

CRUMBS CUSTOM CUPCAKES

WEBSITE TERMS OF SERVICE

These Terms of Service ("Terms") are effective as of the Effective Date as set out in item 2 of the Table.

1	Business Name:	Crumbs Custom Cupcakes
	Physical address:	Christiaan Street, Hout Bay, 7806, South Africa
	Email address:	hello@crumbscustomcupcakes.com
2	Effective Date:	1 June 2024
3	Website:	https://crumbscustomcupcakes.com
4	User:	Refers to any visitor to the website at the above URL who registers an account to make a purchase.
5	Services:	All orders placed online with Crumbs Custom Cupcakes constitute the User's offer to purchase the tutorials, cupcake bouquets, and other products, subject to these terms and conditions.
6	Privacy Policy:	See: https://crumbscustomcupcakes.com/legal/PrivacyPolicy.pdf
7	Registration Process:	For bouquet order requests, no registration is required. Users must register an account to be able to purchase tutorials and other products. Register at: https://crumbscustomcupcakes.com/account
8	Payment Options:	Payment is accepted via credit / debit card (Visa, Mastercard, Amex) or by direct electronic transfers (South African customers only).
9	Delivery of Goods:	Tutorials are delivered online via a tutorial management system on the website, with downloadable PDFs included in each tutorial. Tutorials may not be copied or shared in any form. Delivery of Cupcake Bouquets and gift boxes are governed by clause 23 below.
10	Province where arbitration will be held:	Western Cape
11	Return / Refund Process:	See Clause 23 below.

Please read these terms carefully before browsing this website. Your continued use of this website indicates that you have both read and accept these terms. You cannot use this website if you do not accept these terms. All sections of these terms are applicable to all users unless the section expressly states otherwise.

Clause 1 Introduction

- 1.1 The website, with the URL being set out in item 3 of the above Table ("the Website") is operated and/or owned by the Company, as set out in item 1 of the above Table. The Terms herein are entered into by and between the Company and the User. Any reference to the Company, "we", "our" or "us", shall include our employees, officers, directors, representatives, agents, shareholders, affiliates, subsidiaries, holding companies, related entities, advisers, sub-contractors, service providers and suppliers.
- 1.2 These Terms, including any document incorporated by reference herein, including, but not limited to the Privacy Policy (collectively, the "Terms") apply to any User who uses any one or more of the Services, accesses, refers to, views and/or downloads any information or material made available on the Website for whatever purpose, or Browser who, accesses, refers to, views and/or downloads any information or material made available on the Website for whatever purpose (hereinafter referred to as "User" (where applicable), "you" or "your").
- 1.3 Accessing and/or use of the Website after the Effective Date will signify that you have read, understand, accept, and agree to be bound, and are bound, by the Terms, in your individual capacity and for and on behalf of any entity for whom you use the Website. Further, and where applicable, you represent and warrant that you have the authority to do so and that you are a Competent Person (as defined in the Protection of Personal Information Act, 4 of 2013, as amended).
- 1.4 To the extent permitted by applicable law, we may modify the Terms with prospective effect without prior notice to you, and any revisions to the Terms will take effect when posted on the Website. Such modifications will require acceptance by you prior to your continued use of the Website, and shall thereby be construed as your consent to the amended or updated Terms. Your only remedy, should you not agree to these Terms, is to refuse acceptance of the amended or updated Terms, thereby preventing your use of this Website.

