

# WEBSITE TERMS AND CONDITIONS

## SARAH JADE HAIRCARE

Last updated August 2020

Welcome to SARAH JADE HAIRCARE. You should read these terms and conditions (“**Ts&Cs**”) carefully before you start using the website at URL [www.sarahjadehaircare.com.au](http://www.sarahjadehaircare.com.au) (“**Website**”). These Ts&Cs, our [Privacy Policy](#) and any other rules or guidelines that are posted onto the Website from time to time (together, the “**Terms**”) are entered into between “**you**”, the user, and **VOGUE DESIGN HOLDINGS PTY LTD t/a SARAH JADE HAIRCARE ACN 601 601 469** (“**SARAH JADE HAIRCARE**”, “**we**”, “**us**”, “**our**”).

These Ts & Cs are important - please read them carefully. The Terms are a legally binding contract between you and SARAH JADE HAIRCARE and they govern your use of the Website and they apply to the ordering, purchasing, fulfilment and delivery of all goods supplied, or to be supplied, by us to you (the “**Goods**”).

If you do not agree with any of the Terms, do not use the Website and you must leave the Website immediately.

### 1. DEFINITIONS

#### 1.1 Definitions In these Ts & Cs:

**ACL** means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth).

**Associate** in relation to a Party, means the employees, officers, directors, contractors and agents of that Party.

**Business Day** means a day other than a Saturday, Sunday or a public holiday in Sydney, Australia.

**Confidential Information** of a Party means the confidential, proprietary or commercially sensitive information of that party or its Related Bodies Corporate (irrespective of the form or the manner in which the information is disclosed, or the time of such disclosure) including information and materials in any tangible form including source code, data, designs, know-how, trade secrets, formulae, processes, techniques, methods, results, information regarding sources of supply, business plans and opportunities, business processes and methodologies, partners, customers, potential agreements and the existence, scope and activities of any research, design, development, marketing or other projects and other similar information with like characteristics, regardless of whether the information is transferred or stored in writing, visually, electronically or by any other means, which is:

- (a) not generally known to the public or in the applicable trade; and
- (b) either designated in writing as confidential or is of a nature that a reasonable person who deals with such information or materials would believe that the disclosing party expects it to be maintained as confidential or intends or is obligated to maintain it as confidential,

but, in each case, does not include information which is in, or comes into, the public domain other than by the receiving party’s (or its Associate’s) breach of an obligation of confidence or of these Terms, or which is independently known to, or developed by the receiving party (or its Associate) as evidenced by contemporaneous written records.

**Consequential Loss** means indirect economic loss, loss of income or profit, loss or damages resulting from wasted management time, damage to goodwill or business reputation, loss of opportunity or any other special, indirect or consequential loss or damage.

**Consumer** has the definition given to it in the ACL.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Goods** has the meaning given at the beginning of these Ts & Cs.

**Intellectual Property Rights** means all intellectual and industrial property or protected rights, including copyright, moral rights, patents, trade marks, trade names, Confidential Information, know-how, trade secrets, registered or unregistered designs, database rights and domain names, whether or not any of them is registered and including applications for registration of any such thing now or in the future in force and effect worldwide.

**Price** means the amount payable by you to us in relation to the Goods purchased from us (including any amount in respect of delivery of the Goods).

**Privacy Policy** means our privacy policy from time to time.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Trade or Commercial Buyer** means any person who applies and is accepted by SARAH JADE Hair Care to become a trade stockist.

**Website** has the meaning given at the beginning of these Ts & Cs.

- 1.2 Interpretation. In the Ts & Cs, unless the context requires otherwise: (a) a reference to a clause or schedule is to a clause or schedule to these Ts & Cs all of which form part of these Ts & Cs; (b) where an expression, word or phrase is given a particular meaning, then other grammatical forms of that expression, word or phrase, have corresponding meanings; (c) the rule of interpretation which sometimes requires that a document be interpreted to the disadvantage of the Party which put the document forward, does not apply; (d) a reference to these Ts & Cs or any other agreement includes any variation, novation, supplementation or replacement of it; (e) headings and sub-headings are for convenience only; (f) the phrase include, includes or including, or similar phrases does not limit what else might be included; (g) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and also any subordinate legislation issued under, that legislation or legislative provision; (h) a reference to "**law**" means all laws, codes, guidelines and the like in force from time to time; (i) the singular includes the plural and vice versa; (j) a reference to any Party to these Ts & Cs or to any other document or arrangement, includes that Party's legal personal representatives, substitutes (including any person taking by novation), successors and permitted assigns; (k) a reference to a person includes a body corporate, partnership, joint venture, incorporated or unincorporated association, authority, State, government, or government or quasi-government body, and vice versa; and (l) "**in writing**" includes any modes of reproducing words in legible and non-transitory form including by email and other electronic means.

