

WHOO'S BAKERY? – TERMS & CONDITIONS\

Blah ... blah .. blah .. terms & conditions. I know they are a pain in the butt but they are important as they protect your rights, and mine. Below are the terms and conditions upon which I make my website and my products contained on my website available to you.

If you do not agree to be bound by these terms & conditions, please do not use my website.

- 1 These Terms and Conditions (**T&Cs**) describe the rights and responsibilities upon which I make my products (**Products**) available to you through my website 'Whoo's Bakery?' at www.whoosbakery.com (**Website**).
- 2 The term 'Whoo's Bakery?' or 'me' or my' or 'I' refers to me, the owner of the website, Stacey Louise Fuller.
- 3 The Website is provided to you free of charge for your general information and personal use only.
- 4 By using the Website you agree to be bound by these T&Cs as amended from time to time.
- 5 Notice of any amendments will be effected by posting the amended T&Cs on my Website. The amended T&Cs will apply once notice has been given. If you do not wish to accept the amended T&Cs you should not continue to use my Website. If you continue to use my Website, you agree to be bound by the amended T&Cs.

Applicable Law

- 6 These T&Cs shall be governed by and construed in accordance with the laws of the State of Louisiana and the jurisdiction of the Courts of the State of Louisiana and of any United States courts located within New Orleans, Texas Louisiana for purposes of any and all litigation arising out of the use of this Website, or the purchase of any goods made through this Website.

My Products

- 7 The images and descriptions shown on my Website are intended as guidelines only.
- 8 Each product is handmade and may differ slightly to the ones pictured on this Website.

Orders

- 9 By making an Order Enquiry you are making an offer, subject to these T&Cs, to purchase my Products (**Offer**).
- 10 Acceptance of your Offer will not occur when I query or seek more information regarding your Order Enquiry. Acceptance of your Offer will be effective upon me sending you written confirmation by email of such acceptance (**Order Confirmation**).
- 11 I reserve all rights to refuse an Offer without reason.
- 12 I do not consider myself bound by these T&Cs until:
 - a. I have emailed you an Order Confirmation; and
 - b. payments as provide for in Clause 23 below has cleared into my bank account.

Corporate Orders

- 13 Clauses 14 to 17 apply to custom designed products by me for corporations involving their corporate artwork or logo.
- 14 Upon receipt of an Order Confirmation from me, you agree to grant me permission to use your corporate artwork or logo for the sole purpose of creating your order.

- 15 I will not use your corporate artwork or logo in any way that might mislead the public or bring your corporation into disrepute.
- 16 Please be aware that food colouring has limitations and I cannot guarantee an exact colour matches to your corporate artwork or logo.
- 17 You agree to photographs of your order displaying your corporate artwork or logo being displayed on my Website for an indefinite period.

Prices

- 18 Any quote provided by me prior to receiving your Order Confirmation is valid for a period of 14 days.
- 19 Unless otherwise agreed in writing by me, the price for my Products shall be the price contained in the Order Confirmation (**Price**).
- 20 I reserve the right to increase prices for my Products to reflect any major or unforeseen price increase in materials and my production costs. Such price increases will not affect those with a prior Order Confirmation whom have paid in full (as defined in 23 below).

Payment

- 21 Payment pursuant to an Order Confirmation may be made via Paypal, bank transfer or cash to an account specified by me.
- 22 No payment shall be deemed to have been received until such funds have cleared into that account.
- 23 Payments by you pursuant to these T&Cs are payable before the Payment Date specified on the Order Confirmation.
- 24 I reserve the right to terminate our agreement to be bound by these T&Cs should you fail to make payments due pursuant to these T&Cs.
- 25 You are required to make all payments due pursuant to these T&Cs without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by me to you.
- 26 In the event any payments are not received by me by the Payment Date, I am entitled to suspend all deliveries to you and collection by you.
- 27 If you fail to make any payments pursuant to these T&Cs you will be liable to pay interest to me on such sum from the Due Date of that payment at the annual rate of 4% above the base lending rate from time to time of my bank, accruing on a daily basis until payment is made, whether before or after any judgment.
- 28 All payments payable to me pursuant to these T&Cs will immediately become due upon termination of our agreement to be bound by these T&Cs, notwithstanding any other term or condition set out herein.
- 29 You will be liable for any costs, including but not limited to my legal costs, incurred in relation to the recovery of any monies not paid by you to me.

