

Rosita Flowers Standard Terms of Business

1. In this document:

- 1.1. **"Agreement"** means the agreement to purchase goods between the Customer and the Supplier comprising of these Terms and Conditions together with any Order Form, invoice and other related documents or information;
- 1.2. **"Business"** means the business trading as Rosita Flowers, Rosita Flowers – the Kitchens and Rosita Flowers Australia.
- 1.3. **"Claim"** means any loss, damage, action, costs, expenses, refund request, replacement request, claim, notice, demand, action, proceeding, litigation, investigation or judgment however arising, whether present or future, actual or contingent, and whether involving a third party or a party to this Agreement;
- 1.4. **"Courier"** means courier services or other delivery company;
- 1.5. **"Customer"** (or interchangeable "Client") means the clients or the customer of the Business, the person placing the Order for Goods and Services, or on whose behalf the Order is placed, with the Supplier;
- 1.6. **"Goods"** means any flowers, plants, goods, items products, services or materials supplied or to be supplied by the Supplier in accordance with Order Form (or as varied in accordance to this Terms and Conditions) and any goods specified in any invoice;
- 1.7. **"Order"** means any order or offer to purchase Goods whether through the Business's online portal , telephone request or an order in person at the Supplier's store;
- 1.8. **"Order Form"** means the agreement between the Supplier and the Customer as entered into by the parties in relation to the Order placed and varied from time to time by mutual agreement including but not limited to any Order placed through the website for the Business through the online portal, telephone order, order in person at the Supplier's store;
- 1.9. **"Price"** means the price payable for the Goods as specified in an Order Form in Australian dollar (AUD), payable by the Customer to the Supplier at the time of Order placement in connection with the Goods (including, any fees, costs or expenses in relation to the Goods), the Customer must pay GST on any taxable supply made by the Supplier to the Customer under this Agreement;
- 1.10. **Recipient** means the intended receiver of the Goods for the Order or any other personnel accepting the Goods on behalf of the Recipient at the nominated address of the Recipient;
- 1.11. **"Supplier"** means Rosita Flowers Pty Ltd ACN 607 365 748, Kangoo Pty Ltd ACN 162 202 726 and its related bodies corporate (within the meaning of the Corporations Act 2001 (Cth));

- 1.12. **Terms and Conditions** means the terms and conditions contained in this document; and

2. Delivery

- 2.1. Delivery of the Goods ("**Delivery**") is taken to occur at the time that:
 - (a) the Customer or the Customer's nominated Courier takes possession of the Goods at the Supplier's address; or
 - (b) the Supplier (or the Supplier's nominated Couerier) delivers the Goods to the nominated address notified by the Customer when placing the Order even if the intended receiver of the Goods is not present at the address (Delivery is taken to have occurred as long as the Goods are received by a Recipient).
- 2.2. The cost of Delivery is charged at the Supplier's sole discretion depending on the delivery address (this is based on the approximate distance from the closest shop to the destination) and is in addition to the Price.
- 2.3. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivered to the Customer for the purposes of this Agreement.
- 2.4. Same-day Delivery service applies only when the Order is placed before 11AM from Monday to Sunday. Any Order received after 11AM, will be delivered the next day. An additional \$10 surcharge will apply for deliveries due on Sundays and any express/urgent Order requests
- 2.5. In certain circumstances, individual store manager may at its discretion accepts Order with urgent delivery request, such Order are not guaranteed and may be decided at the store manager's absolute discretion on a case by case basis.
- 2.6. Delivery will be completed as follows:
 - (a) If the delivery address provided by the Customer is incorrect, an additional \$30 surcharge will apply. The Supplier will contact the Customer to arrange a new delivery address, date and time.
 - (b) If there is no one home at the time of delivery, the Courier will leave the flowers in the best and safest location possible (or in accordance to any special instructions for delivery provided by the Customer at the time of Order.
 - (c) If the Courier is unable to leave the flowers (for example, if the access gate is locked), the Supplier will call the Customer to arrange a new delivery date and time. An additional surcharge applies for redelivery, the costs of this may vary depending on the day, time, and location of the redelivery request.

