

Cotton Candy Kids – Usage Terms

Welcome to Cotton Candy Kids Online! Cotton Candy Kids Online is the website of Cotton Candy Kids (ABN 27 627 768 954) (“we”, “us” or the “**Company**”), a leading online and in-store retailer of baby goods and provider of child-minding facilities and services.

1. Agreement to these Usage Terms

- 1.1 Cotton Candy Kids Online is located on the web at <http://www.cottoncandykids.com.au> (“**Cotton Candy Kids Online**” or “**this site**”). By accessing this site, you agree to be bound by these terms of use (“**Usage Terms**”). These Usage Terms constitute a binding agreement between you and the Company and govern your use of this site. As part of these Usage Terms, your use of this site is also subject to our Privacy Policy and Child-Minding Agreement, which are incorporated by reference into these Usage Terms.

Legal capacity to transact

- 1.2 If you are under 18 years of age, you cannot place orders through this site. By using this site you represent and warrant to the Company that you are over the age of 18 years. Should the Company suffer any damage or other losses as a result of a transaction entered into by a minor, we reserve the right to seek compensation for such losses from the parents or guardians of that minor.

2. Restrictions on use

You must not:

- (a) use any device, routine or software that interferes, or attempts to interfere, with the proper working of this site;
- (b) engage in any action that requires, or may require, an unreasonable or excessively large load on our infrastructure;
- (c) use this site to decipher passwords or security encryption codes, transmit any worms, viruses or Trojan horses, transfer or store illegal, threatening or obscene material or otherwise violate the security of any computer network;
- (d) use this site to violate any applicable local, state, national or international law, to engage in any misleading or deceptive online marketing practices or for any fraudulent or malicious purposes;
- (e) use any spider, robot or search/retrieval application or any screen scraping, data mining or similar data gathering device, process, program or means to access, retrieve or index any portion of this site;
- (f) use this site by any automated means;
- (g) use this site to transmit junk mail, spam or chain letters or pyramid schemes or engage in other flooding techniques or mass distribution of unsolicited email;
- (h) access, retrieve or index any portion of this site for use in constructing or populating any database that is searchable online or for the purpose of soliciting or sharing reviews;
- (i) interfere with the display of any advertisements appearing on or in connection with this site;

- (j) reverse engineer, decompile, disassemble, adapt, modify, translate, frame or reformat any of the material contained on this site;
- (k) reproduce, duplicate, copy or store any of the material appearing on this site other than for your own personal and non-commercial use;
- (l) falsely imply that any other business or website is associated with the Company or this site;
- (m) do anything that leads, or may lead, to a decrease in the value of the Company's intellectual property rights in this site;
- (n) use or exploit any of the material appearing on this site for, or in connection with, any business or enterprise (whether for profit or otherwise), including any business or enterprise that is in competition with the Company;
- (o) release to the public any news release, advertising material, promotional material or any other form of publicity or information relating to the Company without the Company's prior written consent; or
- (p) use this site to transmit any information or material that is, or may reasonably be considered to be:
 - (i) abusive, threatening, harassing, harmful, obscene, indecent, lewd, inflammatory, violent, vulgar, profane, racially, ethnically or otherwise objectionable or offensive in any way;
 - (ii) libellous, defamatory, pornographic, sexually explicit, unlawful or plagiarised;
 - (iii) infringing upon or violating any copyright, trademark, patent or other intellectual property or proprietary right;
 - (iv) in breach of any duty of confidentiality by which you are bound, whether by way of a fiduciary or contractual relationship;
 - (v) in breach of any person's privacy or publicity rights;
 - (vi) a misrepresentation of facts, including the impersonation of any person or entity or a misrepresentation of an affiliation with any person or entity (including any sponsorship or endorsement);
 - (vii) in violation of any applicable law, statute, ordinance or regulation, or encouraging of others to do so;
 - (viii) containing any political campaigning material, advertisements or solicitations; or
 - (ix) likely to bring the Company or any of its directors or employees into disrepute.

