

These are the Terms and Conditions on which Jodi Swan ABN 91 276 470 271 trading as Empowered Play will carry out work for you. In making a booking with Empowered Play, you are accepting these Terms and Conditions.

1. DEFINITIONS

- 1.1 **Additional Fees** means the Goods purchased by you at your request.
- 1.2 **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 1.3 **Confidential Information** of a party means any information regarding that party's personal information or individual circumstances which is:
- (a) by its nature confidential;
 - (b) designated as confidential by that party at the time of disclosure; or
 - (c) which the other party knows or ought to know is confidential.
- Confidential information does not include information, documents or materials that are common property, are required to be disclosed by law or are available in the public domain in Australia otherwise than by a breach of these Terms and Conditions.
- 1.4 **Fees** means:
- (a) the amount of \$25 AUD per class; or
 - (b) a package for a number of classes as outlined on our website or where a quote is provided and accepted by you prior to the commencement of the Services; or
 - (c) the amount for an event as outlined on our website or where a quote is provided and accepted by you prior to the commencement of the Services.
- 1.5 **Goods** means sensory play products supplied by us at your request.
- 1.6 **Services** means the provision of classes or events for sensory and messy play intended for babies, infants and young children. It includes the setting up, cleaning up and provision of toys used in the event. In relation to cleaning, Empowered Play will only clean the sensory play area where the class or event occurs, it does not include general cleaning.
- 1.7 **You** means the person who has made the booking, the parent or guardian of a child who is participating in the Services, or any other

person attending a class or event held by Empowered Play.

2. PROVISION OF SERVICES

- 2.1 Empowered Play shall provide the Services on the booked dates and times.
- 2.2 The location where the Services will be provided upon booking.
- 2.3 Where the Services provided is an event or party, the location will be as agreed in writing with Empowered Play. You are responsible for arranging and the cost of the venue hire.
- 2.4 You acknowledge that classes run by Empowered Play include taste-safe food-based products, artificial food colouring, small pieces and loose parts. Wherever possible, Empowered Play will use high grade food-safe ingredients and dye.

3. PARENTAL/CAREGIVER SUPERVISION

- 3.1 You acknowledge that an adult is required to supervise the child who is participating in the Services at **all times**, especially whilst the child is engaging with small loose parts and water play.
- 3.2 It is your responsibility to ensure that the child participating in the Services does not ingest any of the materials supplied by Empowered Play. Whilst Empowered Play provides food-safe products, they are not intended to be consumed. Empowered Play does not take any responsibility for any allergic reaction or loss resulting from materials ingested.
- 3.3 For the avoidance of doubt, an adult is a person over the age of 18 years.

4. ALLERGIES

- 4.1 You must advise Empowered Play of any allergies or anaphylaxis of a child intended to participate in the Services at the time of booking.
- 4.2 Empowered Play will take any necessary precautions when provided with sufficient warning in relation to a child's allergies however does not warrant that they will provide an allergy free environment. Empowered Play does not accept any responsibility for any allergic reactions suffered by a child participating in the Services or an adult supervising a child during the Services. You acknowledge that accommodations for allergies or anaphylaxis may not be feasible, particularly where short notice has been provided.

5. FEES

- 5.1 Fees are payable at the time of booking.
- 5.2 Additional Fees are payable at the time of purchase.
- 5.3 Unless otherwise stated, the Fees are exclusive of GST.
- 5.4 If you are booking multiple classes at one time, the Fees for every class booked will be payable at the time of booking.
- 5.5 Where you are booking a party, the Fees are payable as follows:
- (a) a \$50 deposit payable on booking which is non-refundable as it is used to pay for materials; and
 - (b) the balance of the Fees are payable in full 7 days prior to the booking date for the Services. If this is not paid by the due date, you acknowledge that Empowered Play may cancel the booking and retain the \$50 deposit paid.
- 5.6 Where a package for Services is provided to you, the following shall apply:
- (a) the package for Services must be used within the period outlined in the voucher for the package. After this time, it cannot be used or extended unless otherwise agreed to in writing by Empowered Play; and
 - (b) a voucher issued for a package cannot be exchanged for cash; and
 - (c) any voucher issued for a package is not transferrable and may only be used by you, the person who purchased the package, unless otherwise agreed to in writing by Empowered Play; and
 - (d) a voucher issued for a package can only be used for the Services outlined on the voucher; and
 - (e) if the cost of the Services exceeds the value of the voucher for the package, you agree to pay any difference.
- 5.7 Any discount to the Fees is offered in good faith only and Empowered Play reserves the right to amend or stop offering the discount at any time.
- 5.8 You must pay interest on any outstanding Fees at a rate of 10% per annum, calculated daily.
- 5.9 If Fees remain unpaid, Empowered Play reserves its rights to:

- (a) Suspend the provision of Services until any overdue Fees are paid; and
- (b) Engage a debt collection service, at your sole cost.