Clause 2 Terminology

- 2.1 "**Browser**" shall mean any person who visits any page of the Website, whether by landing at the home page or any other page through use of a hyperlink of another website or by direct access to the Website and who has no intention of using, or does not use, the Services offered by us;

- 2.2 **"Business Days"** shall mean any days which are not a Saturday, Sunday or gazetted public holiday in the Republic of South Africa during working hours;
- 2.3 **"Cart"** shall mean the User's Cart on the Website in which it stores intended purchases prior to payment being made;
- 2.4 **"Excluded Loss or Damage"** means any:
- 2.4.1 loss of profit, revenue (including anticipated revenue), use, product or production (including delayed, postponed, interrupted or deferred production and/or inability to produce, deliver or process), bargain, contract, expectation or opportunity, access to markets, goodwill and/or business reputation even if such loss is a direct loss or a loss that flows naturally from the relevant breach;
- 2.4.2 indirect loss;
- 2.4.3 loss consequential on other loss;
- 2.4.4 remote or unforeseeable loss or damage;
- 2.4.5 kind of loss or damage considered other than loss arising in usual course of things; and
- 2.4.6 any similar loss or damage, whether or not in the reasonable contemplation of the Parties at the time of purchasing Goods and/or Services, and/or agreeing to these Terms,
- and in each case arising from or in connection with the performance of these Terms, whether arising from a breach of contract or delict (including negligence) or under any statute or any other basis, in law or equity, and whether or not foreseeable by us or the User at the time of purchasing Goods and/or Services, and/or agreeing to these Terms;
- 2.5 **"Goods"** shall mean the tutorials or other products as made available to a User for purchase on the Website;
- 2.6 **"Party"** or **"Parties"** shall mean the Company and/or or the User as the context implies;
- 2.7 **"Privacy Policy"** shall mean the Privacy Policy which is to be read as if specifically incorporated in the Terms, which Privacy Policy may be found at the URL recorded in item 6 of the above Table;
- 2.8 **"Registration Process"** refers to the process to be followed by a Browser on our Website in order to make a purchase. This process is set out in item 7 of the above Table;

- 2.9 **“Services”** shall refer to the Services provided by us to the User as set out in item 5 of the above Table;
- 2.10 **“Terms”** shall mean these Terms of Service as read together with the Privacy Policy;
- 2.11 **“User”** shall mean the Browser who completes the Registration Process on the Website in make a purchase, and whose details are recorded in item 4 of the above Table.
- 2.12 **“VAT”** shall mean value-added tax levied in terms of the Value-added Tax Act, 1991.
- 2.13 **“Tutorial Management System”** shall mean the software enabling the user to view video tutorials on the website after they have been purchased. The system provides a private video, and text-based supporting information, including downloadable PDF files.
- 2.14 Any use of the above terminology or other words in the singular, plural, capitalisation and/or he/she or they, are taken as interchangeable and therefore as referring to the same.

Clause 3 Your agreement to these Terms

- 3.1 Subject to, and on the basis of your acceptance of the Terms, we grant to you a limited, revocable, non-transferable license to access and use the Website in accordance with the various policies and agreements which may govern such use and access.

Clause 4 Registration Process

- 4.1 Only Users may order and purchase Goods and/or Services through the Website.
- 4.2 In order to register as a User you will, through the Registration Process as recorded in item 7 of the above Table, be prompted to provide login details as well as submit certain personal information as contained in the Privacy Policy.
- 4.3 The provisions pertaining to the processing of your Personal Information are set out more fully in our Privacy Policy, which may be found at the URL recorded in item 6 of the above Table.
- 4.4 In the event of a User being of the view that their login details are being used by someone else, please contact us immediately on the email address recorded in item 1 of the above Table.

Clause 5 Purchase of Goods and/or Services

5.1 The Goods and/or Services as selected by the User for purchase together with the individual price thereof shall be reflected in the User's Cart. The price of each of the Goods and/or Services shall automatically be tallied in the Cart, as a total, which total shall be inclusive of VAT.

Clause 6 Payment

6.1 The payment options available to a User are those set out in item 8 of the above Table.

6.2 Goods will only be released for delivery and/or Services rendered once payment has been received.

Clause 7 Delivery / Collection of Goods

7.1 Goods shall be delivered to the User by the method recorded in item 9 of the above Table.

7.2 Our obligation to provide the Goods to you is fulfilled upon delivery thereof. We are not responsible for any loss or unauthorised use of the Goods after provision thereof to you.

