

## WEBSITE TERMS OF USE

The Website is owned and operated by PapaCow Pty Ltd (ABN 57 109 714 516) trading as PapaCow Fashion (**PapaCow, us, we** or **our**).

These terms of use (**Terms**) govern your access to, and use of, the Website. By using or accessing the Website, you agree to be bound by these Terms, as updated by us from time to time. You agree that PapaCow may change and update the Terms from time to time without notice to you and the most recent version of the Terms posted on the Website will apply and bind you in respect of that access or use. We recommend that you review the Terms regularly each time you access or use the Website to take notice of any changes we may have made.

If you do not agree to these Terms, including any changes to these Terms, you must not use or access the Website.

Before ordering any Goods through the Website, please read our Terms of Sale, which can be accessed here: [papacow.com.au/terms-of-sale](http://papacow.com.au/terms-of-sale)

### **1. Privacy Policy**

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- 1.1. These Terms incorporate our privacy policy, which can be accessed here: [papacow.com.au/privacy-policy](http://papacow.com.au/privacy-policy). You warrant that any personal information you provide to us through the Website is accurate and current.

### **2. Intellectual Property**

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- 2.1. PapaCow owns, or is licenced to use, all Intellectual Property Rights in the Website and the Content.
- 2.2. Your use of the Website does not grant to you any Intellectual Property Rights in the Website or the Content, nor does it grant you any licence or right to use the Website or the Content other than as permitted by these Terms.
- 2.3. Subject to these Terms, PapaCow grants to you a non-exclusive, non-transferable, revocable, royalty-free licence to access, view and use the Website and the Content, for your personal use and benefit only, provided you comply with these Terms.
- 2.4. Subject to the limited licence granted in paragraph 2.3, you agree that you will not use the Website or the Content in a way which infringes the Intellectual Property Rights of PapaCow. In particular, you must not:
- 2.4.1. copy, reproduce or replicate the Content;
  - 2.4.2. modify, change or customise the Content in any way, including by removing any copyright notice or altering our trademarks or logos; or
  - 2.4.3. disseminate copies of the Content to any third parties.

### **3. Use of the Website**

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- 3.1. You must not use the Website (including the Content) in any manner that is illegal, unlawful or in any manner contrary to or prohibited by these Terms.

- 3.2. Without limiting paragraph 3.1, you must not access or use the Website (including the Content) for any activities, or post or upload to the Website any User Content (defined in paragraph 4.3 below), which:
  - 3.2.1. breaches any laws or regulations, or violates any applicable standards or codes;
  - 3.2.2. infringes a third party's legal rights, including rights of privacy or intellectual property rights;
  - 3.2.3. transmits or distributes a virus or any other malicious code into the Website, the Content, or any part of the Website or the Content;
  - 3.2.4. hacks into, disrupts or otherwise negatively affects the Website, the Content, or any part of the Website or the Content;
  - 3.2.5. circumvents the Website's structure, presentation or navigational function so as to obtain information that PapaCow has chosen not to make publicly available; or
  - 3.2.6. defames, abuses, harasses, stalks, threatens or intimidates others.
- 3.3. You must be 18 years or over to access or use the Website. If you are under 18 years of age, you must only access and use the Website with the permission of your parent or legal guardian.

#### **4. User Content and Third Party Content**

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- 4.1. PapaCow uses social media sites, including Facebook and Instagram, which may change over time (**Social Media Sites**). PapaCow reserves the right to cease use of any Social Media Site at its discretion.
- 4.2. The Website and the Social Media Sites may include functions that enable you and other users to post or submit feedback, reviews, comments, and interact with one another.
- 4.3. By posting or submitting any feedback, reviews, comments, images, photographs, materials or other content (**User Content**) to, or through, the Website or our Social Media Sites, you agree that:
  - 4.3.1. your User Content complies with these Terms and all laws and relevant social media guidelines, codes, policies and terms applicable to the relevant Social Media Site (for example, Facebook's Terms of Service); and
  - 4.3.2. you are solely responsible for your conduct and for all User Content that you post or submit.
- 4.4. You must not post or submit any User Content that:
  - 4.4.1. is defamatory or malicious;
  - 4.4.2. is illegal, misleading or deceptive, is obscene, offensive, discriminatory, inflammatory, indecent, depicts nudity, sexual activity or violence, or is unsuitable for children;