5.10 Fees may be varied from time to time by Empowered Play publishing the new Fees on their website or in their office. All Services provided after this notice is given will be subject to the new Fees.

5.11 No refunds will be provided for change of mind.

6. RESCHEDULING, CANCELLATION AND NO-SHOW POLICY

6.1 If you or your child is unwell, we ask that you do not attend your booking.

6.2 Your booking may be rescheduled or cancelled at no additional cost, provided that you give at least 24 hours' notice prior to the start time of the booking.

6.3 In relation to make-up sessions, Empowered Play reserves the right to require that these are within the same term of the original booking.

6.4 If less than 24 hours' notice is given, or if you don't provide any notice, Empowered Play reserves the right to retain the full Fees for that booking. Fees will be refunded on a case-by-case basis determined solely by Empowered Play.

6.5 In the case of rescheduling, new booking times are subject to availability. Empowered Play will use its best endeavours to reschedule your booking to a time that suits you.

6.6 If you are late to your booking and begin later than the scheduled start time, no extra time will be provided and the booking will still end at the scheduled end time. You acknowledge that no compensation will be provided for late arrivals.

6.7 If Empowered Play is unable to attend an Appointment due to illness or otherwise, Empowered Play will contact you to reschedule your booking and you will not be charged any Fees.

6.8 Empowered Play reserves the right to cancel any class that has less than 3 attendees. If Empowered Play cancels a class in accordance with this provision, it will issue a credit against your account, to be used for future classes.

6.9 Empowered Play will announce any cancellations on our social media platforms.

7. YOUR OBLIGATIONS

- 7.1 Empowered Play recommends that all participants wear old or inexpensive clothing, as the Services are messy and may result in stains to clothing. Empowered Play does not take any responsibility for any damage to clothing or personal items as a result of the Services.
- 7.2 You must follow all reasonable directions and instructions of Empowered Play relating to the health and safety of your, your children, and the other participants, including precautions taken for COVID-19.
- 7.3 You are welcome to take photographs of your children during the booking, however please do not take any photographs of children that are not yours. You must comply with any direction of Empowered Play in relation to taking photographs or videos.
- 7.4 Children must wear appropriate clothing, including shoes if the child is walking, during the booking.
- 7.5 Where the Services will be conducted outside or in semi-shaded locations, you acknowledge that you are responsible for the sun safety of the child participating in the Services, such as wearing protective clothing and sunscreen. Empowered Play takes no responsibility for sun safety.
- 7.6 It is your responsibility to supervise all children in your care, at all times. Empowered Play will not take any responsibility for supervising any child during the Services.

8. WARRANTY DISCLAIMER

- 8.1 Empowered Play hereby gives notice that it is not an allergy free environment. Empowered Play takes no responsibility for any cross-contamination of allergens that may occur.
- 8.2 Empowered Play takes no responsibility for any damage, loss or theft of any personal items.
- 8.3 During the provision of the Services, information may be provided by third parties to you. Empowered Play takes no responsibility for the accuracy, completeness or reliability of such information. You should obtain your own professional advice. Empowered Play shall not be liable for any loss arising from reliance on information provided by third parties during the Services.
- 8.4 In relation to the preceding clause, examples of third parties may be an occupational therapist, early intervention specialist or similar.

- 8.5 Any warranty as to Goods shall be limited to the warranty provided by the manufacturer.
- 8.6 Nothing in these Terms and Conditions excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by legislation which cannot be lawfully excluded or limited. Such legislation includes the Australian Consumer Law which contains guarantees that protect the purchasers of goods and services in certain circumstances, each a non-excludable provision.
- 8.7 Subject to Empowered Play's obligations under the non-excludable provisions, and to the fullest extent permissible by law, Empowered Play expressly disclaims all warranties and representations of any kind with respect to the Services whether express, implied, statutory, or arising out of the course of performance, course of dealing or usage of trade including any warranties or merchantability, fitness for a particular purpose, satisfactory quality, accuracy, title or non-infringement.