Amendments, cancellations & refunds

- 30 You may make amendments to your order as follows:
- a. for cupcakes 7 days prior to the Due Date; and
 - b. for cookies and cakes 14 days prior to the Due Date.
- 31 In the event of a cancellation, payments will be repaid to you as follows:
- a. a full refund for cancellations 3 months prior to the Due Date;
 - b. 50% of payments paid pursuant to these T&Cs within 30 days of the Due Date subject to clause c below; or
 - c. no refund for cancellations within 14 days of the Due Date.
- 32 Clause 31 is subject to my discretion and I may refund further monies to you in certain circumstances.

- 33 I will provide you with written confirmation by email of any amendments, cancellations or refunds made pursuant to these T&Cs.
- 34 Taste is a very personal matter and subjective I cannot accept the return of any of my Products nor provide a refund merely because you do not like the taste.

Delivery

- 35 Delivery is only available for cakes on Saturdays and Sundays within 25 miles of the New Orleans Central Business District.
- 36 All my products are available for collection with prior arrangement.
- 37 Deliveries will be made to residential addresses only.
- 38 You are required to provide me with full and accurate details for delivery, including the name, address and postcode for the Designated Delivery Address. I will not be responsible for any orders which are not delivered due to incorrect information supplied by you.
- 39 You are liable for all delivery charges. If I am unable to deliver your order to the Designated Delivery Address, or if there is nobody available to receive your order and you request a further delivery attempt, you will be liable to pay all charges associated with any further delivery attempt.
- 40 Delivery will be made on the Due Date, being the date specified by you and reflected on the Order Confirmation (**Due Date**).
- 41 Subject to the other T&Cs, I will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of your order (even if caused by my negligence), nor will any delay entitle you to terminate or rescind our agreement to be bound by these T&Cs unless such delay exceeds 30 days.
- 42 If for any reason you will not accept delivery of your order as specified on the Order Confirmation because you have failed to provide an accurate Designated Delivery Address, been home to accept delivery of your order or failed to provide accurate and appropriate documentation, instructions, licences or authorisations:
- a. risk in your order will pass to you (including for loss and damage caused by any negligence by me);
 - b. your order will be deemed to have been delivered;
 - c. I may store your order until delivery whereupon you will be liable for all related costs and expenses associated with subsequent deliveries.
- 43 Under no circumstances shall I be liable to you in respect of any complaint concerning any aspect of my Products which is not raised by you within 2 days of the Due Date.
- 44 For orders personally delivered by me, if you find that your order is not in accordance with that specified on the Order Confirmation, or your order is incomplete, or damaged:
- a. I will try my best to resolve any issues as quickly as possible; and
 - b. you must retain the damaged products and all packaging for inspection by me. Subject to my report on the claimed damage and to these T&Cs, if I am satisfied that the damage to your order is my fault and I am unable to rectify the damage, I will refund to you the value of the damaged products.
- 45 I will not accept responsibility and no refunds will be given for shipped cookies that are broken once left in the care of the USPS.
- 46 All claims cookies that are received broken through shipment with USPS shall be directed directly to USPS.
- 47 I cannot accept responsibility for damage caused by you or by a courier/agent engaged by you to collect my Products if they are damaged during transit to you provided that you or your courier/agent has signed my 'Collection and Delivery Disclaimer' confirming that the goods were in good condition and undamaged at the point of collection.

Force Majeure

- 48 Neither you nor I shall be liable to the other for any failure to perform any obligation pursuant to these T&Cs which is due to an event beyond the control of either of us, including but not limited to, any Act of God, terrorism, war, Political insurrection, insurrection, riot, civil unrest, act of civil or military authority, uprising, earthquake, flood or any other natural or man-made eventuality outside of our control, which causes the termination of an agreement or contract entered into, nor which could have been reasonably foreseen. If either you or I are affected by such event we agree to inform the other of the same and use all reasonable endeavours to comply with these T&Cs.

Messages to Recipients

- 49 I will not post your personal message to a recipient if in my opinion that message could be construed by the recipient as harassing, threatening, vulgar, abusive, obscene, and defamatory, racist or which may cause embarrassment or distress any person or are otherwise unlawful or objectionable.

