

LYONS DEN

TERMS AND CONDITIONS

Thank you for choosing Lyons Den Cakes 59 386 534 795 (hereafter “**Lyons Den Cakes**” “**we**”, “**us**”) to create your special Order, being **your custom wedding cake**.

This is an Agreement under which you (hereafter ‘**you**’ or ‘**your**’) agree to use the Goods and Services (‘**the Terms**’) supplied by us.

Please read these Terms carefully before ordering Goods and Services from us. The Terms below are important because they set out the rights and obligations of you, when ordering our Goods and Services (“**Your Order**”).

Your Order is confirmed once you have executed these Terms. However, where you fail to accept the Terms but proceed to instruct us in relation to the creation of the Goods or the manner in which the Services are undertaken, you confirm your agreement to be bound by these Terms. This also applies where you pay the non-refundable Booking Fee as required by these Terms. This agreement expressly supersedes prior agreements or arrangements with you.

1. Making Your Order

- 1.1 We will discuss the concept and details of the Order for your special event with you. However, in doing so, you acknowledge that some particulars of your Order can vary for reasons, as either outlined in the Schedule or as discussed.
- 1.2 You also acknowledge that there are a number of factors that determine how the Order can be arranged and that the Order that you choose may be different to what you thought it would be. We will endeavor to inform you of any reason as to why this may be the case in our initial discussions with you.
- 1.3 We offer free consultations, whether it be face to face, phone or zoom. During these consultations, we will ask you for as much information as possible so as to ascertain the design of your custom wedding cake.
- 1.4 We may assist you by providing photos during our discussions. However, you acknowledge that the ingredients that we use as part of your Order may look different to those in the photos. All attempts will be made to source the colours, types of Order and materials requested for the Order. However, some items requested may not be available. Where measurements have been provided for arrangements, this sizing will be a guide only. Order vary in size during the baking process, this can impact the sizing of the final Order. We cannot accept responsibility for these variations in size.

2. Quoting Your Order

- 2.1 When you have decided on the details of your Order, we will then provide you with our quote (‘**Quote**’) for your Order. This information will include:
 - a. Your chosen Goods and Services (‘**Goods and/or Services**’);
 - b. The date of delivery of your Order (‘**Delivery Date**’); and
 - c. The price (‘**Price**’).
- 2.2 Your Order may require premium prices to be paid at certain times of the year, and therefore are subject to a price increase for cakes required on, but not exclusively, any public holidays, and any dates that fall on Easter weekend, the Christmas period between XX December and XX December New Years’ Eve and New Years Day (‘**Peak Periods**’). You acknowledge that the Price will be higher if your Delivery Day or any of the Delivery Dates are within a Peak Period.

- 2.3 Our offer to provide your Order at the Quote provided will be valid for you to consider for a period of three (3) months from the date of the Quote (**'Quote Period'**). Notwithstanding this, we take Orders on a *"first come, first served basis"* and should another client make an Order at the same time as your desired Date, we may not be available to complete your Order.
- 2.4 If you would like to change any of the Order or Delivery Date, we will provide you with a new quote with the revised Order, revised key Dates and revised Price.

3. Confirming Your Order

- 3.1 To confirm your Order, we require a non-refundable and non-transferable Booking Fee of **30% of the total price** of your Order or the amount that we specify (the **'Booking Fee'**).
- 3.2 You acknowledge that the purpose of the Booking Fee is to secure your Order and for us to pay for our costs and expenses to do so. You acknowledge and accept that the Booking Fee is not refundable and not transferable unless specified in this Agreement. The Booking Fee has been set as liquidated damages as a genuine estimate of loss suffered in the event that you cancel the Order and the associated Goods and Services required in order to undertake the Order, regardless of whether we are able to allow another Order to be made in its place.
- 3.3 If you confirm your Order by the last day of the Quote Period, then we agree to provide the Order on the Delivery Dates for the Price.
- 3.4 If you do not confirm your Order by the last date of the Quote Period, then our offer to provide your Order will no longer be valid and we will have no further obligations to you. We can provide you with a new quote if you would like.

4. Cancellation or Postponement of Order

4.1 Cancellation

- 4.1.1 You may cancel your Order at any time, by notifying us in writing. In doing so, the following terms apply:
- a. Where you have provided twenty-one (21) days notice of cancellation, your forfeit the Non-Refundable Booking Fee, as outlined in Clause 3 and all other monies paid to us will be refunded;
 - b. Where you cannot or do not provide twenty-one (21) days notice of cancellation, no refund of monies will be provided.
- 4.1.2 You accept that the non-refundable amounts paid to us are also non-transferable and cannot be applied to later dates. You acknowledge that any money retained by us upon cancellation is treated as liquidated damages on the basis that we suffer the loss of opportunity for another Order to be fulfilled.

