and dispute policy in Section IV which shall form an integral part of these Terms and Conditions.
- 2.2 Asia We reserves its rights to add, change, amend, alter, modify, revise or suspend the Terms and Conditions ("Revised Terms and Conditions") at any time. Changes will be made through announcement or publication on the Site or such other medium or media or commerce platform of ours with no further notice to you. The Revised Terms and Conditions shall be effective upon publication and shall form part of the Terms and Conditions. Your continuing access and use of the Site following the changes or variations to the Terms and Conditions, constitutes your acknowledgement and acceptance to such changes or variations.
- 2.3 The headings used in this agreement are included for convenience only and will not limit or otherwise affect these Terms and Conditions.
- 2.4 The User understands that information/data may be transferred unencrypted and involve:
- a) Transmission over various networks;
  - b) Changes to conform and adapt to technical requirements of connecting networks or devices.
- All credit card and payment information used in executing a transaction and/or effecting payments will always remain encrypted.
- 2.5 You agree not to reproduce, duplicate, copy, sell, resell, or exploit any portion:
- a) of our Site;
  - b) use of our Site;
  - c) access to our Site; or
  - d) any contact on our Site;
- without express written permission from us.
- 2.6 We are not responsible if information made available on the Site is not accurate, complete or current. The material on this site is provided for general information only and should not be relied upon or used as the sole information. Any reliance on the material on this site is at your own risk. All images shown on the site are for illustration purposes only. Actual product(s) may differ from images.
- 2.7 We reserve the right but not the obligation to modify the contents on the Site at any time. You agree that it is your responsibility to monitor changes on the Site.

*~ The remainder of this page has been intentionally left blank ~*

- 2.8 We reserve the right, at our sole discretion, to update, change or replace any part or modify these Terms and Conditions at any time, by posting updates and changes to our Site. You agree that it is your responsibility to monitor changes on the Site. Your continued use of or access to our Site following the posting of any changes, constitutes acceptance of those changes.

### **3.0 DURATION**

- 3.1 Except as otherwise provided herein, these Terms and Conditions shall continue in full force and effect until or unless terminated in accordance with these Terms and Conditions.
- 3.2 Unless otherwise prohibited by law, all decisions made by Asia We in connection with the provisions of these Terms and Conditions shall be conclusive and binding on the User (as the case may be).

### **4.0 GOVERNING LAW AND JURISDICTION**

These Terms and Conditions shall be governed by and construed in accordance with the laws of Malaysia.

*~ The remainder of this page has been intentionally left blank ~*

**SECTION II  
TERMS OF REGISTRATION**

**1.0 ELIGIBILITY OF USER**

- 1.1 The eligibility of the User to register with Asia We is subject to compliance with all of the following conditions set out below. The User shall:
- a) be an individual or legal entity with the capacity of a natural person or juridical person under the laws of Malaysia;
  - b) be a person who is eligible to engage in the e-commerce transactions in accordance to the relevant digital or e-commerce legislations in Malaysia;
  - c) agree to comply with these Terms and Conditions;
  - d) register itself with the Site or such other registered media platforms belonging and so specified by Asia We and agree to read, understand and accept the rules, policies, guidelines and contents as we may from time to time implement and impose on the User;
  - e) ensure that all information (including personal information) is true, accurate and not misleading in all aspects and shall refrain from using any false identity, misuse the identity of another person or other improper or illegal methods to be eligible as a User. Failing which, we reserve the right to take all necessary legal action (including termination and disqualifying the User from the Site) against such a User who has breached the above provisions and the User shall bear the legal consequences of the breach;
  - f) comply with all the relevant directives, policies, rules, regulations and laws of Malaysia. The User acknowledges that we have relied solely on the accuracy and completeness of the information provided by the User at the point of registration.
- 1.2 Upon successful registration, the User is deemed to have qualified as a User on the Site and the identity of the User may be verified by way of accessing to the relevant User's Account and the e-store on the Site.

