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## **WEBSITE – TERMS OF ACCESS**

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## Website — Terms of Access

### Terms of Access to the Website (Terms of Access)

This website (referred to in these Terms of Access as the **Website**) is owned and operated by **WAFEX Pty Ltd ACN 144 871 956 (Wafex)**, who is referred to in these Terms of Access as “we”, “us”, “our” and similar grammatical forms.

The material on the Website is copyright © 2021 by Wafex or other copyright owners.

The Website is available for you to:

- (a) Access conditional on your acceptance without alteration of the terms and conditions set out on this linked page. By continuing to access the Website you are agreeing to these Terms of Access.
- (b) Upload material or information conditional on your acceptance without alteration of the terms and conditions set out on this linked page. By continuing to provide upload material or information about your product or service you are agreeing to the Terms of Use related to uploading material or information to our Website.

### OPERATIVE PROVISIONS

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## 1. Use of material on the Website

### 1.1 Generally

- (a) Except for the limited use set out in these terms you may not use the Website, or the material contained on it, for any purpose. This involves:
  - (i) the reproduction of the material in any material form.
  - (ii) the distribution of the material in any material form.
  - (iii) re-transmission of the material by any medium of communication.
  - (iv) uploading or reposting the material to any other site on the Internet; and
  - (v) “framing” the material on the Website with other material on any other website.

The above are specifically prohibited by these Terms of Access.

- (b) Despite the above restrictions on use of the material on the Website, you may download material from the Website for your personal non-commercial use provided you do not remove any copyright and trademark notices contained on the material.
- (c) You may not modify or copy:
  - (i) the layout of the Website; or

- (ii) any computer software and code contained in the Website.
- (d) We reserve all intellectual property rights, including, but not limited to, copyright in material or services provided by it. The material provided on the Website is provided for personal use only and may not be:
  - (i) re-sold or re-distributed in any material form.
  - (ii) stored in any storage media; or
  - (iii) re-transmitted in any media,without our prior written consent.

## **1.2 Links to other websites**

- (a) This Website contains links to sites on the Internet owned and operated by third parties and which are not under our control.
- (b) In relation to the other sites on the Internet, which are linked to the Website, we:
  - (i) provide the links to other sites as a convenience to you and the existence of a link to other sites does not imply any endorsement by us of the contents of the linked site; and
  - (ii) is not responsible for the material contained on those linked sites.

## **1.3 Disclaimer 1**

- (a) We are making the Website available for others to publish information without assuming a duty of care to users. We are not in the business of providing professional advice and gives no warranty, guarantee or representation about the accuracy, reliability or timeliness or otherwise, of the information contained on the Website or linked sites on the Internet.
- (b) To the full extent permitted by law we disclaim any and all warranties, express or implied, regarding:
  - (i) the accuracy, reliability, timeliness or otherwise of any information contained or referred to on the Website or of any linked sites; and
  - (ii) merchantability or fitness for any particular purpose for any service or product contained or referred to on the Website or on any linked sites.
- (c) We will not be liable under any circumstances for any loss of profits or any damages of any kind recognised by law (even if it has been advised of the possibility of such loss of profits or damages) which are the consequence of you:
  - (i) acting, or failing to act, on any information contained on or referred to on the Website or any of the linked websites; and
  - (ii) using or acquiring, or your inability to use or acquire, any service or product contained or referred to on the Website or any linked sites.

#### **1.4 Disclaimer 2**

- (a) We do not warrant, guarantee or make any representation that:
  - (i) the Website, or the server that makes the site available on the Internet are free of software viruses;
  - (ii) the functions contained in any software contained on the Website will operate uninterrupted or are error-free; and
  - (iii) errors and defects in the Website will be corrected.
- (b) We are not liable to you for:
  - (i) errors or omissions in the Website, or linked sites on the Internet;
  - (ii) delays to, interruptions of or cessation of the services provided in the Website, or linked sites; and
  - (iii) defamatory, offensive or illegal conduct of any user of the Website, whether caused through our negligence or the negligence of our employees, independent contractors or agents, or through any other cause.
- (c) You agree to accept the full cost of any necessary repair, correction and maintenance of any of your computer software or hardware, which may be necessary as a consequence of you accessing the Website.

#### **1.5 Limitation of liability**

Clause 1.3 (disclaimer 1) or clause 1.3(c)(ii) (disclaimer 2) may not apply to you in jurisdictions in which limitations on or exclusions of warranties or liabilities are not permitted by law. To the full extent permitted by law our liability for any implied warranty or condition is limited, at our choice, to one or more of the following:

- (a) if the breach of an implied warranty or condition relates to services:
  - (i) the supply of the services again; or
  - (ii) the payment of the cost of having the services supplied again; and
- (b) if the breach of an implied warranty or condition relates to goods:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of such goods; or
  - (iii) the payment of the cost of replacing the goods or acquiring equivalent goods, or having the goods repaired.