4.2 Postponement

- 4.1.3 We will, where possible, use our best endeavours to accommodate arrangements where you require a Delivery Date change. However, where you require a postponement, you are allowed one postponement only. The new Delivery Date must be within **twelve (12) months** of the original Delivery Date. Where you require a further postponement, or a date beyond twelve months from the Original Delivery Date, your postponement will be treated as a new Order and you will be subject to these terms once more (including the payment of a further 30% Non Refundable Booking Fee).

- 1.2 We may terminate the agreement between the parties where you are in breach of the Terms, including but not limited to the non-payment of invoices. Where we terminate the agreement for breach, you will be responsible for all fees and disbursements incurred or accrued prior to termination.
- 1.3 We may withdraw our Goods and Services in some circumstances. Such circumstances include discovery of new information, changes to agreed circumstances, or other factors which tend to circumvent its policies. Non-cooperation; changes in locations, facilities or available times; missed appointments and late payments are examples of contributing factors.

5. Preparing for Your Delivery Day and Making Changes to Your Order

- 5.1 Once you confirm your Order, we will start our work to provide your Order.
- 5.2 You may however request a change to the Order at any time up to twenty-one (21) days before your Delivery Date. If we need to change the prices of the Order in your Order to accommodate your change request, then we will provide you with an additional quote. ('**Additional Quote**'). Work cannot proceed on your changed Order unless that additional quote is accepted.
- 5.3 While we make every effort to provide exactly the flavour, filling, decoration, size, colour, shape, and design discussed during consultations, creating cake is an art form and may be subject to variations.
- 5.4 Colour matching is not a precise science and different sugar substrates take colour differently. We will do everything possible to make substrates match to each other and to match provided colour swatches, but sometimes it is not possible to make a 100% perfect colour match and some colours are just not achievable using food grade dyes.
- 5.5 We cannot match a "verbal" colour or a colour sent via electronic device, as all monitors display colour differently. To attempt a colour match, you must provide a colour swatch at least twenty one (21) days in advance of the Order.
- 5.6 To maintain stability and the integrity of your Order, we reserves the right to make design and structural changes to your Order on site or off, without prior notification.
- 5.7 If you change your mind about the concept or details for your Order and we need to change specific parts of the Order or we need to change the amount of work that we need to do to provide the Order, an additional invoice will be provided and this invoice must paid within twenty-one (21) days prior to the Delivery Date.
- 5.8 All ornaments and toppers should be brought to us at least seven (7) days prior to your Delivery Date so they can be assessed for weight and stability and cake reinforcements prepared. In the rare event, we reserve the right not to place ornaments on your cake if we feel that by doing so, it will cause damage to your cake.
- 5.9 We use an approved Florist and Approved food grade applications for fresh flowers on your cake. If you wish to use your own fresh flowers, they should be brought to us at least one or two days before your Delivery Date, or be placed at the cake table at the venue, prepped and ready for use.
- 5.10 We will not liable for any damage or illness caused by incorrect floral inserts into the cake.

6. Making Payments to Us

- 6.1 You must pay us the full Price for your Order (including any increases in the Price) twenty-one (21) days before your Delivery Day.

- 6.2 If the Price for your Order increases after the date that the full Price is due (which is twenty-one days before your Delivery Date) then you must pay us that additional amount immediately upon issuing of the invoice.
- 6.3 You can make payments to us by using one of the payment options that we provide to you.
- 6.4 If you fail to pay us any amount when due, we will suspend delivery of or withhold access to any Order or stop performing any of the Services until payment is made.
- 6.5 Unless stated otherwise, all of the Fees are inclusive of Order and Services Tax ('GST'), as defined by A New Tax Systems (Order and Services Tax) 1999 (Cth) and related legislation.

7. Collection or Delivery of the Order

- 7.1 We will arrange with you, your primary contact or the venue coordinator the details of the Delivery of the Order. They will be made and packaged in a way that gives stability whilst in transit.

If you wish to pick up the Order, this must be arranged at time of consultation. You are solely responsible for the safe delivery of the product and we cannot be held liable for any issues with the Order once collected. We will not be responsible for any damage occurring to your cake once it leaves our facility. Please review our special care instructions on our website to ensure that your cake is at its best on your event. We recommend placing all cakes on a flat area of a Van or SUV or floor board of your vehicle, with air conditioning flowing around the cake, and a non-slip mat under the box or cake board to prevent sliding. If damage occurs during transport, we may be able to repair it. Cost of repairs will be assessed based on whether the cake is returned to the bakery or if staff are required to go to the site for a service call, and the amount of time needed to make repairs. Cost of repairs will be negotiated and paid prior to repairs or service calls to the site being made.

