

LoungIn' Cake LLC
Terms and Conditions - Cake and Pastry Commissions

Any payment to **LoungIn' Cake LLC**, 1602 President Street, Brooklyn, NY 11213 (the "Service Provider") constitutes agreement by the Client to the following terms and conditions:

1. DESCRIPTION OF SERVICES.

The custom cake and pastry "Services" provided by the Service Provider to the Client are agreed upon by the Parties in accordance with the invoice provided to the Client, alongside the Commission Form and design(s), if applicable. The Services to be provided are developed and controlled by the Service Provider. The Parties acknowledge and agree that the Services may be modified or expanded from time to time as agreed upon between the Parties and established in writing.

2. PAYMENT FOR SERVICES.

- A. Rush Commissions. All commissions placed within one week of pick up or delivery date are considered rush and are subject to a rush fee at the Service Provider's discretion, to properly allocate resources. If applicable, Client agrees to provide the total payment, inclusive of the rush fee, within the reasonable timeframe determined by the Service Provider to begin production, as established in writing on the invoice.
- B. Retainer. The Client has the discretion to pay a retainer fee of \$150 to reserve the Service Provider's availability for the agreed date, prior to confirming the details of the Services. If applicable, this fee is earned upon receipt and is nonrefundable. It is not applied toward any future invoices and compensates the Service Provider for committing time and resources to the Client's commission and turning away other work.
- C. Nonrefundable Deposit. The Client agrees to provide a nonrefundable deposit of forty percent of the total compensation, to secure the date, initiate services and receive a copy of any cake design. This deposit will be applied toward the total project cost. The deposit is nonrefundable under any circumstances, including cancellation by the Client.
- D. Cake Tastings. Cake Tasting boxes are available upon request from the client for a fee of \$45.

- E. Balance. The Client agrees to provide the balance of the compensation in installments, as established on invoice:

Any missed payment, if not cured within 48 hours will constitute a material breach of the contract and is grounds for the Service Provider to terminate the contract without any further notice.

3. PICK UP AND DELIVERY SERVICES; CAKE SET-UP

- A. Delivery. Delivery is available for a fee, determined by location and resources utilized to perform the delivery, established by the Service Provider and reflected on the invoice. Delivery is recommended to ensure safe delivery and assembly. Delivery date should be confirmed when finalizing the details of the commission and final delivery time determined by the date of final payment.
- B. Cake Set-Up. Set-up is included with all deliveries. The Client is responsible for ensuring the location is prepared for set-up. If the Client or a representative decide to set up without the Service Provider's assistance, the Client assumes all liability for the condition upon the Service Provider's departure from the delivery. All tiered cakes and extra-tall cakes have a non-edible support system to assist with stability including, but not limited to, wooden dowels, large straws, wood and cardboard separators.
- C. Pick Up. Pick up is available for all cakes 3 tiers or less and for assorted pastry items. Pick up Date should be confirmed when finalizing the details of the commission and pick up time determined by the date of final payment. If no time is requested, default pick up time will be 2 p.m. There is a fifteen minute grace period for pick up. If the Client misses pick up, the Service Provider agrees to contact the Client one time to arrange an alternate pick up date and time. If the Client or a representative chooses to pick up the items, the Client assumes all liability for the condition upon its collection from the pick up location.

4. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY.

- A. Confidential Information. Both Parties shall maintain as confidential any information that the Parties designate as confidential information in their communications to each other or is reasonably considered to be confidential information, including but not limited to phone numbers, addresses, email address, and tax information. Both Parties will limit their use of confidential information to fulfilling their contracted obligations.

- B. Intellectual Property. The Service Provider is the owner of any sketches, designs, or mock up of item(s) for the Services to be provided. The Client is not entitled to receive any copies until after a deposit is provided; the Service Provider maintains ownership of the items.
- C. Photography. The Service Provider reserves the right to reproduce any photograph of the commissioned work for any reason without compensation to the Client. The Service Provider reserves the right to request altered pictures of the commissioned work published electronically to be removed or edited to include a note that it was altered by the Client.

5. INDEMNIFICATION

The Service Provider shall indemnify and hold the Client, its officers, employees, and agents harmless from any loss of liability for the Services under contract. The Client shall indemnify and hold the Service Provider, its officers, employees, and agents harmless from any loss or liability from performing the Services.

- A. Allergies. The Client acknowledges that facilities are not gluten or allergen free. All products may contain or come into contact with milk, wheat, nut extracts, soy, gluten, chocolate, food dyes, as well as other known allergies. If allergens are discussed during the commission process, it will be noted on the Commission Form or invoice and the Service Provider will take precautions to limit exposure. If allergies are not previously shared, the Client agrees to notify its guests of the risks and hold the Service Provider harmless for allergic reactions.

6. MODIFICATION AND TERMINATION; REFUNDS AND DISCOUNTS

- A. Modification. The contract may be further modified or expanded on a case by case basis, within a reasonable time, no later than the date of final payment, between the Parties and established in writing.
- B. Termination. Either Party may terminate the contract at any time, in writing, effective upon receipt. In the event of cancellation, the Client agrees to pay the Service Provider for all Services rendered prior to the effective date of termination.
- C. Refunds and Discounts. The Service Provider agrees to fully refund the Client for failure to have items ready for pick up or delivery on the requested date specified, within

its control or for cancellation within its control. In the case the commission is not fulfilled according to the terms agreed upon by the parties, the Service Provider agrees to provide a discount in an amount proportionate to the discrepancy. Discounts will not be provided for design or flavor preferences or structural issues that occur after customer pick up.

7. FORCE MAJUERE.

Neither Party shall be liable hereunder for any failure or delay in the performance of its obligations if such failure or delay is on account of causes beyond its reasonable control, including civil commotion, war, fires, floods, accident, earthquakes, pandemics, inclement weather, telecommunications line failures, electrical outages, network failures, governmental regulations or controls, casualty, strikes or labor disputes, terrorism, acts of God, or other similar or different occurrences beyond the reasonable control of the Party so defaulting or delaying performance, for so long as such force majeure event is in effect. Each Party shall use reasonable efforts to notify the other Party of the occurrence of such an event within five (5) business days of its occurrence. If Parties cannot agree how to move forward within fourteen days of notice, either Party may terminate.

8. DISPUTES AND ATTORNEY FEES.

In case of any dispute, the Parties agree in good faith to mediate amongst themselves to resolve the matter. If the Parties cannot come to an agreement, either Party reserve the right to enforce in state and federal court. If either Party incurs any legal fees associated with enforcement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and additional litigation expenses from the other Party.

9. ENTIRE AGREEMENT; GOVERNING LAW

Entire Agreement. These Terms and Conditions and along with the invoice and any exhibits referenced therein is the entire agreement between the Parties and supersedes any prior agreement or communications between the Parties.

- A. Severability. If any provision or portion of these Terms and Conditions shall be rendered by law or held by a court to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.
- B. Waiver. No waiver of any term or right in these Terms and Conditions is effective unless in writing, signed by an authorized representative of the waiving Party. The failure

of either Party to enforce any provision of these Terms and Conditions is not a waiver or modification of such provision, or impairment of its right to enforce any other provision of these Terms and Conditions thereafter.

These Terms and Conditions and all related documents including all schedules or modifications are governed by, and construed in accordance with, the laws of the State of New York, including its statutes of limitations.