

# Website Terms of Use

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Welcome to our website. We strive to ensure your experience here is smooth and user friendly.

## 1. Introduction

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The Website and its associated features and applications are owned and operated by Frosty Boy Australia Pty Ltd ABN 61 614 143 654 (**Frosty Boy, we, us or our**).

These terms of use (**Website Terms**) in conjunction with our Standard Terms govern your use of the Website, including the purchase of Products over the Website, any interaction with our social media channels (such as YouTube, Facebook, Instagram and LinkedIn) and any material published on our Website. By complying with these Website Terms, you help us ensure our compliance with relevant laws and avoid us breaching obligations owed to third parties.

If you do not agree to these Website Terms, then you must not use our Website and must not order Products through the Website. By using, accessing or linking to our Website or posting on our social media channels, you agree to be bound by these Website Terms. To the extent of any inconsistency between the Standard Terms, and these Website Terms, the Standard Terms will prevail.

By participating and using the Website or creating an Account (as defined below), you are agreeing to all of these Website Terms and the Standard Terms, as may be updated from time to time. You should check this page regularly to take notice of any changes that have been made to these Website Terms.

## 2. Terminology

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Unless the context indicates otherwise, terms defined in the Standard Terms have the same meaning when used in these Website Terms and the following definitions apply:

| <b>Term</b>   | <b>Meaning</b>   |
|---|--|
| <b>Account</b>  | your account with Frosty Boy created via the features on our Website that provide for the creation of an online account.   |
| <b>Linked Site</b>                                    | any other websites, platforms or pages (including social media pages) which are not operated by Frosty Boy that may be linked or referred to in any part of our Website from time to time, including any pages displayed in search results and information published on such other websites.   |
| <b>Frosty Boy, we, us, our or similar expressions</b> | Frosty Boy Australia Pty Ltd ABN 61 614 143 654 and where the context permits includes references to its related bodies corporate and their respective directors, employees, agents and any third party (other than you) that we have an agreement with, in relation to the Website.   |
| <b>Standard Terms</b>                                 | Frosty Boy's standard terms of sale in effect from time to time, which at the date of these Website Terms are available on our Website, or otherwise on request.   |
| <b>you, your or any similar expression</b>            | the person using the Website and includes a reference to any business on whose behalf you are using the Website or its functions.  |
| <b>Website</b>  | this includes a reference to our websites frostyboy.com, fbgdirect.com, frostyboyglobal.com (and our brand sites available from that domain), wellboost.com, artofblend.com, frostywhip.com, saucesuccess.com, frozenyoghurt.com, bestsoftserve.com and any other website or domain name operated by us and the associated features and applications made available via those websites. It also includes a reference to any of our official social media pages or any mail outs or direct marketing sent to you (that we may introduce in the future from time to time), unless that does not refer to the 'Website' in these Website Terms. |

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# Website Terms

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## 3. Amendments to Website Terms

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Our business is always developing and evolving, getting better day by day. Due to this we may need to make quick changes, so we have the right to change and replace these Website Terms or any of the services or functionalities of the Website at any time.

Any changes to these Website Terms will be effective immediately upon publication on the Website, so please check back on this page each time you use our Website to see if anything has changed. We have details of when these Website Terms were last changed down the bottom for your reference. If you continue using the Website following any changes, you will be bound by the changes and any updates to these Website Terms.

## 4. Access to the Website

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Access to the Website is permitted on a temporary basis, and Frosty Boy reserves the right to withdraw, amend or restrict access to the Website, any services provided via the Website (including access to Accounts) or some parts of the Website from time to time without notice. We will not be responsible if the Website is unavailable at any time. Also, any products or services offered on the Website and any functions or services provided via the Website are only made to those who can enter into legally binding contracts.

## 5. Accounts

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To access some features of the Website, you must register an Account with us. To register for an Account, you must provide us with accurate and current information including your name, address, a valid email address and any other information reasonably requested by Frosty Boy. You must not register more than one Account. You are not permitted to create an Account if you are under 18 years old.

You are solely responsible for the activity that occurs on your Account (including Orders placed using your Account), and you must keep your Account password secure. Frosty Boy is not responsible for any unauthorised activity on your Account, including if you fail to keep your Account login information secure.