- 7.2 The Delivery of the Order and its timeframes will be agreed with either you, your primary contact or the venue co-ordinator.
- 7.3 Due to the logistics of scheduling multiple deliveries and set ups each day, we will contact your venue to confirm delivery and storage logistics however we requires a time "range" for delivery of your Order, as provided by you. You are responsible for confirming this time with your reception/venue staff or wedding coordinator. Cake tables must be set up and ready for us to arrive before the start of this time range. Plateaus, pedestals, risers and dessert trays must also be in place if we are not the providers.
- 7.4 Deliveries to outdoor sites are scheduled as close to the event time as possible, to allow for any last minute changes to cake table location or risks of damage, due to weather.
- 7.5 Call to inform us of any changes to the time range for delivery, immediately, so we can do everything within our power to avoid scheduling conflicts. Please note the phone number at the top of these Terms.
- 7.6 Please keep in mind that any delay to delivery affects not only us, and its staffed labour, but also all clients expecting delivery following yours.

8. Hired Items

- 8.1 As part of your Order, we may agree to rent the equipment or items to you (hereafter, '**General Equipment**'), and you agree to rent the General Equipment in accordance with this clause.

- 8.2 You will be required to pay a non-refundable, non-transferrable Booking Fee of 30% for the hire items at the time of making the Order. You acknowledge that once booked, we are unable to offer the General Equipment to others. Therefore the Reservation Fee is liquidated damages, being a genuine estimate of loss suffered in the event that you cancel the hire of the equipment.
- 8.3 All cancellation of hire of General Equipment must be submitted in writing to us no less than twenty-one (21) days from the date of the booking of the General Equipment. If cancellation is made, refunds of monies paid will not be made.
- 8.4 You must inspect the General Equipment for any damage at the time of collection or within four hours of the equipment being delivered, and raise the issue with us immediately upon noticing damage.
- 8.5 Standard delivery fees are included in your Quote but if the location or amount of different location drop off changes there may be an extra charge. You will, at your own expense, keep the General Equipment in good repair, appearance and condition, normal and reasonable wear and tear excepted. If the equipment is not in good repair, appearance and condition when it is returned to us, you must immediately reimburse us for the actual expense of those repairs or replacement of the General Equipment.
- 8.6 You may be required to pay a “**bond**” of \$100.00 before taking possession of the equipment. Where the General Equipment is returned in the condition it was provided to you, you will be refunded the bond upon return of the General Equipment. Where items are damaged or lost, and the bond is not sufficient to cover the loss or damage to the item, you will be liable for any costs above and beyond the bond amount in order to repair or replace the item. It is at our sole discretion as to whether to repair or replace.
- 8.7 **A damage waiver** of 10% is required to be paid as part of the hire component of the total invoice. You acknowledge that the damage waiver is not insurance or a substitute for insurance. It is non-refundable fee of 10% of the rental charges for the Hire Items and billed on the rental invoice to your rental charges. The Damage Waiver covers reasonable wear and tear of the Hire Items. The Damage Waiver does not cover damage resulting from misuse or abuse of the Hire Items, your negligent acts or omissions, failing to maintain the Hire Items or during transport loading/unloading. It is your responsibility to maintain the condition and safekeeping of the Hire Items and may be liable for any Hire Items which are lost, stolen or damaged during the rental period.
- 8.8 Unless you obtain the prior written consent from us, you will not alter, modify or attach anything to the General Equipment unless the alteration, modification or attachment is easily removable without damaging the functional capabilities or economic value of the General Equipment.
- 8.9 To the extent permitted by law, you will be responsible for risk of loss, theft, damage or destruction to the equipment from any and every cause.

9. Specific Order Installations

- 9.1 On your Delivery Day, if it is part of the Services agreed, we will develop a “run sheet” with you. We will not be liable for items not set up if they were not listed on the “handover sheet”.
- 9.2 Prior to the Delivery, we will arrange the nature of the set up and break down of structures, equipment and materials with you, your primary contact or the venue coordinator
- 9.3 You warrant that you have obtained approval (by way of licenses, permits or otherwise) in order to hold your event at its location and with the structures, equipment and materials arranged. We will not be a liable for any loss, damage or delay as a result of failing to obtain such approvals. It is the responsibility of the client to determine what approvals will be required.