*~ The remainder of this page has been intentionally left blank ~*

**SECTION III  
TERMS OF USE**

**1.0 REPRESENTATIONS AND WARRANTIES BY THE USER**

- 1.1 The User hereby represent, warrant and undertake (where applicable) to Asia We that:
- a) it has taken all necessary steps to ensure that its personal information or other related information submitted to us is true, accurate and not misleading at the time of registration and shall at all times, ensure the validity and keep-up-to-date such information including, but not limited to, his/her email address, contact number and postal address. The User further undertakes that no false personal information shall be provided to us and we are obliged to update the information in due course upon receipt of any updates on the information provided by the User;
  - b) it will comply and conform to these Terms and Conditions, all rules, regulations and policies implemented by us;
  - c) it shall at all times, ensure compliance with the applicable laws or other pertinent laws in Malaysia and in the event of any infringements and violations of the governing laws, regulations, directives, the User shall be solely liable.

**2.0 RIGHTS AND OBLIGATIONS OF USER**

- 2.1 The User is obliged under these Terms and Conditions to:
- a) provide current, complete and accurate account information for all purchases made on the Site.
  - b) promptly update account and other information including, but not limited to, email address, payment details and contact details for us to process your transaction and contact you thereafter (if applicable).

**3.0 RIGHTS AND OBLIGATIONS OF ASIA WE**

- 3.1 Asia We has the absolute right to:
- a) suspend or terminate the User's Accounts, in the event the User make or cause to make disparaging remarks or conduct that adversely impacts its reputation, products, services, management and members;
  - b) approve, refuse or reject service to anyone at any time with or without reason at its sole discretion;
  - c) access the User's data and transactions on the Site and should there be any suspicious or irregular activities, it has the right to inquire or request that the User make the necessary changes or to make the necessary deletion or modification where appropriate;
  - d) announce on the Site, any illegal transactions or wrongdoings carried out by the User suspend the relevant User in the event where it is affirmed by any effective legal instruments or any orders/judgments that the User has violated any laws or by its judgment that the User has committed any wrongdoings;

- e) delete or impose restrictions to the User in respect of any announcements, comments or information published by the User on the Site, where it believes that the contents of the announcements, comments or information published is:
  - a. fraudulent, malicious, false, untrue, incorrect or misleading;
  - b. not relevant to the transactions carried out on the Site;
  - c. violating the pricing of sales or tantamount to attempts to disrupt the usual order of the transactions on the Site;
  - d. contrary to the public interest or that could have a material adverse effect on Asia We or the other users of the Site;
- f) appoint any third-party logistics company for the distribution of products. We will not bear any losses arising from negligence on the part of the logistics company;
- g) modify or discontinue products or services offered (or any part or content thereof) and pricing without notice. We shall not be liable to you or to any third-party for any such modification, change, suspension or discontinuance.

#### **4.0 INTELLECTUAL PROPERTY RIGHTS**

- 4.1 The User shall not, without the prior written consent of Asia We, directly or indirectly, adopt or otherwise use the registered trademarks, trade names and such other intellectual property rights of Asia We and its operating assets including all logos, business names, business domains ("IP Rights"). In the event of an infringement of any of the IP Rights of Asia We, we reserve the right to claim for any losses or damages incurred in connection with the infringement.
- 4.2 Asia We shall not be liable for and the User shall be solely responsible and liable for any losses and damages caused by the User as a result of the infringement of the IP Rights. All costs and expenses arising out of the breach or incurred for the purposes of defending Asia We and/or User shall be borne solely by the relevant User.

#### **5.0 TERMINATION**

- 5.1 The obligations and liabilities of the parties incurred prior to the termination date shall survive the termination of this agreement for all purposes.
- 5.2 These Terms and Conditions are effective unless and until terminated by either you or us. You may terminate these Terms and Conditions at any time by notifying us that you no longer wish to use our Services, or when you cease using our site.
- 5.3 If in our sole judgment you fail, or we suspect that you have failed, to comply with any term or provision of these Terms and Conditions, we also may terminate this agreement at any time without notice and you will remain liable for all amounts due up to and including the date of termination; and/or accordingly may deny you access to our Site (or any part thereof).

*~ The remainder of this page has been intentionally left blank ~*

## **6.0 PARTIES' COVENANTS**

- 6.1 The Parties shall at all times ensure strict compliance to these Terms and Conditions.
- 6.2 The User hereby agrees to compensate us and be responsible for all losses and expense incurred or arising in connection with any breach of these Terms and Conditions suffered by us.