## 2. YOUR ACCEPTANCE OF THESE TERMS

- 2.1 Your acceptance of the Terms. Your use and continuing use of the Website is an acknowledgement that you have been given a reasonable opportunity to read the Terms, that you understand the Terms, and that you agree to abide by and be bound by the Terms.
- 2.2 When the Terms apply. These Terms apply to you if you access the Website including browsing the Website, or otherwise using any part of the Website.
- 2.3 Changes to the Terms. The Website will evolve over time based on customer feedback and other improvements in technology. These Terms are not intended to answer every question or address every issue raised by the use of the Website. SARAH JADE Haircare reserves the right to update or otherwise change the Terms periodically, and any such changes will be posted to the Website. Your continuing access or use of the Website constitutes your agreement to be bound by any such changes. We are not obliged to notify you of any changes but we will endeavour to alert you to any significant changes via email or notification on the Website.
- 2.4 Questions about the Terms. Should you have any questions in relation to the Terms, you should contact us at [hello@sarahjadehaircare.com.au](mailto:hello@sarahjadehaircare.com.au) before you use the Website.

## 3. LICENCE TO USE THE SITE

- 3.1 Our licence to you. We hereby grant you a non-exclusive, non-transferable licence to use the Website in accordance with the Terms.
- 3.2 Nature of the service. You acknowledge and agree that: (a) we may, at any time in our sole discretion and without prior notice, alter, amend, interrupt, reschedule, modify or cease the operation of all or any part or any feature of the Website; and (b) the Website may not operate on a continuous basis, and may be unavailable from time to time (including for maintenance purposes).
- 3.3 Eligibility to purchase - retail. In order purchase Goods from the Website, you must be able to form a legally binding contract with us in compliance with all applicable laws. You must be at least 18 (eighteen) years of age, or you must have parental or guardian consent to do so and your parent or guardian agrees to be bound by these Terms. By purchasing Goods from the Website, you represent and warrant that you have full right, power and authority to accept these Terms and to perform your obligations under

them. If you have previously been removed from the Website, you are not permitted to rejoin it unless we give you express written consent to do so.

- 3.4 Eligibility to purchase – trade & commercial. Trade and Commercial Buyers are entitled to receive our trade prices on our Goods. You can apply for a trade and commercial account by registering for an account through the Website. We may ask you to provide information to verify that you are a trade or commercial buyer and we may, in our sole discretion, decide whether to grant you a trade and commercial account.

#### **4. YOUR RESPONSIBILITIES**

- 4.1 Registration. In order to access faster check-out and track your order history, you can register for an account on check out. Registration is free.

- 4.2 Your information. When registering for an account (including a trade & commercial account), You must use Your correct and current name and information. You must not impersonate any person or entity or falsely state or otherwise misrepresent Your affiliation with a person or entity or employ misleading email addresses or falsify information in any part of any communication transmitted through the Service. We will handle all personal information We collect in accordance with Our Privacy Policy.

- 4.3 Your password and login. You are responsible for maintaining the confidentiality of your password and login and you must not share your password or login with any other party. You are responsible for all activities that occur under your password and login. You must not use or attempt to use another party's password or login to access any part of the Website. You must immediately notify us at [hello@sarahjadehaircare.com](mailto:hello@sarahjadehaircare.com) of any unauthorised use of your password or login or any other breach or suspected breach of security in respect of the Website.

- 4.4 What you must do. In accessing and/or using the Website, you must:

- (a) Comply with all applicable laws and you must not use the Website for any purpose that is unlawful or in breach of the Terms;
- (b) Not alter or modify any part of the Website;
- (c) Not attempt to "hack", decompile, disassemble or reverse engineer any software deployed in connection with the Website. This includes "phishing", "mining", accessing "hidden" URLs, trying to guess users' passwords, attempting to trigger remote code for the purpose of accessing data or material you would not otherwise have access to;
- (d) Not knowingly transmit any virus, corrupt files or any other software or function that may damage the operation of the Website or other disabling feature to the Website, or which is designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or to diminish the quality of, interfere with the performance of, or impair the functionality of any part of the Website;
- (e) Not use or launch any automated system, including "robots," "spiders," or "offline readers," that accesses the Website in a manner that sends more request messages to our servers in a given period of time than a human can reasonably produce in the same period by using a conventional online web browser;
- (f) Not circumvent, disable or otherwise interfere with security-related features of the Website;
- (g) Not alter or remove any copyright statement or other notice of ownership of Intellectual Property Rights which accompany the Website.

