

BLACKBIRD AND PLUM – TERMS AND CONDITIONS

1 Acceptance

- (a) This website (**Site**) is operated by Blackbird and Plum (ABN 18 608 856 947) (**we, our or us**). It is available at: <https://www.blackbirdandplum.com> and may be available through other addresses or channels.
- (b) By accessing and/or using the Site you:
 - (1) warrant to us that you have reviewed these Terms and Conditions, including our Website Terms of Use (available on the Site) and our Privacy Policy (available on the Site) (**Terms**), with your parent or legal guardian (if you are under 18 years of age), and you understand them;
 - (2) warrant to us that you have the legal capacity to enter into a legally binding agreement with us or (if you are under 18 years of age) you have your parent's or legal guardian's permission to access and use the Site and they have agreed to the Terms on your behalf; and
 - (3) agree to use the Site in accordance with the Terms.Please read the Terms carefully and immediately cease using the Site if you do not agree to them.
- (c) You must not place an order for products through the Site unless you are at least 13 years of age. If you are a parent or legal guardian permitting a person who is at least 13 years of age but under 18 years of age (a **Minor**) to use the Site, you agree to: (i) supervise the Minor's use of the Site; (ii) assume all risks associated with, and liabilities resulting from, the Minor's use of the Site; (iii) ensure that the content on the Site is suitable for the Minor; (iv) ensure all information submitted to us by the Minor is accurate; and (v) provide the consents, representations and warranties contained in the Terms on the Minor's behalf.

2 Collection Notice

- (a) We collect personal information about you in order to enable you to access and use the Site, to contact and communicate with you, to respond to your enquiries, to process any of your orders for the products and for other purposes set out in our Privacy Policy.
- (b) We may disclose that information to third party service providers who help us deliver our services (including information technology service providers, data storage, web-hosting and server providers, professional advisors, payment systems operators and our business partners) or as required by law. If you do not provide this information we may not be able to provide our products to you. In certain circumstances, we may disclose your personal information to third parties located, or who store data, outside Australia.
- (c) Our Privacy Policy contains further information about: (i) how we store and use your personal information; (ii) how you can access and seek correction of your personal information; (iii) how you can make a privacy-related complaint; and (iv) our complaint handling process.
- (d) By providing personal information to us, you consent to us collecting, holding, using and disclosing your personal information in accordance with our Privacy Policy.

3 Orders

- (a) You may order products from us as set out on the Site. Any order placed through the Site is an offer by you to purchase a particular product or products for the price notified (which will include the costs of delivery and taxes) at the time you place your order.
- (b) We may, at our absolute discretion, accept or reject an order. We will endeavour to notify you of a rejection at the time of the order or within a reasonable time thereafter.
- (c) Each order that we accept results in a separate binding agreement between you and us for the supply of products in accordance with the Terms.
- (d) It is your responsibility to check the order details, including selected products and pricing, before you submit your order through the Site.
- (e) When you order and pay on the Site and your payment has been validated, we will provide you with order details, which may include an order number, the delivery and billing addresses and a description of what was ordered.

4 Availability and cancellation

- (a) All purchases made through the Site are subject to availability. We do our best to keep the Site up to date with the availability of products.
- (b) If there is a considerable delay in dispatching your order, or if for any reason we cannot supply the products you order, we will contact you using the details you provided when you placed your order. You may choose to receive a refund or

a store credit or to place your order on backorder. If you choose to place your order on backorder, we will contact you to arrange delivery once the products are available.

5 Price and Payments

- (a) You must pay us the purchase price of each product you order (the **Price**) in accordance with this clause. All amounts are stated in Australian dollars and are inclusive of Australian GST (where applicable), delivery and insurance costs.
- (b) For products which are available at the time of your order, you must pay the Price upfront by one-off payment at the time you place your order. You must pay the Price using one of the methods set out on the Site (currently PayPal).
- (c) You must not pay, or attempt to pay, the Price by fraudulent or unlawful means.

6 Promotional Discount Codes

We may from time to time issue promotional discount codes for certain products on the Site. To claim the discount, you must enter the promotional discount code at the time of submitting your order through the Site. The conditions of use relating to promotional discount codes will be specified on the Site at the time they are issued.

7 Delivery, title and risk

- (a) If possible we will deliver the products to the delivery address you provide when making your order. We deliver Australia wide. We do not currently deliver to PO box addresses.
- (b) You acknowledge and agree that our products are print-on-demand. We normally dispatch products within 8 business days of receiving an order, unless otherwise noted on the Site. Any delivery periods displayed on the Site are estimates only, based on the information provided by the delivery company.
- (c) If you need to change the delivery address, please notify us immediately in writing.
- (d) Title to the products will remain with us until you have paid us the Price in full in accordance with the Terms.
- (e) Risk in the products will pass to you as soon as they are delivered to the delivery address you provided in your order.