#### **1.6 Use of personal information gathered**

- (a) We and any people or legal entities authorised by us may gather and process the

personal information:

- (i) which you may provide when accessing the Website, such as your name, address, e-mail address and other personal information about you; and
  - (ii) regarding the way in which you use the Website including, without limitation, information acquired through the use of “cookies” delivered to your computer when you access our Website.
- (b) We may authorise others to offer you goods and services using the information acquired, as described in clause 1.6.
  - (c) We will comply with the Australian Privacy legislation in respect to our collection, storage and use of your personal information. Please refer to our full privacy policy in clause 2.8(c) for details of how we collect, store and use your personal information.

### **1.7 Termination of access**

We may terminate access to the Website at any time without giving any explanation or justification for the termination of access, and we have no liability for any costs, losses or damages of any kind arising as a consequence of terminating access to the Website.

### **1.8 Alteration of Terms of Access**

We reserve the right to change these Terms of Access:

- (a) with or without further notice to you; and
- (b) without giving you any explanation or justification for such change.

### **1.9 Intellectual property rights**

All logos, icons, brand names or service names that identifying the owner and operator of this Website are our copyright property or our trademarks or service marks. All other trademarks or service marks on this Website are the property of their respective owners. You must obtain written permission before reusing any copyrighted material that is published on this Website. Any unauthorized use of the materials appearing on this Website may violate copyright, trademark and other property rights or legal protections and could result in criminal or civil penalties.

### **1.10 Relevant jurisdiction**

- (a) If any part of these Terms of Access is found to be void, unlawful, or unenforceable then that part will be deemed to be severable from the balance of these Terms of Access and the severed part will not affect the validity and enforceability of any remaining provisions.
- (b) These Terms of Access will be governed by and interpreted in accordance with the law of Western Australia in Australia, without giving effect to any principles of conflicts of laws.

- (c) You agree to the jurisdiction of the courts of Western Australia in Australia to determine any dispute arising out of these Terms of Access.

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## **2. Terms of use relating you uploading material or information to our Website**

This Website (referred to in these “terms of use” as the website) is owned and operated by Wafex, who is referred to in these Terms of Use as “we”, “us”, “our” and similar grammatical forms.

### **2.1 Uploading information**

You represent and warrant in relation to any material or information you provide to the Website that:

- (a) you are authorised to provide the material or information;
- (b) the material or information is not defamatory or a malicious falsehood in relation to any product, service, person or corporation;
- (c) the material or information is not the “passing off” of any product or service and does not constitute unfair competition or infringe the rights of any person or corporation;
- (d) the material or information does not infringe any intellectual property right including, but not limited to, trade marks, service marks or business names (whether registered or unregistered), confidential information and copyright; and
- (e) the material or information does not infringe any legislation or regulations of the Commonwealth of Australia and the State of Western Australia including, but not limited to, the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law (ACL) and any other parliament competent to legislate in relation to the Website or any law in any country where the material or information is or will be available electronically to users of this Website.

### **2.2 Licence to use intellectual property**

By uploading any material that is protected by intellectual property rights including, but not limited to, copyrighted works and material other than works, trade marks and service marks (Intellectual Property) on to the Website, you are granting us a perpetual, non-exclusive and payment-free licence throughout the world to:

- (a) reproduce, use and exploit the Intellectual Property, as part of the Website, to the full extent permitted by Intellectual Property law in any jurisdiction in which the Website is available to users; and
- (b) allow us to sub-licence others the same rights granted to us in clause (a) above.

### **2.3 Removal of information**

In relation to any material or information included on the Website, we may remove any material or information, including but not limited to links to other sites on the Internet, at

any time without giving any explanation or justification for removing the material or information.

#### **2.4 Limit of liability**

We and our respective officers, employees and agents have no liability for any costs, losses or damages of any kind, which you may incur, arising whether directly or indirectly. This applies:

- (a) in relation to or in connection with any material or information supplied in respect of advertising on this Website; and
- (b) as a consequence of removing any material or information from this Website.

#### **2.5 Indemnity**

You will at all times indemnify and keep indemnified us and our respective officers, employees and agents (**Those Indemnified**) from and against any loss (including reasonable legal costs and expenses) or liability incurred by any of Those Indemnified arising from any claim, demand, suit, action or proceeding by any person against any of Those Indemnified where such loss or liability arose out of, in connection with or in respect of:

- (a) any breach of these Terms of Use by you; and
- (b) publication of or distribution of the material or information supplied by you.