- 4.5 Take your own precautions. You must take your own precautions to ensure that your process for accessing the Website does not expose you to risk of viruses, malicious computer code or other forms of interference which may damage your computer system.

#### **5. ORDERS & DELIVERY**

- 5.1 Our invitation to treat. Information contained on the Website constitutes an invitation to treat; it is not and shall not be deemed to be an offer by us to supply any goods or services to you. All orders placed

are subject to our acceptance and product availability. No contract for the sale of any Goods or services will exist between you and us until we accept your order by sending you an email notification of our acceptance of the order. When this happens we will confirm the despatch by sending you an email.

5.2 Contract for purchase and delivery. You agree that, by placing an order in accordance with these Terms, you are contracting with us in relation to the purchase of Goods, and you are separately contracting with us to arrange for the delivery of those Goods to your nominated address.

5.3 Delivery. The delivery period stated within which you will receive your order is approximate. Goods will be sent to the address given by you in your order.

## 6. PRICES AND PAYMENT TERMS

6.1 Prices. The price for our goods and services is as set out on the Website from time to time. All payments on the Website are made in Australian dollars. If you use a card in a currency other than Australian dollars, the rate of exchange and any additional fees will be set by your card issuer. All prices listed on the Website are correct at the time of entering the information, however, we reserve the right to change prices at any time.

6.2 Taxes, freight and insurance. The listed prices include goods and services tax (“GST”). Unless otherwise expressly stated, quoted prices do not include freight, insurance or any other taxes, duties, levies or other incidental costs; these costs are payable by you and you agree to pay them.

6.3 Payment. You will be required to pay for your purchase at the time that you place it on the Website using the payment functionality on the Website. You acknowledge that if you trigger a "chargeback" through your card issuer we reserve the right to cease conducting business with you.

## 7. CANCELLATION OF ORDERS

7.1 Cancellations. You may not cancel an order after it has been placed. If we are unable to deliver or provide the Goods then we may cancel your order (even if it has been accepted) by written notice to you. If we cancel your order, we will refund monies paid by you for that order. We are not liable for any loss or damage whatsoever arising from such cancellation.

## 8. DELIVERY

8.1 Delivery. We will arrange for delivery of the Goods to the address you specify on the order.

8.2 Delivery dates are estimates. We rely on third parties to deliver the Goods to you. As such, any period or date for delivery of Goods by us is an estimate only and not a contractual commitment. We will use our reasonable endeavours to meet any estimated dates for delivery of the Goods but will not be liable for any loss or damage suffered by you or any third party for failure to meet such date.

## 9. WARRANTIES

9.1 Notification of issues with orders. If upon delivery of an order, there are any issues with the order (e.g. shortages, damage or wrong products have been delivered), you must notify us within 7 (seven) days of delivery. You can notify us by emailing the Office Manager at [hello@sarahjadehaircare.com.au](mailto:hello@sarahjadehaircare.com.au). Please provide the full details and description of the issues experienced.

9.2 No limitation on your statutory rights. We make no express warranties or representations other than as set out in this clause 9. Nothing in the Terms excludes, restricts or modifies any terms, conditions or warranties that are imposed or implied by law. Limitations and exclusions are made only to the extent that we may legally do so.

9.3 Warranty – Website. The Website is provided “as is” and “as available”. To the extent permitted by law SARAH JADE HAIRCARE does not warrant that the operation of the Website will be secure, confidential, uninterrupted or error-free and SARAH JADE HAIRCARE (including its Associates) excludes all representations and warranties (in each case, whether express or implied) in respect of the completeness, accuracy, reliability, suitability or availability with respect to the Website and the information contained on any part of the Website for any purpose.