Clause 8 Return / Refund Policy

8.1 Our return and refund policy may be found as part of Clause 23 below.

8.2 To ensure that your request in respect of a refund or return is processed expeditiously, we require that you follow the procedure and adhere to the requirements set out therein.

8.3 Failure to adhere to any of the requirements could delay the processing of your request or result in its decline altogether.

Clause 9 Warranties by the User

9.1 The User warrants and represents that the personal information provided to us is and shall remain accurate, true and correct and that the User will update the personal information held by us to reflect any changes as soon as possible.

9.2 The User further warrants that when registering on the Website it:

9.2.1 is not impersonating any person; and

9.2.2 is not violating any applicable law regarding use of personal or identification information.

- 9.3 Further and insofar as the Registration Process is concerned, the User warrants that the login details shall:
- 9.3.1 be used for personal use only; and
- 9.3.2 not be disclosed by a User to any third party.
- 9.4 The User agrees that, once the correct login details relating to the User's account have been entered, irrespective of whether the use of the log in details is unauthorised or fraudulent, the User will be liable for payment of any such Goods and/or Services purchased.

Clause 10 Warranties by the Company

- 10.1 We make no representation or warranty (express or implied) that the Website, Goods or Services will:
- 10.1.1 meet a User's needs;
- 10.1.2 be accessible at all times;
- 10.1.3 be accurate, complete or current; or
- 10.1.4 be free from viruses.
- 10.2 Subject to any express terms, we make no representation or warranty as to the volume or subject area of Goods and/or Services accessible through the Website.
- 10.3 Except for any express warranties in these Terms, the Goods and Services are provided "as is". We make no other warranties, express or implied, statutory or otherwise, including but not limited to warranties of merchantability, title, fitness for a particular purpose or non-infringement. We do not provide any warranties against viruses, spyware or malware that may be installed on your computer as a result of you accessing or using the Website.
- 10.4 We do not warrant that the use of the Website will be uninterrupted or error free, nor do we warrant that we will review information for accuracy.
- 10.5 We shall not be liable for delays, interruptions, service failures or other problems inherent in use of the internet and electronic communications or other systems outside our reasonable control. While a User may have statutory rights, you agree that the duration of any such statutory warranties will be limited to the shortest period to the extent permitted by required law.

Clause 11 Unauthorised use of the Website or email addresses as provided by us

- 11.1 A User may not use the Website for any objectionable or unlawful purpose.
- 11.2 A User undertakes not to send to us spam mail, or make use of other unsolicited mass e-mailing techniques.
- 11.3 A User shall not introduce any virus, worm, trojan horse, malicious code or other program which may damage computers or other computer-based equipment through email communication with us.
- 11.4 A User may not sell, redistribute or use information contained on the Website for a commercial purpose without our prior written consent.
- 11.5 A User may not remove or alter our copyright notices or other means of identification including any watermarks, as they appear on the Website or any of our emails.
- 11.6 A User understands and agrees that it is solely responsible for compliance with any and all laws, rules and regulations that may apply to its use of the Website, Goods and/or Services.

Clause 12 Links to other Websites

- 12.1 The Website may contain links or portals to other websites. We have no control over websites operated by third parties and the User agrees that we are not responsible for and will have no liability in connection with a User's access to or use of any third-party website.

Clause 13 Limitation of Liability and Indemnity

- 13.1 The User acknowledges and agrees that:
 - 13.1.1 it has determined that the Goods and/or Services are fit for the purpose for which the User requires them;
 - 13.1.2 it has not relied on our's skill and judgment in selecting the Goods and/or Services.
- 13.2 We are not subject to, and the User releases us from any liability (including but not limited to Excluded Loss and Damage) arising from any delay in delivery of or any defect or fault in the Goods and/or Services to the full extent permitted by law.
- 13.3 If the provisions of the Consumer Protection Act 68 of 2008 ("the CPA") or any other act or the general law impose on us a liability for a defect or fault in the Goods and/or Services then, to the extent to which we is entitled to do so, our liability is limited, at our option, to:
 - 13.3.1 replacement or repair of the Goods and/or Services;