- 9.4 Where pack down is included in the Order, and pack down is required to be done at midnight (and no later), you will be charged extra for this if extra labour is required to meet that deadline. This cost will be **\$100** for that packdown. This will be added to your final invoice.
- 9.5 Unless General Equipment is being provided in accordance with Clause 7, we will not be responsible for all set up the breakdown of the installations.
- 9.6 If you have a General Equipment booked and the weather is predicting rain on your Delivery Day, you may require an alternative arrangement made as to location of equipment or materials. We confirm the right to refuse to deliver items where they are may be exposed to inclement weather conditions.
- 9.7 We reserve the right to refuse set up of a cake in any location that is not properly air conditioned or weather proofed or on any cake plateau or stand that does not appear sturdy enough to hold the weight of our cakes. All efforts will be made to work with venue staff to find placement better suited for your cake to make sure it looks beautiful on your arrival.
- 9.8 Your Order will be heavy and will require a perfectly level and sturdy table and cake plateau/stand. We are not responsible for any damage caused by tables or cake plateaus/stands that were unable to withstand the weight of our cakes or improperly installed, or installed at a lean.
- 9.9 Once our Order is set up, it is not intended to be moved until served. We are not responsible for damage caused by others after the cake is set up by us.
- 9.10 Tall cocktail tables are not suitable for tiered cakes over 2 tiers tall, and are not recommended, as someone will have to climb a ladder to both set up the cake, and again at the reception to disassemble and serve your cake.
- 9.11 Please be aware that 5 tiered or larger cakes on a standard height table may require a step stool or step ladder to disassemble and serve.

10. General Terms for Provision of Goods and Services

- 10.1 We warrant to you that the Order will be made and related services performed using reasonable care and skill, however, subject to any condition, warranty or right implied or imposed by the *Competition and Consumer Act 2010 (Cth) (CCA)* or any other law which cannot by law be excluded by agreement, or any express provision in these Conditions, we give no warranties regarding any Order supplied and all other implied or imposed conditions, warranties and rights are excluded. Where any condition, warranty or right is implied or imposed by law and cannot be excluded, we limit our liability for breach of that implied or imposed condition, warranty or right to the fullest extent permitted by law.
- 10.2 Subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, our liability for any breach of any implied or imposed condition, warranty or right in connection with the supply of Order is limited to one or more of the following (at the election of us) - (i) replacement of the Order or supply of Order equivalent to the Order; (ii) repair of the Order; (iii) payment of the cost of replacing the Order or acquiring Order equivalent to the Order; (iv) payment of the cost of having the Order repaired.
- 10.3 You acknowledge, covenant and warrant that:
- a. The terms of the Order are complete and accurate;
 - b. You will cooperate with us in all matters relating to the Order; and

- c. You will provide us with such information and materials we may reasonably require in order to supply the Order, and ensure that such information is complete and accurate in all material respects.

11. Exclusivity

- 11.1 It is understood that we will act as the sole and exclusive cake designer and provider on the Delivery Date. It is your responsibility to ensure that other cakes are not provided on the Delivery Date. Without limiting Clause 14, where this clause is breached, you are liable for any loss suffered as a result of incorrect identification or attribution of work by us, including loss of reputation.

12. Taking and Using Photos

- 12.1 You agree, by making your Order, that you expressly grant us permission to use photos from your Order in various forms of advertising promoting our business. Where images are provided by your photographer, appropriate credit will be given but you must warrant that you have obtained permission from the copyright owner of the photo for its use.
- 12.2 We may use and publish photographs of all persons, flowers and décor involved in the event for editorial, trade, advertising, website use, or any other purpose and in any manner and medium that they see fit to promote our services and inventory.
- 12.3 We may, at our cost and discretion, document aspects of your event with photography, video and or written word with our selected suppliers. We will be respectful of your privacy and anonymity by not including your name or photos of you and your guests if you do not wish for this information to be published.
- 12.4 All creative work and General Equipment provided by us must be credited accordingly. All publications (media, print, blog, social media) must credit us as the supplier for the concept & items hired within your quote/invoice. All subcontractors/third party suppliers must also credit accordingly when using our services or Order.

13. Insurance

You must ensure that all other suppliers or contractors that will be in the same location as the Order when they have been delivered to you have adequate insurance to cover any loss, damage or expense if the Order is affected.