#### **2.6 Use of personal information gathered**

- (a) We and any people or legal entities authorised by us may gather and process the personal information:
  - (i) which you may provide when accessing the Website, such as your name, address, e-mail address and other personal information about you; and
  - (ii) regarding the way in which you use the Website including, without limitation, information acquired through the use of “cookies” delivered to your computer when you access our Website.
- (b) We may authorise others to offer you goods and services using the information acquired, as described in clause 1.6.
- (c) We will comply with the Australian Privacy legislation in respect to our collection, storage and use of your personal information. Please refer to our full privacy policy in clause 2.8(c) for details of how we collect, store and use your personal information.

#### **2.7 Intellectual property rights**

All logos, icons, brand names or service names that identifying the owner and operator of this Website are our copyright property or our trade marks or service marks. All other trade marks or service marks on this Website are the property of their respective owners. You



must obtaining written permission before reusing any copyrighted material that is published on this Website. Any unauthorized use of the materials appearing on this Website may violate copyright, trade mark and other property rights or legal protections and could result in criminal or civil penalties.

## 2.8 Relevant jurisdiction

- (a) If any part of these Terms of Use is found to be void, unlawful, or unenforceable then that part will be deemed to be severable from the balance of these Terms of Use and the severed part will not affect the validity and enforceability of any remaining provisions.
- (b) These Terms of Use will be governed by and interpreted in accordance with the law of Western Australia in Australia, without giving effect to any principles of conflicts of laws.
- (c) You agree to the exclusive jurisdiction of the courts of Western Australia in Australia to determine any dispute arising out of these Terms of Use.

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## 3. Privacy policy

- (a) This website of Tesselaar Flowers is operated by Wafex Pty Ltd who is referred to in this privacy policy as “we”, “us”, “our” and similar grammatical forms.
- (b) By using our online store or pay any subscription to Tesselaar Flowers or registering for an account with us, you are accepting the terms of this privacy policy, and you are consenting to our collection, use, disclosure, retention and protection of your personal information as described in this privacy policy.
- (c) We appreciate that your privacy is important to you, Tesselaar Flowers will continue to protect the personal information you provide us and we will manage your personal information in compliance with the Privacy Act 1988 (Cth) (**Privacy Act**) and the Australian Privacy Principles (**APPs**).
- (d) We will take all reasonable steps to ensure that all information we collect, use or disclose is accurate, complete, up-to-date and stored in a secure environment.

### 3.1 When do we collect information?

- (a) We do not automatically collect personal information from you, such as your name, address, phone number, email address or other personally identifiable information about you (personal information). We collect three categories of information when you use our Website:
  - (i) the personal information you voluntarily provide — that is, we collect personal information with your informed consent;
  - (ii) anonymous non-personal information about how you use our Website; and
  - (iii) “cookie” based information that makes your use of our Website easier by recording your preferences so that when you return to our Website the “cookie” re-loads that information into your web browser.

- (b) For example, we will collect personal information from you when you register on our Websites, place an order, subscribe to our newsletter, respond to a promotional offer, competition or survey or fill out a form related to any customer service feature operating on our Websites.
- (c) When you become a subscriber to the Tesselaar Flowers Website you will need to provide certain details so that we can establish and manage your customer account.
- (d) When you log-into our Website using your Google or Facebook log-in (or use any other log-in connected to any other social media platform) you are allowing that social media platform to share your personal information with us (that is, your personal information related to your log-in with that social media platform, which may include your email address and other personal information).

### **3.2 Why do we need to collect personal information?**

We collect personal information when you volunteer that information in order to receive a service from our Website. The personal information collected on our Websites will be used to provide the services you have requested, such as setting up and managing your subscription to Tesselaar Flowers or processing any purchases you may make at our online store. Your personal information may be used in relation to any survey, promotional offer or any competition you may enter on our Websites.

### **3.3 What information do we collect?**

- (a) The type of information we collect from you will depend on what services on our Website that you use. The personal information we may collect includes your name, postal address, email address, telephone numbers and contact details and information for identification purposes. If you make online purchases from the online store or pay your subscription to Tesselaar Flowers by credit card or debit card or direct debit from your bank account we will collect your card or bank account details.
- (b) General information about visits to our Websites is collected by our computer servers, with small files “cookies” that our Websites transfers to your computer’s hard drive through your Web browser (if you allow the delivery of “cookies”). The “cookies” are used to follow the pattern of movements of users by letting us know which pages on our Websites are visited, in what order and how often and the previous website visited and also to process the items you select if you are making purchases from the online store. The anonymous non-personal information that we collect and analyse is not personal information as described in the Privacy Act.