3. Violations of these Usage Terms

3.1 Without limiting any other remedies available to the Company at law or in equity, the Company reserves the right to, without notice:

- (a) temporarily or indefinitely suspend, or terminate, your access to this site or refuse to provide goods or services to you if:

- (i) you breach any provision of these Usage Terms;
 - (ii) the Company is unable to verify or authenticate any information that you provides to us; or
 - (iii) the Company believes that your actions may cause damage and/or legal liability to the Company, any of its customers or suppliers or any other person; and
- (b) remove or block access to any information and/or materials (in whole or in part) that the Company, in its sole and absolute discretion, regards in any way to be objectionable or in violation of any applicable law, any person's intellectual property rights or these Usage Terms.

Indemnity

- 3.2 You indemnify and holds harmless the Company and its directors, officers, employees, agents, consultants, licensors, partners and affiliates from and against any losses, liabilities, costs, expenses or damages (including actual, special, indirect and consequential losses or damages of every kind and nature, including all legal fees on a solicitor-client basis) suffered or incurred by any of them due to, arising out of, or in any way related to (directly or indirectly):
- (a) any material or information that you submit, post, transmit or otherwise make available through this site;
 - (b) your use of, or connection to, this site; or
 - (c) your negligence or misconduct, breach of this these Usage Terms or violation of any law or the rights of any person.

4. Orders

Order constitutes offer

- 4.1 By placing an order to purchase any goods or services through this site, you make an irrevocable offer to us to purchase the goods and/or services that you have selected pursuant to these Usage Terms. Information contained on this site constitutes an invitation to treat only. No information on this site constitutes an offer by us to supply any goods or services to you – however, the Company will endeavour to supply your selected goods and/or services to you.
- 4.2 We reserve the right in our discretion to:
- (a) at any time prior to your order being accepted in accordance with these Usage Terms, cancel all or part of your order; and
 - (b) at any time:
 - (i) refuse to provide goods or services to you;
 - (ii) terminate your access to this site; and/or
 - (iii) remove or edit any content on this site.

Processing of orders

- 4.3 We will not commence processing any order made through this site unless and until:
- (a) payment for the order has been received by us in full. See below regarding the available payment methods; and

- (b) the order has passed our internal validation procedures, which are undertaken in order to verify the bona fides of each order for the purpose of preventing credit card and other fraud.

Acceptance of orders

- 4.4 Acceptance of each order for the purchase of any goods or services through this site will take place if and when the Company:
- (a) in respect of orders for the purchase of goods – sends the requested goods to you, at the time at which the goods are dispatched by the Company; and
 - (b) in respect of orders for the purchase of services – commences providing those services to you or notifies you in writing (including by email) that your order has been accepted.

Out-of-stock items

- 4.5 This site will only allow you to purchase an item if it is in stock. If, however, our inventory records are incorrect at time when your order is placed:
- (a) we will endeavour to notify you within 24 hours of your order being placed (excluding days that are not business days); and
 - (b) you will be given the opportunity to cancel the order, choose an alternative item or, if the Company is continuing to supply the relevant product, place your order on back order. Goods on back order will be dispatched as soon as they are received by the Company.

5. Delivery of goods

Delivery within Australia

- 5.1 Delivery within Australia will be made through Australia Post via Express Post satchels. Please allow 3 to 5 business days for delivery to major urban areas within Australia. For rural deliveries, please allow 7 to 14 business days.

Delivery outside Australia

- 5.2 Cotton Candy Kids offers worldwide shipping! Delivery will be made via EMS and Delta international couriers. Please allow 5 to 10 business days for deliveries to locations outside of Australia.

Title and risk

- 5.3 Title to, and risk in, the goods will pass from the Company to you at the time at which the goods are dispatched by the Company.

6. Prices

- 6.1 The Company reserves the right to change the prices for goods/services displayed on this site at any time before you place an order.

Shipping costs

- 6.2 Shipping costs will depend upon the location for delivery and the items purchased and are shown separately during checkout.