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- 2.7. Delivery times may vary depending on the Courier company chosen.
- 2.8. If the delivery details provided by the Customer is incorrect, the Supplier is not obliged and will not refund any payments made by the Customer. A redelivery request, will be considered as a new Order and at full Price and expenses of the Customer.
- 2.9. Anticipate time of Delivery for Order to residential addresses is by or before 6pm, and for Order to business addresses is before 5pm.
- 2.10. The Supplier does not guarantee a specific Delivery time. The Supplier will make every attempt to fulfil your request but cannot guarantee it. In certain unforeseen circumstances, evening deliveries may be organised. Any time or date given by the Supplier to the Customer is an estimate only. The Customer must still accept Delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of the Delivery being late.
- 2.11. Terms of Delivery are subject to force majeure and the Supplier will not be in breach of this Agreement and is not liable to the Customer if the Supplier fails to deliver or there is a delay in Delivery is a result of an event beyond the Supplier's reasonable control, including inclement weather, flood, fire, act of God, other emergencies, vehicle accident, traffic conditions temporary closure of road, legislation or other interference beyond the Seller's control.
- 2.12. Where the Business is closed due to observations of public holidays (such as Christmas Day, Anzac Day, and other public holidays observed by the Business), the Supplier will deliver the Goods on the next available business day.
- 3. Nature of Goods**
- 3.1. The Customer acknowledges that the nature of the Goods purchased is a creation of nature and is not an artificial creation, or an item manufactured or can be produced to exact description. Description and images of the Goods are for reference only.
- 3.2. The Customer acknowledge and accepts that:
- (a) there may be minor variation between the images and description of the Goods provided or as represented;
 - (b) nature of the Goods are seasonal and certain items may not be available, the Supplier reserves the right to substitute the Goods with an alternative of equal value and colour and similar style;
 - (c) the Goods sold are for decoration and are an ornamental object, the Supplier made no warranties on the use of the Goods;
 - (d) in instances where sundry items (such as fruits, chocolates or brownies) are included in the Goods, the Supplier made no warranties
- on the quality and standard of the items and these items are subject to the manufacturer's control;
- (e) the Supplier may at its absolute discretion substitute or vary the vase, base, glass, box or container of the Goods (despite the image display on the website, materials, order request form or item as inspected by the Customer) without notice to the Customer provided that the substituted container is of similar quality;
 - (f) the Customer has no right and must not bring a Claim in relation to the Goods or against the Supplier in any instances mentioned in this clause 3.2(a) to 3.2(e); and
 - (g) the Supplier is not responsible of any liabilities in relation to instances mentioned in this clause 3.2(a) to 3.2(e) and the Supplier is not liable to refund the Price paid or to replace the Goods.
- 3.3. The Customer shall take Delivery of the Goods tendered subject to the Supplier's right of variation or discrepancy in the description of the Goods in accordance to this clause 3.
- 3.4. On certain special calendar events (such as Valentine's Day or Mother's Day), due to high volume, the Supplier reserve the right to not accept changes to Order, or cancellation of Order. Further, in the event that some colours or varieties of Goods chosen are not available, the Supplier reserve the right to substitute the Goods with an item of equal value, similar colour and style without notice to the Customer.
- 3.5. The Supplier will not be completing Order on which items (similar to the Goods supplied by the Supplier) purchased elsewhere is required to be included in the Order or if the Customer requires such items to be endorsed with the Supplier's branding.
- 4. Risk**
- 4.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery.
- 4.2. If any of the Goods are damaged or destroyed following Delivery, the Supplier is not obliged nor required to replace the Goods or refund the Price paid.
- 4.3. The Customer acknowledges that due to the nature of the Goods. The Customer bears the absolute risk and liabilities of the following:
- (a) any injury resulting from any thorns or prickles from the Goods (for example in the instance of roses or cactus);
 - (b) allergy reaction due to being exposed to the Goods;
 - (c) the use of the Goods (for example if it can be used for decoration of an edible item); and

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- (d) any products produced from the Goods or of which the Goods is a part of.

- 4.4. The Supplier made **no** warranties or representations in relation to items mentioned in clause 4.3 above. In particular, the Goods sold are for decoration and are an ornamental object. If the Customer intends to use any Goods purchased (in particular the flowers) as a decorative object for an edible item (such as bakeries or cakes), the Customer is to be fully responsible to ascertain whether the Goods can be used for that particular purpose (including whether it is fit for consumption, whether it will cause any allergy reaction or contamination).

5. Payment terms

- 5.1. Payments of the Order are required upfront when the Order Form is placed and the Order is not completed until such time full payment of the Price is received.

6. Cancellation

- 6.1. Should the Customer wish to cancel any Order, the cancellation request must be received by the Supplier at least 24 hours before the delivery date.
- 6.2. In the event that the cancellation request is received only within 24 hours of the delivery date, then such cancellation request will be determined at the Supplier's absolute discretion. In any event, the Customer will not be entitled to a full refund and is still obliged to pay 50% of the Price of the Order.
- 6.3. The Supplier will not be able to refund any Price paid for Order that have already been completed or is en-route on delivery.

7. Limitation of liability

- 7.1. Except as provided below, all express and implied warranties and conditions under statute or general law as to description, quality, suitability, or fitness of any Goods for any purpose or otherwise are hereby expressly excluded. The Supplier shall not be liable for physical injury, loss or damage or for consequential loss or damage of any kind arising out of the supply or the use of any Goods or arising out of contract or negligence or in any way whatsoever.
- 7.2. Nothing in these Terms and Conditions shall be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by the law (including the by the *Competition and Consumer Act 2010* (Cth)) and which by law cannot be excluded, restricted or modified.

8. Indemnity

- 8.1. The Customer agrees to indemnify the Supplier and keep the Supplier indemnified against any claim. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

9. Disputes Resolution

In the event of dispute, the Customer is required to submit such dispute advice or complain to the Supplier within 24 hours of the Delivery. The Supplier will attend to resolving the dispute in a professional manner. Resolution approach taken will be at the Supplier's discretion.

10. Jurisdiction

- 10.1. The Customer acknowledges and agrees that this Agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland. The Customer submits to the non-exclusive jurisdiction of the relevant courts.
- 10.2. The Customer acknowledges and agrees that any contract for the supply of Goods between the Supplier and the Customer is formed at the Supplier's registered address in the state of Queensland.

11. No Adverse Construction

- 11.1. No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part of it.

12. Severance

- 12.1. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- 12.2. If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the Agreement remains effective.

13. Variation

- 13.1. The Customer agrees that these Terms and Conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Customer.
- 13.2. Any proposed variation to these Terms and Conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

14. Entire agreement

This Agreement constitutes the entire agreement between the parties relating to the subject matter (all previous negotiations, understandings, representations, warranties or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect). No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.