### **3.4 Why do we use “cookies” and other web use tracking technologies?**

- (a) When you access our Website, a small files containing a unique identification (ID) number may be downloaded by your web browser and stored in the cache of your computer. The purpose of sending these files with a unique ID number is so that our Website can recognise your computer when you next visit our Website. The “cookies” that are shared with your computer can’t be used to discover any personal information such as your name, address or email address they merely

identify your computer to our Websites when you visit us.

- (b) We can also log the internet protocol address (IP address) of visitors to our Website so that we can work out the countries in which the computers are located.
- (c) We collect information using “cookies” and other tracking technologies for the following reasons:
  - (i) to help us monitor the performance of our Website so that we can improve the operation of the Website and the services we offer;
  - (ii) to provide personalised services to each user of our Website to make their navigation through our Website easier and more rewarding to the user;
  - (iii) to sell advertising on the Website in order to meet some of the costs of operating the Website and improve the content on the Website; and
  - (iv) when we have permission from the user, to market the services we provide by sending emails that are personalised to what we understand are the interests of the user.
- (d) Even if you have given us permission to send you emails, you can, at any time, decide not to receive further emails and will be able to “unsubscribe” from that service.
- (e) If you are unhappy about having a cookie sent to you, you can set your browser to refuse cookies or choose to have your computer warn you each time a cookie is being sent. However, if you turn your cookies off, some of our services may not function properly. However, you can still place orders over the telephone by contacting the online store service personnel.

### **3.5 How do we store your information?**

- (a) We use different technologies and procedures to help protect personal information from unauthorized access, loss, alteration, disclosure or use. Some of the safeguards we use are physical access controls, information firewalls and access authorisation controls to where your personal information is held in data centres. We also use data encryption when personal information is transferred to and from our service providers. Our commitment to data security means:
  - (i) we have procedures to limit access to personal information within our organisation;
  - (ii) we use security measures and technologies within our organisation to protect your personal information; and
  - (iii) we use service providers that can establish that they have secure controls relating to software security, access security and network security, including where credit card information is being transferred.
- (b) Our online store is not hosted in Australia. For that reason, we transfer all data on the online store (including all personal information) to our hosting service provider in the Netherlands. In addition, web traffic information we collect, such as data

collected by Google Analytics may be stored overseas.

### **3.6 What use do we make of your personal information?**

- (a) We will communicate with you in relation to any purchases you make from the online store and in relation to the management of your subscription account with Tesselaar Flowers which will include providing you with information about Tesselaar Flowers.
- (b) We may send you information and updates about any other product, service or information that we provide to our customers; in addition we may send you occasional company news and information about other products and services or special promotional offers of our affiliated companies. If at any time you would like to stop receiving future commercial messages from us, we include detailed unsubscribe instructions at the bottom of each email.
- (c) We may also release your personal information when we believe release is appropriate to comply with the law, enforce our subscription agreements, website policies and terms & conditions, or protect ours or others rights, property, or safety.

### **3.7 How can I access the personal information that you collect?**

- (a) We are happy to provide you with details of personal information held about you. APP 12 allows you to get access to, and correct, the personal information we hold about you.
- (b) To access this information, you need to email or write to us using the contact details below. Please also include your subscriber account number if you are a subscriber to Tesselaar Flowers.
- (c) APP 13 allows you to ask us to take reasonable steps to correction any personal information that is inaccurate, out of date, incomplete, irrelevant or misleading.
- (d) If you believe that your personal information has been misused, you can inform us of your complaint by writing to our address and we will attempt to resolve the matter.

Wafex Pty Ltd, 4165 West Swan Road, West Swan, WA, Australia, 6055

+61 8 9278 9800

Sales@Wafex.com.au

- (e) If you are not satisfied with the outcome of your complaint you may refer the matter to the Office of the Australian Information Commissioner (OAIC). Telephone: 1300 363 992.

enquiries@oaic.gov.au

OAIC complaints page: <http://www.oaic.gov.au/privacy/privacy-complaints>

### **3.8 Third party links**

Our Websites may include links to websites operated by third parties. We have no responsibility or liability for the content and activities of these linked websites. Nonetheless, we seek to protect the integrity of our Websites and welcome any comment about linked websites.

### **3.9 Terms and conditions**

Please also visit our Terms of Access to our Website (clause 0) and our Terms of Use regarding uploading material or information to our Website (clause 2) which sets out the conditions of use and limitations of liability governing the use of our Website.

### **3.10 Your consent**

By using our Website, you consent to this privacy policy.

### **3.11 Changes to our privacy policy**

- (a) If we decide to change this privacy policy, we will post those changes on this page, and update the privacy policy modification date below.
- (b) This privacy policy was last modified on 21<sup>st</sup> October 2021.