GST

- 6.3 Unless otherwise expressly stated, all amounts payable through your use of this site are expressed to be exclusive of GST. If GST is payable on a Taxable Supply, the amount payable for that Taxable Supply will be the amount expressed on this site plus GST. For these purposes, the terms “GST” and “Taxable Supply” have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

7. Payments

eWay secure payment gateway

- 7.1 The Company uses the third party eWAY secure payment gateway provided by Web Active Corporation Pty Ltd (“eWAY”) for its online credit card transactions. eWAY processes online credit card transactions for thousands of Australian merchants, providing a safe and secure means of collecting payments over the internet, as follows:
- (a) all transactions are secured under a 128-bit SSL certificate;
 - (b) payments are fully automated with an immediate response. Your payment will be processed when you click the “Submit Order” button;
 - (c) eWAY at no time touches your funds – all monies are directly transferred from your credit card to the Company’s merchant account;
 - (d) all transaction data is encrypted for storage within eWAY’s bank-grade data centre; and
 - (e) eWAY is an authorised third party processor for all of the major Australian banks.
- 7.2 Payments made through eWay are subject to eWay’s own terms and conditions and privacy policy. For more information, see the eWAY website (<http://www.eway.com.au>).
- 7.3 We do not see or have access to any bank account, credit card or other personal information that you may provide to eWay, other than your name, email address, postal address and truncated credit card number, which are required in order to process your order and deliver your purchased items to you.

Credit and debit card payments

- 7.4 It is not necessary to have an eWay account in order to make a purchase on this site. eWay accepts all major credit and debit cards. Please note that we may be unable to accept credit cards issued by banks outside of Australia in some cases.
- 7.5 The Company does not charge additional transaction fees for paying by credit card.

Refunds and other remedies

- 7.6 Except as expressly provided otherwise in these Usage Terms, all amounts paid through this site are non-refundable. Further information on the steps that the Company will take to remedy any breach of any non-excludable condition or warranty is provided below and in our Returns Policy.

Security

- 7.7 While eWay and our website hosting providers employ secure technology software for transactions with our customers, we will not be responsible for any damages, including consequential losses (whether direct or indirect), that may be suffered by a customer whose credit card is used in a fraudulent or unauthorised manner by any person other than the Company.
- 7.8 The Company may request further information from you, such as a copy of your credit card and/or other identification documentation, as part of our internal validation procedures. These procedures help protect bank and credit card account holders from online fraud. Until your order has passed our internal fraud prevention checks, your order will remain on pending status. If further information is requested and you do not provide the requested information within such time as the Company considers appropriate in its discretion, your order will be cancelled and, if your payment has been received, it will be refunded back to you.

8. Intellectual property

Copyright

- 8.1 In these Usage Terms, the term “**Proprietary Content**” means:
- (a) this site;
 - (b) all of its content (including all of the text, graphics, designs, software, data, sound and video files and other information contained in this site, and the selection and arrangement thereof); and
 - (c) all software, systems and other information that is owned or used by the Company in connection with the goods and services offered through this site (whether hosted on the same domain as this site or otherwise).
- 8.2 All Proprietary Content is the property of the Company or its licensors (as applicable) and is protected by Australian and international copyright laws. You must not reproduce, transmit, republish or prepare derivative works from any of the Proprietary Content, except as expressly authorised by these Usage Terms or with the prior written consent of the Company or other copyright owner (as applicable).
- 8.3 You may download and print out content from this site only for your own personal and non-commercial use and provided that you do not remove or modify any copyright, trademark or other proprietary notices.

Trademarks

- 8.4 The name “Cotton Candy Kids” and the “Cotton Candy Kids” logo are trademarks of the Company. The look and feel of this site (including all button icons, scripts, custom graphics and headers) are the service marks, trademarks and/or trade dress of the Company. These trademarks, service marks and trade dress may not be used, copied or imitated, in whole or in part, without the prior written consent of the Company.

9. Disclaimer of warranties

- 9.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY AND ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS/CONTRACTORS,

LICENSORS, PARTNERS AND AFFILIATES EXPRESSLY DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES (WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE) IN RELATION TO YOUR USE OF THIS SITE OR ANY GOODS/SERVICES THAT THE COMPANY MAY SUPPLY TO YOU, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

- 9.2 This site, and the Company's goods/services, are provided strictly on an 'as is' basis. To the maximum extent permitted by law, the Company and its directors, officers, employees, agents, consultants/contractors, licensors, partners and affiliates make no representation, warranty or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of this site or any of its content or any goods/services advertised or supplied by the Company, and in particular do not represent, warrant or guarantee that:
- (a) the use of the this site will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data;
 - (b) this site or any goods/services supplied by the Company will meet your requirements or expectations;
 - (c) anything on this site, or on any third-party website referred or linked to in this site, is reliable, accurate, complete or up-to-date;
 - (d) the quality of any goods, services, information or other material purchased or obtained through this site or from the Company will meet requirements or expectations;
 - (e) errors or defects will be corrected; or
 - (f) this site or the servers that make it available are free of viruses or other harmful components.