- 9.4 Consumer guarantees. If you purchase Goods as a retail customer, this clause applies to you. If you purchase Goods as a Trade or Commercial Buyer, this section applies if you are a “Consumer” under the ACL. Our Goods and services come with guarantees that cannot be excluded under the ACL. For major failures with the service, you are entitled: (a) to cancel your service contract with us; and (b) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service. The benefits of this warranty are in addition to any rights and remedies available at law. Our liability to you is limited to the options set out in this clause 9.
- 9.5 Warranty. Subject to clauses 9.2 (*No limitation on your statutory rights*), 9.3 (*Consumer guarantees*) and 9.7 (*Limitation of liability*) we warrant that the Goods will be free from defects in materials and workmanship under normal use for the lesser of: (a) the period of 12 (twelve) months from the date of delivery; and (b) the period of 1 (one) month from the date of opening the Goods (“**Warranty Period**”);
- 9.6 Warranty claim. If a defect in the Goods or any services occurs within the Warranty Period, you must first contact us at [hello@sarahjadehaircare.com](mailto:hello@sarahjadehaircare.com) to make a warranty claim and address the claim to the Office Manager. A warranty claim must be accompanied by: (i) proof of purchase; (ii) full details of the alleged defect, and any other relevant documentation reasonably requested by us. If Goods need to be returned, you will bear the cost of transport and insurance of the Goods to and from us to make the warranty claim.
- 9.7 Limitation of liability. If our Goods fail to comply with the warranties set out in this clause 9 and a warranty claim is made within the Warranty Period, our liability is limited to (at our sole discretion): (a) in the case of Goods, replacing the Goods or supplying equivalent goods; (b) in the case of services, supplying the services again or paying the cost of supplying the services again.
- 9.8 When we will not accept returns. Subject to clause 9.2 (*No limitation on your statutory rights*), this warranty will not apply and we will not accept Goods for return: (i) where the Goods have not been stored or used in an appropriate manner (e.g. by leaving the Goods in direct sunlight); (ii) where the Goods have been altered in any way; (iii) where the Goods are not in their original condition and packaging; (iv) where you have failed to follow any instructions or guidelines provided by us; (v) if the Goods have continued to be used after any defect becomes apparent or would have become apparent to a reasonably prudent user; or (vi) due to any accident or Force Majeure.
- 9.9 Excludable terms and conditions – Goods. If you are a Trade or Commercial Buyer and you are not a “Consumer” under the ACL, and to the extent that the law permits: we give no condition, warranty or representation as to ownership, description, condition, merchantability, suitability or fitness (for a particular or any purpose) of the Goods and no such term, condition or warranty will be implied; and all terms (whether express, implied, oral or otherwise) not expressly stated in these Terms are excluded. However, if a defect in the Goods or any services occurs within the Warranty Period, you are entitled to make a warranty claim in accordance with clause 9.6 (*Warranty claim*).
- 9.10 Descriptions are not warranties. Any description of the Goods provided to you is for the sole purpose of identifying them and does not constitute a warranty. In the interest of product improvement, we reserve the right to change ingredients, materials of construction and/or Goods design without notifying you.
- 9.11 Consequential Loss. We are not liable for any Consequential Loss suffered by you or any third party, howsoever caused. We are not liable to the extent that something was caused or contributed to by your negligence or by the negligence of your employees, consultants or agents or of any third party.
- 9.12 Your liability if you breach these Terms. You agree that if you breach these Terms, or any liabilities are incurred arising out of your use of the Website, you will be responsible for the costs and expenses that we and our Associates incur as a result of the breach, including reasonable legal fees (if applicable). You will remain liable if someone else uses your account and/or personal information unless you can prove that such use was fraudulent.

## 10. INTELLECTUAL PROPERTY

- 10.1 SARAH JADE HAIRCARE owns the Website and the Intellectual Property Rights in the Goods. You acknowledge that (a) the Website and the Goods contain proprietary and Confidential Information that is protected by applicable intellectual property and other laws, including copyright, and (b) SARAH JADE

HAIRCARE and its Related Bodies Corporate own all right, title and interest in and to the Website (including all updates, upgrades and improvements to them from time to time) including all Intellectual Property Rights in them. You agree that you may only use the content on the Website for your own individual and non-commercial use. You are not permitted to copy, broadcast, download, store (in any medium), transmit, show or play in public, adapt or change in any way the content of the Website for any other purpose whatsoever without our prior written permission.