- 13.3.2 supply of equivalent Goods and/or Services; or
- 13.3.3 payment of the cost of replacing or repairing the Goods or of acquiring equivalent products,
and in any case:
- 13.3.4 we will not be liable for any Excluded Loss or Damage; and
- 13.3.5 Our total liability to the Customer is limited to the invoice value of the Goods and/or Services.
- 13.4 The Website shall be used entirely at a User's own risk.
- 13.5 We are not responsible for, and the User agrees that we will have no liability in relation to, the use of and conduct in connection with the Website, or any other person's use of or conduct in connection with the Website, in any circumstance.
- 13.6 We cannot guarantee or warrant that any file downloaded from the Website or delivered to you via email will be free of infection or virus, worms, trojan horses or other code that has contaminating or destructive qualities. A User is responsible for implementing appropriate processes, systems and procedures to protect itself from this type of issue.
- 13.7 A User indemnifies us, and agrees to keep us indemnified, from and against any claim, loss, damage, cost or expense that a User may suffer or incur as a result of or in connection with a User's improper use of or conduct in connection with the Website, including any breach by a User of these terms or any applicable law or licensing requirements.
- 13.8 To the maximum extent permitted by law we exclude all implied representations and warranties which, but for these terms, might apply in relation to a User's use of the Website.
- 13.9 To the extent that our liability cannot be excluded by law, our maximum liability, whether in contract, equity, statute or delict (including negligence), to a User will be limited to the minimum amount imposed by such law.
- 13.10 Notwithstanding anything to the contrary in these terms, in no circumstances will we be liable for any indirect, punitive or consequential loss or damages, loss of income, profits, goodwill, data, contracts, use of money or any loss or damages arising from or in any way connected to interruption of the Services of any type, whether in delict, contract or otherwise.

Clause 14 Copyright

- 14.1 The contents of the Website are the property of the Company, unless specified otherwise, and are protected by South African and international copyright laws. Furthermore, the compilation (meaning the collection, arrangement, and assembly) of all content on the Website and/or the Services, is our property, unless credit is attributed to the author thereof, and is, likewise, protected by South African and international copyright laws.
- 14.2 Except as stated in the Terms, none of the contents may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, except as permitted by the fair use privilege under the South African copyright laws or without our prior written permission, which should such consent be provided, we reserve our right to withdraw such consent at any stage, in our sole and absolute discretion.
- 14.3 You are expressly prohibited to “mirror” any content, contained on the Website, on any other server unless our prior written permission is obtained, which should such consent be provided, we reserve our right to withdraw such consent at any stage, in our sole and absolute discretion.
- 14.4 The User is granted a limited, revocable, and non-exclusive right to create a hyperlink to the Website, so long as the link does not portray us, our affiliates, Goods or Services in a false, misleading, derogatory, or otherwise offensive manner. You may not use our logo or other proprietary graphic or trademark as part of the link without our permission or the permission of our affiliates or content suppliers.
- 14.5 All trademarks and copyrights, together with any other intellectual property rights, in and to any of the content of the Website, where not evidently that of third parties, are our exclusive property.

Clause 15 Intellectual Property

- 15.1 You undertake not to attempt to decipher, decompile, disassemble or reverse engineer any of the software or code comprising or in any way making up a part of the Website including any algorithm used by us.
- 15.2 We own or are licensed to use all intellectual property on the Website. You may not use any of our intellectual property for any purpose other than as may be required to use the Website for its intended purpose.

Clause 16 Breach

- 16.1 If either Party commits a breach of the Terms and fails to remedy such breach within 7 (seven) days of receipt of written notice requiring the breach to be remedied, then the Party giving notice shall be entitled, at its

option, either to cancel the Terms and claim damages or alternatively to claim specific performance of all the defaulting Party's obligations, together with damages, if any, whether or not such obligations have fallen due for performance.