10. Limitation of liability

Exclusion of liability

- 10.1 To the maximum extent permitted by law, the Company and its directors, officers, employees, agents, consultants/contractors, licensors, partners and affiliates exclude all liability to you or any other person for any loss, cost, expense, claim or damage (whether arising in contract, negligence, tort, equity, statute or otherwise, and for any loss, whether it be consequential, indirect, incidental, special, punitive, exemplary or otherwise, including any loss of profits, loss or corruption of data or loss of goodwill) arising directly or indirectly out of, or in connection with, any use of this site, or any use of, or reliance upon, any goods or services obtained through this site or from the Company, by you or any other person.

Remedies limited

- 10.2 To the maximum extent permitted by law, the Company and its directors, officers, employees, agents, consultants/contractors, licensors, partners and affiliates expressly limit their liability for breach of any non-excludable condition or warranty implied by virtue of any legislation to the following remedies (the choice of which is to be at the Company's sole discretion):
- (a) in the case of goods, to:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;

- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; and/or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services, to:
 - (i) the supply of the services again; and/or
 - (ii) the payment of the cost of having the services supplied again.

Release

- 10.3 You agree that your use of this site and your purchase of any goods/services from the Company is at your own discretion and risk. You agree to release the Company its directors, officers, employees, agents, consultants, licensors, partners and affiliates from any claim, demand or cause of action that you may have against any of them arising directly or indirectly out of, or in connection with, your use of this site or any use of, or reliance upon, any goods or services obtained through this site or from the Company by you or any other person.

Force majeure

- 10.4 To the maximum extent permitted by law, and without limiting any other provision of these Usage Terms, the Company excludes liability for any delay in performing any of its obligations under these Usage Terms where such delay is caused by circumstances beyond the reasonable control of the Company, and the Company shall be entitled to a reasonable extension of time for the performance of such obligations.

11. General

Interpretation

- 11.1 In these Usage Terms, the following rules of interpretation apply:
- (a) headings are for reference purposes only and in no way define, limit or describe the scope or extent of any provision in these Usage Terms;
 - (b) these Usage Terms may not be construed adversely against the Company solely because the Company prepared them;
 - (c) the singular includes the plural and vice-versa;
 - (d) a reference to a “business day” means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales, Australia are open for business;
 - (e) a reference to a “person” includes an individual, a firm, a corporation, a body corporate, a partnership, an unincorporated body, an association, a government body or any other entity; and
 - (f) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “in particular” or similar expressions.

Costs

- 11.2 Except as specifically provided in these Usage Terms, each party must bear its own legal, accounting and other costs associated with these Usage Terms.

Assignment

- 11.3 You may not assign, transfer or sub-contract any of your rights or obligations under these Usage Terms without the Company's prior written consent. The Company may assign, transfer or sub-contract any of its rights or obligations under these Usage Terms at any time without notice to you.

No waiver

- 11.4 Waiver of any power or right under these Usage Terms must be in writing signed by the party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver. Any failure by the Company to act with respect to a breach by you or others does not waive the Company's right to act with respect to that breach or any subsequent or similar breaches.

Severability

- 11.5 The provisions of these Usage Terms are severable and, if any provision of these Usage Terms is held to be illegal, invalid or unenforceable under present or future law, such provision may be removed and the remaining provisions shall be enforced.

Variation

- 11.6 The Company reserves the right to amend these Usage Terms and any other policy on this site at any time in its sole discretion and any such changes will, unless otherwise noted, be effective immediately. Your continued usage of this site will mean you accept those amendments. We reserve the right, without notice and in our sole discretion, to change, suspend, discontinue or impose limits on any aspect of this site, the content on this site or the goods/services offered through this site.
- 11.7 You may only vary or amend these Usage Terms by written agreement with the Company.

Governing law and jurisdiction

- 11.8 These Usage Terms will be governed in all respects by the laws of New South Wales, Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia and the courts of appeal from them.