- 4.4.3. infringes, or may infringe, on any property rights of a third party (including rights of privacy or intellectual property rights) without first obtaining the consent of that third party;
    - 4.4.4. gives the impression that the content originates from or is endorsed by PapaCow; or
    - 4.4.5. does not otherwise comply with these Terms.
- 4.5. When you post or submit User Content to the Website or our Social Media Sites, you warrant to PapaCow that:
  - 4.5.1. the User Content is your own original creation;
  - 4.5.2. the User Content will not infringe on the property rights of any third party (including the rights of privacy or intellectual property rights); and
  - 4.5.3. the User Content can be licensed to PapaCow as set out in paragraph 4.6 below.
- 4.6. By posting or submitting your User Content to, or through, the Website or our Social Media Sites, you grant to PapaCow a non-exclusive, worldwide, royalty-free, transferrable, sub-licensable, licence to use, republish, modify or otherwise make available the User Content or any part of the User Content (including without attributing authorship), for any purpose whatsoever.
- 4.7. You indemnify PapaCow from and against any claims, proceedings, causes of action, damages, losses, costs and expenses (including legal costs) (**Claims**) arising as a result of the breach of a warranty given by you under paragraph 4.5.
- 4.8. PapaCow has the right to monitor or moderate your User Content or any feedback, reviews, comments, images, photographs or other content posted or submitted by any other person (**Third Party Content**) to, or through, the Website or to our Social Media Sites, but has no obligation to do so.
- 4.9. Third Party Content posted or submitted to the Website or the Social Media Sites is the responsibility of those users. You agree that PapaCow is not responsible for any Third Party Content posted or submitted to the Website or our Social Media Sites or for any material on any Third Party Websites linked through the Website or our Social Media Sites.
- 4.10. PapaCow does not support, represent, guarantee the completeness, truthfulness, accuracy or reliability of any Third Party Content posted or submitted to the Website or our Social Media Sites.
- 4.11. PapaCow may edit, delete or remove any of your User Content or Third Party Content at any time without giving explanation or justification for editing or removing such content. PapaCow reserves the right to block or prevent any user from accessing the Website or our Social Media Sites, or take any other action we consider appropriate, if we believe that the user has breached, violated or disregarded any of these Terms.

## 5. Goods Disclaimer

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- 5.1. PapaCow attempts to display the Goods as accurately as possible. Due to many factors, including colouring varying from screen to screen, and from screen to printer, PapaCow cannot guarantee that the colours in the Goods you receive will be identical to the colours appearing on the Website.
- 5.2. While PapaCow has taken reasonable steps to ensure that all details, descriptions, and prices which appear on the Website are accurate and up to date, PapaCow makes no representations, warranties or guarantees that the information appearing on the Website is accurate or error free. If we discover an error or inaccuracy in the details, descriptions or pricing information, we may at any time without notice to you correct such errors or inaccuracies. If we discover an error or inaccuracy after you have submitted an order to us, we will contact you to inform you of the error or inaccuracy. You may then confirm your order for the Goods with the correct information or elect to cancel your order. If you elect to cancel your order, we will refund to you any amount paid for the Goods.
- 5.3. The Website, including any Content, or our Social Media Sites may include links to other websites not owned or controlled by us (**Third Party Websites**). Third Party Websites are subject to the terms and conditions outlined by that third party.
- 5.4. Unless expressly stated by PapaCow, any links to Third Party Websites do not indicate a relationship between PapaCow and the third party or indicate any endorsement or sponsorship by PapaCow of the Third Party Website, or the goods or services it provides.