Disclaimers

- 50 To the extent that in a particular circumstance any disclaimer or limitation on damages or liability set out in these T&Cs is prohibited by any law which is applicable, then, instead of the provisions hereof in such particular circumstance, I shall be entitled to the maximum disclaimers and/or limitations on damages and liability available at law or in equity by such applicable law and in no event shall such damages or liability exceed ten US dollars (\$10).
- 51 You understand and agree that your use of my Website is at your own risk. My Website is provided "as is" and without warranty by me, and, to the maximum extent allowed by applicable law, I expressly disclaim all warranties, express or implied including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, and any warranty of non-infringement. I do not warrant, guarantee, or make any representations regarding the use or the results of the use of my Website with respect to performance, accuracy, reliability, security capability or otherwise. You will not hold me responsible for any damages that result from you accessing (including any software or systems you use to access) the website service or using my Website including, but not limited to, infection by virus, damage to any computer, software or systems or portable devices you use to access the same. No oral or written information or advice given by any person shall create a warranty or a representation from me.
- 52 Under no circumstances shall I be liable for any unauthorised use of my Website or my Products.
- 53 Under no circumstances shall I be liable to you for any direct, indirect, consequential, incidental or special damages arising out of your use of or inability to use my Website, even if I have been advised of the possibility of such damages.
- 54 I do not monitor or review the content of third party's websites which are linked to my Website. Opinions expressed, or material appearing on such websites, are not necessarily shared or endorsed by me and therefore I shall not be regarded as the publisher of such opinions or material. Please be aware that I am not responsible for the privacy practices, or content, of these sites. I encourage you to be aware when leaving my Website to read the privacy statements of these sites. You should evaluate the security and trustworthiness of any other website connected to this site or accessed through my Website yourself, before disclosing any personal information to them. I will not accept any responsibility for any loss or damage in whatever manner, howsoever caused, resulting from your disclosure to third parties of personal information.

Intellectual Property Rights

- 55 You agree that you will not infringe any rights including Intellectual property rights of any person including, without limitation, copying, reproducing or otherwise modifying any material found on my Website. All content and programming of my Website is the property of me.
- 56 You may not reproduce, modify, copy or distribute or use for commercial purposes any of the materials or content on my Website without written permission from me.
- 57 All intellectual property content on my Website including, but not limited to, trademarks, button icons, logos, graphics and images are owned by me and s protected by International Copyright Laws. Your use of them is governed by these T&Cs and applicable law.
- 58 You will infringe my rights if you copy or reproduce any part of my Website save for:
- a. a temporary copy of any part of my Website which is automatically made or retained by your browser as you browse my Website;
 - b. you printing out any pages from my Website as a record of any of my Products you have ordered;
 - c. you printing out a copy of these T&Cs which I recommend you do;
 - d. your own personal use provided that:
 - i. no documents or related graphics on my Website are modified in anyway; and
 - ii. no graphics on my Website are used separately from the corresponding text.
- 59 For the purpose of Clauses 56 to 58 'copy' and 'copying' shall include non-literal copying as well as the copying of the structure and form of my Website and any elements within it.

Privacy

- 60 The information which I obtain about you is treated appropriately with the applicable laws. I will not sell, distribute or lease any of your personal information to third parties unless I have your permission, or I am required by law to do so.
- 61 During the course of you using my Website I may collect your name, address, contact number and email address in order to complete your order.
- 62 The personal information I collect from you will be used to:
- a. carry out my obligations pursuant to these T&Cs;
 - b. notify you about changes to my Products;
 - c. deliver your order to you.
- 63 If I am under a duty to disclose or share your personal data in order to comply with any legal obligation, or in order to enforce or apply these T&Cs to protect my rights, property, or safety of all others and myself. This includes exchanging information with other companies and organisations for the purposes of fraud protection and credit risk reduction.
- 64 You have the right to access information I hold about you.

Definitions

- 65 The defined terms used in these T&Cs shall mean:

“Designated Delivery Address” means the residential address to which your order is to be delivered on the Due Date and as specified on the Order Confirmation;

“Order Enquiry” means any form of communication between you and me pertaining to an order prior to receiving an Order Confirmation;

“Payment or Payments” means any monies paid by you to me pursuant to these T&Cs;

“Payment Date” means a date specified by me on the Order Confirmation by which payment for your order must be made in full;

“Products” means all baked goods offered for sale by Whoo’s Bakery? on its Website or through an Order Enquiry;