

1. Our Agreement

1.1 Accepting this Agreement

- (a) These terms govern your access to and use of the Website, and the conditions upon which you procure goods and services from us. By using the Website or purchasing our goods and services, you agree to comply with and be bound by the terms and conditions of this Agreement.
- (b) If you do not agree to these terms, you have no right to purchase our goods or services, obtain information from or otherwise continue using the Website.
- (c) It is your obligation to ensure that you have read, understood and agree to the most recent terms available on the Website.

1.2 About this Agreement

2. Throughout the Agreement we use some capitalised words and phrases, like the word **Agreement**. These capitalised words and phrases are defined in clause 11.1. They aid to clarify the terms and conditions. Please feel free to email us at petalpatch@caboolture.com.au if you have any other questions relating to this Agreement.

3. Purchase of goods and services

3.1 Placing orders

- (a) The goods and services featured on this Website are presented as an invitation to treat.
- (b) The price shown at the time you enter your payment details is the total price of the order.
- (c) By entering your payment details, you are making an offer to us on the terms and conditions set out in this Agreement. We are under no obligation to accept an offer. However, acceptance of your offer is deemed once we confirm your order and notify you of the first anticipated delivery date.
- (d) If you identify an error in the order, please contact us. If at that time your order has not been confirmed, we will wherever possible amend it.

3.2 Purchases via this Website

- (a) All prices quoted are in Australian Dollars and include GST.
 - (b) You are responsible for all bank fees, and charges applied by the payment gateway provider, which you choose to use.
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4. Website

4.1 Information only

Other than the descriptions of our goods and services, the content of our Website is for informational purposes only. It is to be used or relied on at your own risk. We make no warranty or representations as to the accuracy of the information.

4.2 Third party websites and hyperlinks

- (a) The Website may contain hyperlinks and other pointers to websites operated by third parties. We do not control these third party websites and are therefore not responsible for the hyperlinks, information or downloads available on them. You visit third party websites entirely at your own risk.

- (b) Where we provide hyperlinks, we do so only for your convenience and do not indicate, expressly or implicitly, any endorsement, sponsorship or approval by us of the content on the third party website.

4.3 Website not locally available

You acknowledge and agree that the Website will only be accessible using the internet and will not be available "locally".

4.4 Parts of the Website controlled by third parties

- (a) You acknowledge and agree that the Website is operated from servers owned and controlled by a third party. As such, you acknowledge that certain functions are out of our control, including data storage and backup.
- (b) We may subcontract the storage of any data to another third party (or multiple third parties) without notification to or consent from you.

4.5 Amendments to the Website

We reserve the right to upgrade, maintain, tune, backup, amend, add to or remove content from, redesign, improve, take offline (temporarily or permanently) or otherwise alter the Website at our sole and absolute discretion.

4.6 Inaccessibility of the Website

From time to time, without notice, access to all or part of the Website may be disrupted or limited. During such an interruption, we will use reasonable endeavours to restore access to the Website as soon as practicable.

4.7 Errors

You acknowledge and agree that there may be technical or administrative errors in the information on the Website. We reserve the right to do any of the following, at our absolute discretion, without notice:

- (a) correct any errors in the Website; or
- (b) update the Website.

4.8 Website security

We will take reasonable steps to ensure that the Website and your order is secure from unauthorised access consistent with generally accepted industry standards.

5. Your use of the Website

5.1 Registering an Account

You acknowledge and agree in order to purchase goods and services, you are required to provide us with Personal Information and create an Account. It is your responsibility to ensure the information in this Account is accurate and kept up to date.

5.2 Account security

- (a) You agree to use reasonable endeavours to keep all Account details strictly confidential.
- (b) You are responsible for your Account activities which occur via the Website, whether those activities are authorised or not, unless they arise from a technical issue with the Website.

5.3 Lawful use of the Website

You undertake not to upload, store or access any data on the Website if such access or storage would:

- (a) infringe a person's Intellectual Property right;
- (b) breach any Privacy Law; or
- (c) breach any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory).

5.4 Conduct which is expressly prohibited

You must not:

- (a) in any way tamper with, hinder or modify the Website;
- (b) knowingly transmit any viruses or other disabling features to or via the Website;
- (c) intentionally disable or circumvent any protection or disabling mechanism related to the Website;
- (d) install or store any software applications, code or scripts on or through the Website;
- (e) use the Website in any way which could be reasonably expected to interfere with or damage our network, any other operator's network, or another user's enjoyment of the Website; or
- (f) attempt, facilitate or assist another person to do any of the above acts.

5.5 Right to suspend

We reserve the right to limit or suspend your access to the Website if in our reasonable opinion, you are in breach of any of your obligations or warranties in this Agreement.

6. Privacy

You agree and consent to us handling your Personal Information in accordance with our Privacy Policy. We may amend our Privacy Policy in our sole discretion. If we amend our Privacy Policy, we will post the new version on the Website.

7. Intellectual Property

7.1 Our warranties regarding Intellectual Property

We warrant we own or have a licence to use the Intellectual Property in the Website.

7.2 Your warranties regarding Intellectual Property

You warrant you will not do any of the following, or permit any person over whom you have effective control to:

- (a) copy or reproduce, or create an adaptation or translation of, all or part of the Website in any way, except to the extent that reproduction occurs automatically through its ordinary use;
- (b) incorporate all or part of the Website in any other webpage, site, application or other digital or non-digital format;
- (c) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of the Website on any medium; or

- (d) directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, content, architecture, or algorithms contained in the Website.