8 Warranty / Guarantee for Defects

- (a) If, within 48 hours after the delivery of the products, you contact us in writing to let us know of any defect in the products (**Defect**), along with a photo and description of the relevant Defect, we will, at our own cost:
 - (1) repair or replace the product; or
 - (2) if we are unable to repair or replace the product, we will offer you a choice of a credit or refund as applicable to the Defect.
- (b) If we ask you to, you must return to us the defective products, together with all packaging and proof of purchase to the contact details set out below.
- (c) We will cover the costs of you returning the products to us.
- (d) In Australia, our goods come with guarantees which cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

9 Returns

We do not accept returns for change of mind or other circumstances.

10 Limitations

- (a) Despite anything to the contrary, to the maximum extent permitted by law:
 - (1) our maximum aggregate liability arising from or in connection with the Terms (including the products and/or the subject matter of the Terms) will be limited to, and must not exceed, the portion of the Price paid by you to us for the products the subject of the relevant claim; and
 - (2) we will not be liable to you for any loss of profit (including anticipated profit), loss of benefit (including anticipated benefit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- (b) Despite anything to the contrary, to the maximum extent permitted by law, we will have no liability, and you release and discharge us from all liability, arising from or in connection with any:
 - (1) loss of, or damage to, the products, or any injury or loss to any person;
 - (2) failure or delay in providing the products; or
 - (3) breach of the Terms or any law,where caused or contributed to by any:

- (4) event or circumstance beyond our reasonable control; or
 - (5) act or omission of you or your related parties,
- and, in any event, any defect, error, omission or lack of functionality or suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the products.

- (c) Nothing in the Terms attempts to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Australian Consumer Law. Any and all other warranties or conditions which are not guaranteed by the Australian Consumer Law are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in these Terms.

11 Intellectual property

- (a) All intellectual property (including copyright) developed, adapted, modified or created by us or our personnel (including in connection with the Terms and the products) will at all times vest, or remain vested, in us.
- (b) You must not, without our prior written consent:
 - (1) copy or use, in whole or in part, any of our intellectual property;
 - (2) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our intellectual property to any third party; or
 - (3) breach any intellectual property rights connected with the Site or the products, including (without limitation) altering or modifying any of our intellectual property; causing any of any of our intellectual property to be framed or embedded in another website; or creating derivative works from any of our intellectual property.

12 Termination

- (a) We may immediately suspend, terminate or limit your access to and use of the Site and (where applicable) your account) if you breach the Terms and the breach cannot be remedied or is not remedied within 5 business days of us notifying you of the breach.
- (b) You may stop using the Site at any time for any reason.
- (c) We may stop making the Site (or any part of it) available without prior notice. If we do this, any order that we have accepted will not be affected, subject to the Terms.

13 General

- (a) **Disputes:** Neither party may commence court proceedings relating to any dispute arising from, or in connection with, these Terms without first meeting with a senior representative of the other party to seek (in good faith) to resolve that dispute (unless that party is seeking urgent interlocutory relief or the dispute relates to compliance with this clause).
- (b) **Notices:** Any notice given under these Terms must be in writing and addressed to us at the details set out below or to you at the details provided when submitting your order. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of email.
- (c) **Waiver:** Any failure or delay by a party in exercising a power or right (either wholly or partly) in relation to these Terms does not operate as a waiver or prevent a party from exercising that power or right or any other power or right. A waiver must be in writing.
- (d) **Relationship of parties:** These Terms are not intended to create a partnership, joint venture or agency relationship between the parties.
- (e) **Photographs:** If you provide us with photographs of the products, you consent to us publishing such photographs and details (including but not limited to your name, location and date) for our marketing purposes including on the Site and social media.
- (f) **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions.
- (g) **Assignment:** You must not assign any rights or obligations under these Terms, whether in whole or in part, without our prior written consent.
- (h) **Entire agreement:** The Terms contain the entire understanding and agreement between you and us in respect of their subject matter.
- (i) **Amendment:** We may, at any time and at our discretion, vary these Terms by publishing varied terms on the Site. Prior to placing an order, we recommend you carefully read the terms that are in effect at that time to ensure you understand and agree to them. For any order that has been accepted by us, the terms and conditions that apply will be the ones that were in effect (and which you agreed to) when you placed your order.

- (j) **Governing law:** These Terms are governed by the laws of Victoria. The Site may be accessed in Australia and overseas. We make no representation that the Site complies with the laws (including intellectual property laws) of any country outside of Australia. If you access the Site from outside Australia, you do so at your own risk and are responsible for complying with these laws in the place you access the Site.

For any questions and notices, please contact us at:

Blackbird and Plum (ABN 18 608 856 947)

Email: blackbirdandplum@gmail.com

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