You must not use another person's Account without their express permission and our permission. If we suspect something is not right, we may refer potentially fraudulent, abusive or illegal activity to the relevant authorities. If you suspect or become aware of any unauthorised use of your Account or that your password is no longer secure, please contact us immediately, and take immediate steps to re-secure your Account (including by changing your password).

## 6. Information about others

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Information or links of other websites made available on our Website (or in our mail outs, such as emails we may send to you) may be based on information or other matters that we have been told by third parties (for example, estimated delivery dates from our delivery providers).

Unfortunately, we cannot independently verify everything that these third parties tell us. As a result, we cannot guarantee that any information, offers or other things that are stated on our Website or that are contained in any links to Linked Sites, are accurate and up to date, so you have to check this directly with the third party. Except as required by law (including the Australian Consumer Law), we will not be responsible for inaccuracies, errors or other issues caused by incorrect information supplied to us by third parties.

Once you leave our Websites or click on a link that prompts you to leave our Websites, the content, privacy regulations and these Website Terms, will no longer apply and you will be subject to the individual policies and website terms of such other website. We do not test nor do we seek quality and accuracy assurances from any external websites.

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Similarly, we also disclaim any control or liability if you access our Website via links provided on other websites, as we cannot guarantee that the links or words (that may be the same or substantially similar to Frosty Boy) will in fact link or direct you to our official Website. In other words, if you access our Website other than via the official Website address provided above, Frosty Boy cannot provide assurances that your privacy will be protected in the ways set out in our privacy policy. Our recommendation would be to only access our Website using the official link to the Website, provided above.

## **7. Purchase of Products via the Website**

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Any Order for Products made via the Website (including, for the avoidance of doubt, our other brand Websites) will be deemed to be made in accordance with our Standard Terms and these Website Terms.

You may offer to purchase Products described on the Website for the price specified on the Website (which is inclusive of GST unless stated otherwise). In all other respects, the price is exclusive of taxes, duties and charges (including any Additional Charges) imposed or levied in Australia or overseas in connection with the supply of the Products that are not expressly stated as being included in the price on the 'check out' page of the Website when placing the Order. It will be your responsibility to pay the cost of any such taxes, duties or charges imposed or levied on the supply of Products (including international orders), in addition to the price of the Products and the Additional Charges.

All payments are to be made in the currency stated when placing the Order on the Website, and you are responsible for all currency conversion, banking or similar fees in respect of any payments to Frosty Boy (and you must reimburse Frosty Boy for any of the foregoing on demand).

Your Order must contain your name, email address, credit card details and any other information specified on the Website or as otherwise required by Frosty Boy from time to time, and Frosty Boy may treat you as having provided any information contained in your Account. The process for acceptance and handling of Orders is addressed in the Standard Terms. Without limiting Frosty Boy's rights under the Standard Terms:

- (a) you may not cancel an Order once it has been submitted, even if our acceptance or rejection of your Offer is still pending;
- (b) if we reject your offer to purchase Products for any reason, Frosty Boy will not be under any further Liability to you arising out of your original offer or our non-acceptance of that offer;
- (c) we give no undertaking as to the availability of Products advertised on the Website; and
- (d) any prices quoted on the Website do not include any delivery, transport or other Additional Charges that may be incurred pursuant to the Standard Terms, unless those are expressly included in the accepted Order.

When you place an Order, you may receive an Order confirmation by email. This email will only be an acknowledgement of receipt of your Order and will not constitute acceptance of your Order. A contract between us for the purchase of the Products will not be formed until you receive a shipment confirmation via email from Frosty Boy or the Standard Terms provide for a contract to be formed earlier.

Frosty Boy is not obliged to supply the Product to you until we have accepted your Order. We may refuse to accept an Order from you for any reason, including due to unavailability of stock, suspicion that you might on-sell the Products to consumers (unless you are a Distributor), errors in respect of the Order or Products (including any error in the prices, images or Product descriptions or wrongful inclusion of an item in a particular sale or promotion on the Website) or if we suspect your Order or payment method is fraudulent.