14. Liability and Indemnity

- 14.1 **Important Product Disclaimer:** We are NOT an allergy-free bakery. We cannot guarantee that our products are free from any ingredients that may affect certain food allergies. We recognize the seriousness of food allergies and we recommend that you inform us of any food allergies you or your guests may have before you place your order. We will not assume any liability for adverse reactions to foods consumed or food items one may come in contact with while eating a Product provided by us.
- 14.2 **Limitation of liability:** To the fullest extent permitted by law you agree that neither us, nor any of our officers, employees or contractors, will be liable to you or any person for any Claim resulting from, in relation to, or arising out of (i) your use or inability to use our Goods and Services or the Order itself, except to the extent resulting from our gross negligence or wilful default.
- 14.3 To the fullest extent permitted by law, you agree to indemnify, defend and forever hold harmless us, and their officers and employees from and against all Claims, including reasonable legal costs,

resulting from any breach of this Agreement or any activity related to your use of the Services, by you and any liability for any Claim, whether direct, indirect, incidental, special and/or consequential.

15. Safety

- 15.1 Unless legislation provides otherwise, it is your responsibility to ensure you, and your other vendors, are following government regulations in regards to public health and safety, including those restrictions relating to gatherings and social distancing.
- 15.2 If these regulations are not strictly adhered to and we feel that our personal safety is at risk, we reserve the right to exit the location and cease our duties and you will forfeit any fees paid.
- 15.3 We are not responsible for the failure of the participants of your event or guests to follow government regulations in regards to public health and safety, including those restrictions relating to the handling of food, gatherings and social distancing. To the fullest extent permitted by law you agree that we will not be liable to you or any person for any claim resulting from issues relating to public health and safety and the following of mandatory rules and regulations relating to the same.

16. Subcontracting of Services

In the unlikely event of severe medical, natural, or other emergencies, or where, for whatever reason, we cannot fulfill your Order, we will make every effort to secure a replacement. If a suitable replacement is not found, responsibility and liability is limited to the return of all payments received for the Order. However, notwithstanding a suitable subcontractor found, the Order will be provided by that subcontractor at the price already invoiced and paid to us.

17. Force Majeure

- 17.1 We cannot be liable or responsible for any failure to perform, or the delay in performance of, any of its obligations under the Agreement that is caused by any act or event beyond my control. Examples include, but are not limited to, acts of God, flood, fire, warfare, government laws or regulations, electrical fire, strikes by suppliers (known as '**force majeure circumstances**').
- 17.2 If a genuine force majeure circumstance occurs and means that the performance of our obligations to fulfill the Order is impossible, we will contact you as soon as reasonably possible to notify you and our obligations to prepare the Order will be suspended. The time for performance of the obligations will be extended for the duration of that force majeure circumstance.
- 17.3 This clause does not apply in circumstances where an event outside of our control occurs but the circumstances still make the Order possible (notwithstanding inconvenience or financial hardship). If events beyond our control occur but it is entirely possible for me to make the Order, any choice to cancel your event is done so at your own initiative and the usual cancellation clauses in these Terms apply.
- 17.4 If you cancel the Order or vary the Order because the alleged event outside of our control causes mere inconvenience or changes the booking in a manner that does not suit you, any fees and charges that are deemed *non-refundable* remain so and we are only obliged to use our reasonable endeavours to provide an alternative date.
- 17.5 In genuine force majeure circumstances, we will endeavour to arrange a new date for the Order to be fulfilled with you. We must use all reasonable endeavours to mutually agree on a new date, but if we are unable to agree on an alternative date, the Order will be considered cancelled under these Terms.

18. Assignment

- 18.1 We may at any time assign all or any of its rights and liabilities arising under these Terms.

18.2 You are not entitled to assign or purport to assign any of its rights or liabilities under these Terms and Conditions without the prior written consent of us (which consent may be given or withheld or given subject to conditions in our absolute discretion).

19. Severance

If any provision in this agreement is unlawful or inconsistent with any law, then to the extent of the unlawful nature or inconsistency, that provision may be severed from without affecting the remainder of the Agreement.

20. Relationship of the Parties

This agreement must be executed by each party named. In instances where it is signed by one party, the signing party acknowledges and warrants that they have the authorisation to execute the agreement on behalf of the other party. In doing so, they also warrant that the other party has read and understood the Terms prior to providing permission to execute.

21. Jurisdiction

This agreement and any contract arising under it is governed exclusively by the laws of South Australia, Australia. Any legal proceedings relating to them can only be taken by you in courts with jurisdiction in South Australia, Australia. Where the law gives us a right to bring a proceeding in any other state of Australia, this clause does not in any way limit that right.

Date 1st January 2022