## **7.0 LIMITATION OF LIABILITIES**

- 7.1 All access and downloads of content or information from the Site or such other webpages or linked webpages shall be at the User's own risk and Asia We shall not be liable for any loss of data or interruption to the User due to the usage of any such downloaded content or information.
- 7.2 We do not guarantee, represent or warrant that your use of our service will be uninterrupted, timely, secure or error-free.
- 7.3 You agree that from time to time, we may remove or cancel products or Site functions for indefinite periods of time without further notice to you.
- 7.4 You expressly agree that your use of, or inability to use, the Site is at your sole risk. The products and/or services delivered to you through the Site are (except as expressly stated by us) provided 'as is' and 'as available' for your consumption, without any representation, warranties or conditions of any kind, either express or implied, including, but not limited to, all implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, durability, title, and non-infringement.
- 7.5 In no case shall Asia We, our directors, officers, employees, affiliates, agents, contractors, interns, suppliers, service providers or licensors be liable for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages of any kind, including, but not limited to, lost profits, lost revenue, lost savings, loss of data, replacement costs, or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise, arising from your use of any of the service or any products procured using the Site, or for any other claim related in any way to your use of the Site, or any product or service, including, but not limited to, any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of the Site or any content (or product) posted, transmitted, or otherwise made available via the service, even if advised of their possibility. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, our liability shall be limited to the maximum extent permitted by law.
- 7.6 We do not warrant that the quality of any products, services, information, or other material purchased or obtained by you will meet your expectations.

## **8.0 DELIVERY**

- 8.1 The User understands that Asia We offers their products via delivery. By entering the delivery address on the Site, the User will see the nearest available outlet at that time. Delivery areas may expand, shrink or change depending on weather and traffic conditions, situations of force majeure and/or at the discretion of Us.

*~ The remainder of this page has been intentionally left blank ~*

8.2 In cases where we attempt to deliver an Order but we are unable to do so due to the reasons caused by the User, we reserve the right to cancel the Order without refund or remedy, if the User remains uncontactable or fail to receive the Order within ten (10) minutes from the time the Order arrives at the specified delivery address. The reasons include but are not limited to:

- a) no one was present or available to receive the Order; or
- b) customer was uncontactable despite attempts to reach the customer via the phone number provided; or
- c) lack of appropriate or sufficient access to deliver the Order successfully;
- d) lack of a suitable or secure location to leave the Order; or
- e) in the case of Restricted Goods, customer did not meet the statutory age requirements or delivery/logistics partner did not deem it safe or appropriate for the customer to receive the Restricted Goods.

## **9.0 ENTIRE AGREEMENT**

9.1 The failure of us to exercise or enforce any right or provision of these Terms and Conditions shall not constitute a waiver of such right or provision.

9.2 These Terms and Conditions and any policies or operating rules posted by us on this site constitutes the entire agreement and understanding between you and us and govern your use of the Site, superseding any prior or contemporaneous agreements, communications and proposals, whether oral or written, between you and us (including, but not limited to, any prior versions of the Terms and Conditions).

9.3 Any ambiguities in the interpretation of these Terms and Conditions shall not be construed against the drafting party.

## **10.0 THIRD-PARTY LINKS**

10.1 Certain content, products, and services available via our Site may include materials from third-parties. Third-party links on this site may direct you to third-party websites that are not affiliated with us. We are not responsible for examining or evaluating the content or accuracy of third-party websites.

10.2 We are not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions made in connection with any third-party websites. Please review carefully the third-party's policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products should be directed to the third-party.

## **11.0 COMMENTS, FEEDBACK, AND OTHER SUBMISSIONS**

11.1 If you send certain specific or unspecific comments, feedback and/or submissions ("comments") with or without a request from us you agree that we may, at any time, without restriction, edit, copy, publish, distribute, translate and otherwise use in any medium. These include, but are not limited to, creative ideas, suggestions, proposals, plans, or other materials that are sent to us via online, by email, by postal mail, or otherwise.

11.2 We are and shall be under no obligation:

- a) to maintain any comments in confidence;
- b) to pay compensation for any comments; or
- c) to respond to any comments.

11.3 We may, but have no obligation to, monitor, edit or remove content that we determine in our sole discretion are unlawful, offensive, threatening, libellous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property or these Terms and Conditions.

11.4 You agree that your comments will not violate any right of any third-party, including copyright, trademark, privacy, personality or other personal or proprietary right. You further agree that your comments will not contain libellous otherwise unlawful, abusive or obscene material, or contain any computer virus or other malware that could in any way affect the operation of the Site or any related website.