Clause 17 Dispute Resolution

17.1 Any dispute which arises between the Parties in respect of the Terms shall require the Parties to use their best endeavours to resolve the dispute informally within 7 (seven) days of the dispute having been raised in writing.

17.2 If either Party provides written notification to the other that such attempt has failed then each Party shall attempt to agree upon the appointment of a suitably qualified mediator, within 10 (ten) days of such dispute being referred.

17.3 If agreement is not reached as to the appointment of such mediator within 10 (ten) days after either Party has in writing called for the appointment of a mediator, or where an appointment has been agreed upon and such mediator is not able to mediate a resolution of such dispute within 30 (thirty) days after such appointment then any Party may give written notice to the other Parties referring the dispute to arbitration in accordance with the rules of Arbitration Foundation of South Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA.

17.4 Either Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party. This clause shall not preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

17.5 The arbitration shall be held –

17.5.1 in the province reflected in item 10 of the above Table, or other venue agreed by the Parties in writing;

17.5.2 in English; and

17.5.3 immediately and with a view to its being completed within 21 (twenty one) days after it is demanded.

17.5.4 The Parties irrevocably agree that the decision in arbitration proceedings:

17.5.4.1 shall be final and binding upon them;

17.5.4.2 shall be carried into effect;

17.5.4.3 may be made an order of any court of competent jurisdiction.

Clause 18 Assignment and Novation:

18.1 We may assign or novate any of our rights or obligations under these Terms without a User's consent. You may not assign or novate any of your rights.

Clause 19 Force Majeure:

19.1 The failure of either Party to fulfil any of their obligations under these Terms shall not be considered to be a breach of, or default provided such inability arises from an event of Force Majeure, and that either of the Parties who may be affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet these Terms, and has informed the other as soon as possible about the occurrence of such an event.

19.2 During the subsistence of Force Majeure, the performance of both Parties under these Terms shall be suspended, on condition that either of them may elect to cancel any Services should the event of Force Majeure continues for more than 14 (fourteen) days by giving written notice to the other.

Clause 20 General

20.1 To the extent permitted by law, these Terms shall be governed by and be construed in accordance with South African law, and any dispute arising out of these Terms shall be submitted to the competent South African courts having the requisite jurisdiction to hear the matter.

20.2 Subject to the dispute resolution provisions above, to the extent necessary and/or possible, you consent to the non-exclusive jurisdiction of the High Court in Gauteng or an alternative appropriate South African court seized with appropriate jurisdiction in all disputes arising out of the Terms, our Services, and/or related agreements incorporated by reference.

Clause 21 Severance

21.1 If any of these terms are deemed invalid or unenforceable for any reason (including, but not limited to the exclusions and limitations set out above), then the invalid or unenforceable provision will be severed from these Terms and the remaining terms will continue to apply. Failure by us to enforce any of the provisions set out in these Terms and/or any other agreement, or failure to exercise any option to terminate, shall not be construed as a waiver of such provisions and shall not affect the validity of these Terms or of any agreement or any part thereof, or the right thereafter to enforce each and every provision.

Clause 22 *Domicilium Citandi Et Executandi* and Contact Information

22.1 We choose as our *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided

for or necessary of these Terms, the address reflected in item 1 of the above Table, and the User chooses the address reflected in item 4 of the above Table as its *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or sending any notice provided for or necessary of these Terms.

22.2 Both the User and the Company may change its domicilium to any other physical address or email address by written notice to the other to that effect. Such change of address will be effective 7 (Seven) days after receipt of notice of change of domicilium.

22.3 All notices to be given in terms of these Terms will:

22.3.1 be given in writing;

22.3.2 be delivered or sent by email; and

22.3.3 be presumed to have been received on the date of delivery.

Clause 23 FLORAL BOUQUETS - TERMS AND CONDITIONS

23.1 By purchasing a cupcake gift box or bouquet from Crumbs Custom Cupcakes, it is assumed that you have read and accept our Terms and Conditions in full.