## 6. Liability

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- 6.1. Nothing in these Terms excludes, restricts or modifies any consumer guarantee, right or remedy conferred on you by the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**) or any other applicable law that cannot be excluded, restricted or modified by agreement. Subject to that, any condition, warranty, right or liability which would otherwise be implied in these Terms or imposed by law is excluded.
- 6.2. You agree that you access and use the Website, including the Content, at your own risk.
- 6.3. PapaCow is not liable for any Claims arising from your use or reliance upon the Website, including any Content.
- 6.4. PapaCow does not represent or warrant that the Website, including the Content, will be free from viruses (including malware or spyware) or other destructive properties or any other defect or error which may affect or interrupt your access to, or use of, the Website or the Content.
- 6.5. Subject to the Australian Consumer Law, PapaCow's maximum total aggregate liability for all Claims arising under or in relation to these Terms, whether in contract, tort (including negligence), equity, under statute, or on any other basis is limited to the total amount paid by you to PapaCow for any Goods purchased by you pursuant to these Terms.

## **7. Force Majeure**

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- 7.1. If we are restricted or prevented from performing any or all of our obligations under these Terms by reason of an event which is not reasonably within our control including without limitation omissions or impositions by federal or national government authorities, fire, flood, earthquake and other natural disasters, acts of god, epidemics or pandemics (including Covid-19), war, revolution, strike, fuel shortages and shortage of raw materials, we are relieved of those obligations to the extent and for the period that they are unable to be performed.

## **8. Termination of Access**

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- 8.1. We reserve the right to limit, suspend or terminate your access to the Website, including any Content, and/or our Social Media Sites at any time and without giving you any explanation or justification for the termination of your access.
- 8.2. You agree that PapaCow has no liability for any costs, losses or damages of any kind arising as a consequence of terminating your access to the Website, the Content. or our Social Media Sites.

## **9. Contact Details and Notices**

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- 9.1. If you have any comments, feedback or questions about the Website or these Terms, please email us at [sales@papacow.com.au](mailto:sales@papacow.com.au).
- 9.2. PapaCow may give notice to you by either direct communication to the email address provided by you or generally by publication of a generic message or communication on a notice board or information link accessible to and found on the Website.

## **10. General**

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- 10.1. PapaCow may amend, remove, alter or vary the Website or any of the Content at any time without notice to you.
- 10.2. You acknowledge that PapaCow may assign any of its rights or obligations under these Terms at any time.
- 10.3. The provisions of these Terms are deemed to be severable and any invalidity of any provision of these Terms will not affect the validity of the remaining provisions.
- 10.4. Our failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver of that right, power or remedy.
- 10.5. These Terms will be governed by and interpreted in accordance with the law of Western Australia and you agree to the jurisdiction of the courts of Western Australia to determine any disputes arising out of these Terms.
- 10.6. If you access the Website, including the Content, outside Western Australia, you agree to comply with all laws in force in that place in addition to the Terms and all laws in Western Australia.

## **11. Definitions**

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- 11.1. In these Terms, the following words have the meanings set out below:

**Content** means any data, text, photographs, images, scripts, graphics, trade marks, logos, sounds, music, audio, audio-visual combinations, interactive features and other content provided by PapaCow through the Website or included in the Website.

**Goods** means any and all goods supplied by PapaCow, including all goods set out in an invoice, order confirmation or other document provided by PapaCow to you.

**Intellectual Property Rights** means all existing and future intellectual property rights of whatever nature anywhere in the world, including trade marks, logos, domain names, trade names, designs, patents, copyright and analogous rights, know how, trade secrets, business names, concepts, rights in confidential information, and all and any other intellectual property rights, whether registered or unregistered, and including all applications and rights to apply for any of the same.

**Website** means the website located at [<https://staging.pwd.net.au/papacow/>].

**You or your** means the person who uses the Website or the Social Media Sites.