11.5 You agree to not use a false e-mail address, pretend to be someone other than yourself, or otherwise mislead us or third-parties as to the origin of any comments. You are solely responsible for any comments you make and their accuracy. We take no responsibility and assume no liability for any comments posted by you or any third-party.

## **12.0 ERRORS, INACCURACIES, AND OMISSIONS**

12.1 Occasionally there may be information on our Site that contains typographical errors, inaccuracies or omissions that may relate to product descriptions, pricing, promotions, offers, delivery or shipping charges, transit times and availability. We reserve the right to correct any errors, inaccuracies or omissions, and to change or update information or cancel orders if any information is inaccurate at any time without prior notice (including after you have submitted your order).

12.2 We undertake no obligation to update, amend or clarify information on the Site, including, but not limited to, pricing information, except as required by law. No specified update or refresh date is applied on the Site, and such updates should not be taken to indicate that all information on the Site has been modified or updated.

## **13.0 PROHIBITED USES**

13.1 In addition to other prohibitions as set forth in the Terms and Conditions, you are prohibited from using the site or its content:

- a) for any unlawful purpose;
- b) to solicit others to perform or participate in any unlawful acts;
- c) to violate any international, federal, provincial or state regulations, rules, laws, or local ordinances;
- d) to infringe upon or violate our intellectual property rights or the intellectual property rights of others;

- e) to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability;
- f) to submit false or misleading information;
- g) to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Site or of any related website, other websites, or the Internet;
- h) to collect or track the personal information of others;
- i) to spam, phish, pharm, pretext, spider, crawl, or scrape;
- j) for any obscene or immoral purpose; or
- k) to interfere with or circumvent the security features of the Site or any related website, other websites, or the Internet. We reserve the right to terminate your use of the Site or any related website for violating any of the prohibited uses.

#### **14.0 INDEMNIFICATION**

- 14.1 You agree to indemnify, defend and hold harmless Asia We and our subsidiaries, affiliates, partners, officers, directors, agents, contractors, licensors, service providers, subcontractors, suppliers, interns and employees, from any claim or demand, including reasonable attorneys' fees, made by any third-party due to or arising out of your breach of these Terms and Conditions or the documents they incorporate by reference or your violation of any law or the rights of a third-party.

#### **15.0 SEVERABILITY**

- 15.1 In the event that any provision(s) of these Terms and Conditions are determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms and Conditions, such determination shall not affect the validity and enforceability of any other remaining provisions.

*~ The remainder of this page has been intentionally left blank ~*

**SECTION IV**  
**RETURN, REFUND AND DISPUTE POLICY**

**1.0 REFUNDS & DISPUTE HANDLING**

- 1.1 The Buyer will **only** have the right to a refund for a cancelled Order only if we have not yet accepted Buyer's Order.
- 1.2 Should the Buyer still decide to cancel Order after it has been accepted by us, no refunds (whether in whole or in part) will be issued to Buyer and the Buyer agrees to forfeit the delivery of the said cancelled Order.
- 1.3 Upon receipt of the Order, if the Buyer discovers that there are issues with the Order (e.g., defective order, or missing items), the Buyer will need to contact our customer support (details on the website).

We may request for photographic proof and/or additional information to properly investigate the issue with the Order. If we determine that the Order and/or Goods you received are not of satisfactory condition or quality, we will compensate you for your Order or parts of your Order.

However, we will not be held liable for damaged orders during the delivery of the order, should a third-party delivery partner/logistics provider be used.

- 1.4 To be eligible for a refund, the Buyer must contact us within 2 hours of receipt of products. Should the Buyer contact us after this time has elapsed, the Buyer is no longer eligible for refunds.
- 1.5 Any refund is capped at lower of:
  - a) the price paid by the Buyer for one or more of the Products; or
  - b) net price (total price of the transaction less any discounts) paid by the Buyer.
- 1.6 Approved refunds will take up to 30 days to be credited into your bank account. We will only process refunds directly to bank accounts.
- 1.7 Asia We takes full responsibility for the transactions from the website **[www.kindablue.com.my](http://www.kindablue.com.my)** and handling the dispute management, refunds, cancellations, returns & customer support.

*~ The End ~*