23.2 All prices are non-negotiable and priced according to the specifications listed on our pricelist in terms of design and size ordered, as detailed on your invoice.

23.3 Full payment by EFT or credit/debit card is required to confirm your order, payable on presentation of your invoice and we reserve the right to cancel any order with payment still outstanding 72 hours from date of invoice. Preparation of your order will not start until payment is received. Any delay in payment may subsequently delay completion of your order.

23.4 Once an order has been placed and finalised, any adjustments thereafter are at the discretion of Crumbs Custom Cupcakes.

23.5 Any last minute cancellations, non-collected orders due to sickness or extreme circumstances are refundable at the discretion of Crumbs Custom Cupcakes. We reserve the right to refuse a refund of any order placed telephonically, by email or online should we consider it unreasonable to do so.

23.6 All orders are made to order and are only available for collection from the address listed on your invoice.

- 23.7 We understand that events get cancelled, due to a myriad of reasons. There is a considerable amount of preparation and work that goes into your order in advance of the order date. Many of our buttercream flowers are prepared and stored in advance. If you cancel your order 30 days or more before delivery, you will get a full refund, between 7-14 days you will receive 50% refund on payment received. Less than 7 days in advance, no refund will be offered.
- 23.8 Although every attempt is made to ensure uniformity of colour and design in the product selected, due to the nature of these products, we cannot guarantee an exact colour match. The final colour and design may be adjusted at the discretion of Crumbs Custom Cupcakes.
- 23.9 Allergies: all allergies must be declared at the time of purchase. Crumbs Custom Cupcakes cannot be held responsible for any food allergies or reactions if not declared at time of purchase. A full list of ingredients used in the baking of our cupcakes is available on request.
- 23.10 As cakes are perishable goods, we do not recommend keeping them for more than 3-4 days from date of delivery/collection (we do not recommend storing in a refrigerator as this will alter the taste and texture, but to rather keep them covered or in a sealed container at room temperature) and we do not accept returns of perishable goods. Refunds or exchanges will only be given if you receive the incorrect product or if the products are shown to be of unsatisfactory quality.
- 23.11 If you are in any way dissatisfied with the condition or quality of your cakes, you must contact us within 24hrs, to allow me to rectify the problem.
- 23.12 Refunds or replacements will not be given without the return of the product.
- 23.13 Collection times: a collection time window will be given on your invoice. Late arrivals or non-collection outside this timeframe, without prior notification, will not be considered and your order will be resold. Rescheduling is at the discretion of Crumbs Custom Cupcakes.
- 23.14 Deliveries (for orders placed from outside Cape Town ONLY): please ensure that there is someone to receive your order at the delivery address you have specified and supply a telephone number of the person to whom the order is being handed over. Once the order has been delivered and signed for, Crumbs Custom Cupcakes will not accept responsibility for the condition thereafter. If, when delivering, there is no-one available to receive the order and after making reasonable attempts to contact the customer,

the order will be returned to head office with our driver and only available for collection in Hout Bay.

Clause 24 TUTORIALS – TERMS AND CONDITIONS

- 24.1 Tutorial videos and downloadable files may not be transferred, published, copied or shared in any way.
- 24.2 Tutorial videos and downloadable files are not refundable.
- 24.2 Tutorial videos are hosted on our web server and subject to traffic and bandwidth limitations. Crumbs Custom Cupcakes cannot be held responsible for any performance issues experienced whilst streaming these videos.
- 24.3 Payment for Tutorials and downloadable files are via credit card only. Our payment gateway, Stripe, manages all payments on a secure, encrypted platform. Stripe employs both symmetric and asymmetric encryption, using industry-standard protocols such as SSL and Transport Layer Security (TLS) to ensure secure data transmission between customers' browsers, business websites, and payment platforms. No credit card information is retained by Crumbs Custom Cupcakes.
- 24.4 Non-financial personal information submitted during the purchase process is governed by our Privacy Policy which can be found on our website at <https://crumbscustomcupcakes.com/legal/PrivacyPolicy.pdf>