## **11. CONFIDENTIALITY**

11.1 What You must do. You must: (i) keep confidential the Confidential Information; (ii) use the Confidential Information for the sole purpose of performing your obligations under these Terms; (iii) not commercially exploit or be directly or indirectly involved in the commercial exploitation by any third party, of the Confidential Information; and (iv) not disclose the Confidential Information to any person other than those of your Associates who need to know the Confidential Information, provided you ensure that all such Associates are aware of, and agree to comply with, the obligations of confidentiality set out in this clause 11. Any breach by an Associate will be deemed to be a breach by you.

## **12. SUSPENSION AND TERMINATION OF USER ACCOUNTS**

12.1 Our reserved rights to determine access. We reserve the right, in our sole discretion, to decide whether user activity or behaviour within the Website violates the Terms (including copyright).

12.2 Suspension or termination of your access or account. We may at any time, without prior notice suspend or terminate your access and/or use of all or any part of the Website, and we may suspend or terminate your user account, if, in our sole discretion, we believe that:

- (a) you have breached these Terms in any way;
- (b) your access or use of any part of the Website may be directly or indirectly harmful to others or may otherwise violate any laws;
- (c) we cease to operate the Website, or
- (d) for any other reason.

12.3 What happens if we suspend or terminate your access. If we suspend or terminate your access or use of the Website, or your user account, you are prohibited from continuing to access and use any part of the Website regardless of whether you are able to continue to do so. In addition you are not permitted to create, and you must not create, any other accounts for access to the Website.

12.4 Inactive accounts. We may also suspend and/or terminate your user account for all or any part of the Website because of your inactivity.

## **13. DISPUTE RESOLUTION**

13.1 Notice of dispute. If a dispute arises in connection with this Agreement, any Party may give written notice of the dispute to the other Party identifying the dispute and providing details of it.

13.2 Meeting to resolve dispute. Within 15 (fifteen) Business Days of the Parties receiving the notice referred to in clause 13.1 the Parties must meet to attempt in good faith to resolve the dispute.

13.3 Final resolution of dispute. Where the Parties fail to reach a decision or resolve the dispute within 20 (twenty) Business Days of the notice referred to in clause 13.1, either Party may submit the dispute to an expert for expert determination in accordance with the current provisions of the expert determination rules as published by the Resolution Institute (to be found on its website [www.iama.org.au](http://www.iama.org.au)) whose decision shall bind the Parties.

## **14. GENERAL**

14.1 Force majeure. Neither Party will be liable to the other for any failure to perform its obligations under these Terms where such failure or delay is caused by events beyond its reasonable control, including epidemics, quarantine, biological contamination, entry and exit restrictions, industrial disputes, strikes,

lockouts, acts of god, acts or threats of terrorism or war (“**Force Majeure**”) provided such failure or delay could not have been prevented by reasonable precautions or could not have reasonably been circumvented by the non-performing Party by means of alternate sources, workarounds or by using its best endeavours. However, the foregoing does not apply if the Force Majeure event is caused by a breach of the Terms by the non-performing Party. If an event of Force Majeure occurs, we may suspend or terminate an order by written notice to you.

- 14.2 Waivers. If a Party does not exercise a right or remedy fully or at a given time, the Party may still exercise it later. A waiver by either Party in respect of a breach of a provision of the Terms by the other Party will not be deemed to be a waiver in respect of any other breach and the failure of a Party to enforce at any time any of the provisions of the Terms will in no way be interpreted as a waiver of such provision.
- 14.3 Assignment. You must not assign or sub-licence any right, title or interest under the Terms without SARAH JADE HAIRCARE's prior written consent. SARAH JADE HAIRCARE may assign its right, title and interest under the Terms by written notice to you.
- 14.4 Entire agreement. The Terms contain the entire understanding between the Parties concerning its subject matter and supersedes all prior communications.
- 14.5 Prohibition and enforceability. If any term or provision of the Terms is held illegal, invalid or unenforceable under any applicable law, that term or provision will be severed and the remaining terms and conditions will be unaffected.
- 14.6 Survival. Clauses 9 (*Warranties*), 10 (*Intellectual Property*) and 11 (*Confidentiality*) together with any other clauses which contemplate that a Party has any rights or obligations after the Terms expire or terminate, survive the expiry or termination of the Terms.
- 14.7 Exclusion of the Vienna Sales Convention. The United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna, Austria on 11 April 1980 does not apply to the Terms or to any individual contract of sale concluded within the framework of the Terms.
- 14.8 Governing law. These Terms are governed by, and will be construed in accordance with the laws of New South Wales, Australia. The Parties agree to irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia, and courts hearing appeals from those courts.