Frosty Boy may cancel a contract to supply Products if the Products are not available for any reason. We will notify you if this is the case and return any payment that you have made using the same method originally used by you to pay for the Product. If the refund transaction fails, we will advise you of this and make arrangements to process the refund via a different method.

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If you place an Order via the Website, you must pay for the Order in full at the time of ordering by one of the payment methods accepted on the Website. You must be fully entitled to use the payment method used for purchases and the payment method must have sufficient funds, credit or other payment facilities to cover the purchase. Frosty Boy is not responsible for the decisions of payment providers to allow you to use their service or provide any warranties or assurances about them. If a particular service is not available to you, you should use another valid payment method. You may elect to store your payment methods in your Account for future purchases, if such a facility is available via the Website.

If you discover that you have made a mistake with your Order after you have submitted it to the Website, please contact us immediately. Frosty Boy cannot guarantee that it will be able to amend your Order in accordance with your instructions and fees may be applicable to process a change in accordance with the Standard Terms.

## **8. Linked Sites**

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Our Website may contain links or produce search results that link to third party websites, external pages or information that is not operated by us or that which is not under our control (including Linked Sites). As Frosty Boy has no control over these things (including Linked Sites), we are not responsible for them or any loss or damage that may arise from your use or reliance on them.

Your use of any Linked Sites will still be subject to these Website Terms to the extent they impose obligations on you (for example, you agree not to engage in any criminal offence on any Linked Sites), as well as the terms of service or use of the relevant Linked Site.

## **Your privacy**

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We strongly value your privacy. We have a separate privacy policy that sets out how we handle personal information, to the extent any of it is collected, that is available via the links on our Website (or otherwise on request).

By using the Website, you consent to us collecting, using, storing and disclosing your personal information in accordance with the privacy policy (as amended from time to time) and promise to us that all information provided by you is accurate and up to date.

## **9. Things you cannot do**

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When visiting, using or interacting with the Website (including when posting or commenting on any of our social media pages), you must not:

- (a) commit or encourage a criminal offence;
- (b) transmit or distribute a virus, trojan, worm, logic bomb or any other material which is malicious, technologically harmful, in breach of confidence or in any way offensive or obscene;
- (c) hack into any aspect of the Website or its services (including by interfering with security-related or other features of the Website);
- (d) corrupt data or cause annoyance to other users or Frosty Boy;
- (e) infringe any other person's rights, including any of their intellectual property rights;
- (f) send any unsolicited advertising or promotional material, commonly referred to as "spam";
- (g) attempt to affect the performance or functionality of the Website or any computer facilities of, or accessed through, the Website; or
- (h) use data mining, robots, screen capping or similar data gathering or extraction tools on the Website (or any information contained within it) or use any other automated means to extract or harvest information from the Website.

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You must ensure that your access to the Website is not illegal or prohibited by laws which apply to you. You also have to take your own precautions to ensure that the process which you follow for accessing the Website does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your own computer system.

Any breach of the above obligations may constitute a criminal offence and we may, in our discretion, report any such criminal offence to the relevant law enforcement authorities and disclose your identity to them (where collected or where traceable).

We can potentially be liable for things that you post on our social media pages and for things you do in relation to our Website that may breach these Website Terms. We also cannot be responsible for how you may use the Website. Accordingly, you agree to indemnify and defend (if we ask) Frosty Boy (including its directors, officers, employees, consultants, agents, and affiliates) from any and all liabilities, costs, expenses, claims or other obligations that we incur in connection with you breaching your obligations in these Website Terms.

We will also not be liable for any liability, loss, cost, expense, claim or other obligation caused by your use of the Website, any distributed denial-of-service attack, viruses or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Website, visiting any Linked Sites, following any links in our mail-outs or your downloading of any material made available from either of these sources.

## **Intellectual property, software and content**

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We are proud of our brand and the work that has gone into developing our Website. The Website and the contents on the Website are subject to copyright, trade marks and other intellectual property rights. Unless stated otherwise, these intellectual property rights are owed by, or licensed to, Frosty Boy.