8. Warranties

Subject to the Non-excludable Conditions, we make no warranties or guarantees:

- (a) the Website is of acceptable quality;
- (b) the Website's fitness for any particular purpose; or
- (c) regarding your access to, or the results of your access to, the Website including its correctness, accuracy, timeliness, completeness, reliability or otherwise.

9. Limitation of Liability

9.1 Implied Conditions

We exclude all implied guarantees, conditions and warranties from this Agreement except any Non-excludable Condition.

9.2 Limitation of Liability

Subject to the Non-excludable Conditions, we exclude all other liability for any costs, including consequential losses, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

- (a) the Website being inaccessible for any reason;
- (b) incorrect or corrupt data, lost data, or any inputs or outputs of the Website;
- (c) computer virus, trojan and other malware in connection with the Website or our services;
- (d) security vulnerabilities in the Website or any breach of security that results in unauthorised access to, or corruption of data;
- (e) our negligence or that of our service providers;
- (f) any unauthorised activity in relation to the Website or our services;
- (g) the occurrence of an Event of Force Majeure;
- (h) your failure to provide the correct details about your order;
- (i) your breach of this Agreement; or
- (j) any act or omission by you, your personnel or your associates under or in relation to this Agreement.

9.3 Limits to liability associated with goods and services

Where a Non-excludable Condition is deemed to apply, to the fullest extent possible under the law, we limit our liability for any breach to:

- (a) in the case of goods: the re-supply of the goods or payment of the cost of the re-supply of the goods; or the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and
- (b) in the case of services: the resupply of the services; or the payment of the cost of having the services resupplied.

9.4 Indemnity

You indemnify us against all costs suffered or incurred by us, however caused, arising wholly or partially, directly or indirectly, in connection with this Agreement or your use of the Website and our services, including any costs arising from:

- (a) your breach of this Agreement;
- (b) your infringement of any third party Intellectual Property rights associated with this Agreement;
- (c) any harm to, claim or action by a third party (including to that third party's personal property) which arise directly or indirectly from your use of the Website, the goods, or the services procured under this Agreement; and
- (d) your breach of any law.

10. Dispute Resolution

10.1 Mandatory mediation

- (a) A party claiming that a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute and the parties must submit themselves to the dispute resolution procedure set out in this clause 9.
- (b) Subject to clause 9.2, the parties agree that if a Dispute arises, a party may not commence any legal proceedings relating to the Dispute unless it has complied with the provisions of this clause.
- (c) If the parties cannot resolve the Dispute within 30 days of receiving a notice of the Dispute, then either party may (by giving notice in writing to the other party) require the Dispute to be referred for mediation. The mediation must be undertaken:
 - (i) in accordance with the Resolution Institute Mediation Rules;
 - (ii) at a location agreed by the parties and in the absence of agreement in Brisbane, Queensland; and
 - (iii) using a mediator agreed by the parties and in the absence of agreement by a mediator nominated by the Resolution Institute.
- (d) Each party must pay its own internal and legal costs in relation to complying with this clause 9. The mediator's costs are to be shared equally.
- (e) If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

10.2 Not applicable to the collection of debts

The parties acknowledge and agree this clause 9 does not:

- (a) apply to the recovery of any debt; or
- (b) prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

11. General provisions

11.1 Assignment

We may assign, encumber, declare a trust over or otherwise create an interest in our rights in this Agreement without your consent.

11.2 Entire Agreement

This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

11.3 Governing law

The laws of Queensland, Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

11.4 Notices

Any communication under or in connection with this Agreement:

- (a) which we send, must be either delivered or posted by prepaid post to the address or sent by email to the details in your order/Account at the time of sending; and
- (b) which you send, must be either delivered or posted by prepaid post to **7/31 King Street Caboolture QLD 4510** or sent by email to our email address set out at clause 1.2.

11.5 Severability

Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change its intended effect.

11.6 Variations to this Agreement

We may vary the terms of use of the Website, without notice to you.

12. Definitions and interpretation

12.1 Definitions

Unless the terms and conditions of the Agreement state otherwise, the following expressions used in this Agreement have the following meanings:

Account means the username and access credentials used when you sign up to receive goods and services from us.

Agreement means these terms and conditions and any document incorporated into them by reference.

Australian Consumer Law means schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Delivery Service Provider means any one of the service providers who may deliver the goods on our behalf and who are selected in our sole discretion.

Event of Force Majeure means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or

computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

Intellectual Property means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, confidential information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Non-excludable Condition means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

Payment Terms mean payment is required immediately on making an order.

Personal Information means information or an opinion about an identifiable individual (not a company), whether or not that information or opinion is true or in a material form.

Privacy Law means the *Privacy Act 1988* (Cth) incorporating the Australian Privacy Principles.

Privacy Policy means the privacy policy available on our Website or as amended by us from time to time.

Shipping Location means the location you nominate for the delivery of goods in your order.

You means the person or entity using the Website.

Us, we or our means Caboolture Petal Patch Florist

Website means the website located at www.cabooltureflorist.com.au and any of its subdomains.

Interpretation

Unless the terms and conditions of the Agreement explicitly state otherwise, the Agreement will be interpreted as follows:

- (a) a reference to a party includes that party's permitted assigns, administrators, successors, executors, legal representatives and any novated party;
- (b) any reference to a trustee includes any substituted or additional trustee;
- (c) unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;
- (d) "including", "includes" or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;
- (e) where a term is defined, other grammatical forms of that term will be taken to have the same meaning;
- (f) headings are for convenience and will not affect interpretation;
- (g) words in the singular will be taken to include the plural and also the opposite;
- (h) when any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body;
- (i) a reference to a party's conduct includes omissions as well as acts; and

- (j) if a party is described as having discretion in a matter, the discretion in that matter will be interpreted as sole and absolute.