9. LIMITATION OF LIABILITY AND WARRANTY

- 9.1 To the fullest extent permissible by law, Empowered Play is not liable (whether in contract or tort) for:
- (a) Faults or defects in any services or goods provided by third parties in connection with the Services; or
 - (b) Any indirect, special or consequential loss (including loss of profits, loss of revenue, replacement costs, goodwill or any similar damages) however arising, whether or not Empowered Play knew of the possibility of such loss and whether or not such loss was foreseeable.
- 9.2 To the fullest extent permitted by law, the liability of Empowered Play for a breach of a non-excludable condition is limited to the supplying of the Services again or payment of the cost of having the Services supplied again.

10. FORCE MAJEURE

- 10.1 Empowered Play will have no liability to you in relation to any loss, damage or expense caused by Empowered Play's failure to provide the Services as a result of a pandemic, government restrictions, fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war or any matter beyond Empowered Play's control.
- 10.2 If any of the events occur as outlined in the above clause, the provision of Services will be

temporarily postponed. Empowered Play will make a reasonable effort to inform you about the occurrence of such an event and the impact (such as period of termination). Empowered Play will endeavour to resume the provision of Services as soon as possible once the event or matters arising from an event has been resolved.

11. INDEMNITY

11.1 You indemnify and hold harmless Empowered Play in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal fees on a full indemnity basis), in connection with any of the following:

- (a) Any breach of these Terms and Conditions;
- (b) Any of your negligent acts or omissions; and
- (c) Your use of the Services, including any third-party claims made in connection with or arising out of your use of the Services, other than use in accordance with these Terms and Conditions.

12. CONFIDENTIALITY

12.1 Each party agrees to keep confidential, and not to use or disclose except as permitted by these Terms and Conditions, any Confidential Information of the other party. This obligation of confidence extends to Confidential Information obtained by a party before these Terms and Conditions were in force.

12.2 Each party must take all steps and do all such things as may be necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.

12.3 From time to time, Empowered Play may take photographs or videos for marketing purposes. These photographs and videos will be posted to Empowered Play's website, social media platforms, and/or used in advertising. If you do not wish to take part in these photographs and videos, please advise Empowered Play at the start of each booking.

13. PRIVACY

13.1 "Personal Information" (as that term is defined in the *Privacy Act 1988* (Cth)) will only be used by Empowered Play in accordance with the provision of its Privacy Policy.

13.2 Empowered Play's Privacy can be obtained from its website.

13.3 Each party shall refrain from making negative comments about the other party, whether online or in person.

14. DISPUTE RESOLUTION

14.1 The parties agree to attempt in good faith to resolve any dispute regarding these Terms and Conditions through negotiation with the assistance of an agreed mediator.

14.2 If the dispute or difference is not resolved to the satisfaction of the parties within 30 days, either party may request the matter to be heard by an arbitrator.

14.3 Arbitration shall be effected:

- (a) By an arbitrator agreed upon in writing by the parties; or
- (b) In the absence of such agreement, by an arbitrator appointed in accordance with the provisions of the law relating to arbitration in force in the State of South Australia; or
- (c) By an arbitrator appointed by the National President for the time being of the Institute of Arbitrators Australia.

14.4 Empowered Play may pause the provision of the Services to conduct whatever investigations deemed appropriate and, within 30 days of the given written notice, seek to resolve the dispute.

15. GENERAL

15.1 Any notice provided under these Terms and Conditions must be in writing, addressed to the other party's contact persons as notified by the other party.

15.2 These Terms and Conditions do not create a relationship of employment, agency or partnership between the parties.

15.3 Empowered Play may sub-contract its obligations under these Terms and Conditions.

15.4 The failure of a party at any time to insist on performance by the other party of an obligation under these Terms and Conditions is not a waiver of any of its rights.

15.5 If part or all of any of the provisions of these Terms and Conditions are illegal or unenforceable, it will be severed from these Terms and Conditions, and will not affect the continued operation of the remaining provisions.

15.6 Empowered Play may vary these Terms and Conditions from time to time. Any varied Terms and Conditions will apply to Services that

commence after the date that Empowered Play publishes the varied Terms and Conditions. If you make a booking after that date, you are deemed to have accepted the varied Terms and Conditions.

15.7 These Terms and Conditions are governed by the laws of South Australia and each party irrevocably submits to the non-exclusive jurisdiction of the Courts of South Australia.

15.8 These Terms and Conditions constitute the entire agreement of the parties as to the subject matter and supersede and cancel all prior arrangements, understanding and negotiations in connection with it. Any statement made in negotiations for these Terms and Conditions which is not set out in the Terms and Conditions do not form part of the agreement between the parties.