The intellectual property rights in all software and content (including photos and videos) made available to you on or through the Website (including on our social media pages and mail-outs) remain the property of Frosty Boy, and all such rights are reserved. If we agree, you may store, print and display the content supplied solely for your own personal use (but we cannot agree to give rights to you that we ourselves do not have). You are not permitted to publish, manipulate, distribute or otherwise reproduce, in any format, any of the content or copies of the content supplied to you or which appears on the Website (including those that relate to other businesses, or Linked Sites) and you cannot use any of these things in connection with any business or commercial enterprise.

Except where we expressly state otherwise, any third-party trade marks and content, services, links and locations featured on the Website are in no way associated, linked or affiliated with Frosty Boy and you should not rely on the existence of such a connection or affiliation when dealing with us or using the Website. Any trade marks or names featured on the Website are owned by the respective trade mark owners. Where a trade mark or brand name is referred to, it is used solely to describe or identify the products and services and is in no way an assertion that such products or services are endorsed by or connected to us.

## **10. Things we are not responsible for**

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While we do our best to mean and do what we say, we cannot guarantee everything that appears on the Website or in mailouts, because some things are beyond our control or may inadvertently contain errors or omissions. Subject to any consumer guarantees or other protections that we cannot exclude by law, the material displayed on the Website or in our mailouts is provided without any guarantees, conditions or warranties as to its accuracy.

Unfortunately, no data transmission over the Internet can be guaranteed as totally secure. While we strive to protect such information, we do not warrant and cannot ensure the security of any information which you transmit to us. Accordingly, any information that you transmit to us is transmitted at your own risk. Once we receive your transmission, we will take steps to preserve the security of such information. You agree that you will not share your password to any account that we may allow you to create, let anyone else access your account, or do anything that might put the security of your account at risk. We reserve the right to remove your username or similar identifier in respect of your account if

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appropriate. You acknowledge sole responsibility for and assume all risk arising from your use of the Website.

To the fullest extent permitted by law, Frosty Boy excludes all warranties and other terms which might otherwise be implied by law and we will not be liable for any damages (including any direct, indirect, special, consequential, punitive or incidental damages, or damages for loss of use, profits, data or other intangibles, damage to goodwill or reputation, or the cost of procurement of substitute goods and services), arising out of or related to the use, inability to use, performance or failures of the Website or any of the Linked Sites and any materials posted on those external websites, in mailouts or otherwise, even if the damages were foreseeable or arise in contract, tort, equity, statute or otherwise. Please note that this does not affect our liability to the extent it cannot be excluded by law.

Due to photographic and screen limitations associated with the representation of products on the Website, some actual Products may differ to a certain extent in visual appearance from the way they appear on the Website. In addition, where it is suitable to do so, some depictions of Products are created or chosen by us for promotional purposes and may not be an exact representation of the Products received.

## **11. Linking to our Website**

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While we appreciate people promoting the great things we are doing, please check with our marketing team before you do so. You may not link to the Website or any part of the Website without our permission or in a way that damages Frosty Boy's reputation or takes advantage of it. You also cannot make or publish any links in a way that indicates any form of association, approval or endorsement on Frosty Boy's part where none exists.

Any links (if we approve them) must be from a website that is owned by you and need to be done in a way that is legal and fair. While we are proud of our Website, the Website must not be framed on any other website and you cannot create a link to any part of the Website other than the home page (if we consent to you doing so). Frosty Boy reserves the right to withdraw linking permission without notice.

## **12. General provisions**

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If any parts of these Website Terms are unenforceable (including any provision in which Frosty Boy excludes liability to you) the enforceability of any other part of these Website Terms will not be affected and all other provisions remain in full force and effect. So far as possible, where any wording (or part of it) can be severed to allow the remaining parts to be valid, the wording must be interpreted accordingly. Alternatively, you agree that the wording must be amended and interpreted in such a way that closely resembles the original meaning of the wording so that it is enforceable.

These Website Terms are governed by the laws of the Queensland and you irrevocably submit to the non-exclusive jurisdiction of the courts of the Queensland.

## **13. Final say**

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Thanks for taking the time to read these Website Terms. We appreciate that there is quite a bit of information here, but we have tried to make this easy for you to understand. If you have any questions about our Website or these Website Terms, please contact us.

## **14. Currency**

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These Website Terms were last updated on 24 September 2024.