



EGGSMART ACCOUNT TERMS & CONDITIONS

Eggsmart Terms of Use Agreement

IMPORTANT - PLEASE READ: The following agreement describes the terms and conditions that apply to the prepaid account of your Eggsmart gift card in Canada between you and Eggsmart Inc. which carries on business through its affiliates and franchisees as Eggsmart (hereafter collectively, "Eggsmart").

By using your gift card, you agree to the terms and conditions of this agreement. Please keep a copy of this agreement for your records. The terms and conditions of this agreement will govern the use of the gift card by you or anyone else that holds or uses the card.

About Your Gift Card Account: Eggsmart Purchases Only

The gift card allows you to load a dollar value on to your gift card for future purchases at participating Eggsmart locations. The dollar value that you load onto your card is a pre-payment only for the goods and services at participating Eggsmart locations. No credit card, credit line, overdraft protection, or deposit account is associated with a gift card. Unless otherwise required by law or permitted by this agreement, any amount on your gift card is non-refundable and may not be redeemed for cash at any Eggsmart locations. No interest, dividends, or any other earnings on funds deposited onto a gift card will accrue or be paid or credited to you by Eggsmart. The value associated with the card is not insured by either the Canadian Deposit Insurance Corporation (CDIC) or the Federal Deposit Insurance Corporation (FDIC).

Use of card is limited to participating Eggsmart locations. We reserve the right not to accept, load, reload or re-issue any gift card or otherwise limit the use of a gift card if we reasonably believe that the use is unauthorized, fraudulent, or otherwise unlawful.

Registering Your Card

Once you have purchased your gift card, you can register it online or call us at 1-800-242-5353 in order to access the additional features of the gift card program such as protecting your balance on your card from loss or theft (see details below). After you register your card, you will receive emails from us for purposes of managing your account or providing you services relating to your gift card, including confirmation of reloads and verification of accounts.

Loading and Reloading Value on Your Card

You can load a dollar value on the gift card at participating Eggsmart locations using cash, an approved credit card or debit card (where available). You may also reload a dollar value on the gift card by going online and using an approved credit card. All gift cards must be activated at a participating restaurant (no activation can take place online). The loaded amount will appear on your gift card immediately. Currently, in store, you may load a minimum of \$10.00 to a maximum of \$50.00 worth of value to your gift card. Online, the minimum amount that can be loaded per gift card is \$10.00 with a maximum of up to \$50.00.

All amounts loaded onto your gift card are held and denominated in the currency of the country in which the gift card was sold (the "base currency").

Fees and Expiration of Card Balances

Eggsmart does not charge any fees for the issuance, activation, or use of your gift card and your gift card has no expiration date. Gift cards with a zero balance will be deactivated after two (2) years from the date of last use.

Receipts and Statements

Cardholders are not sent statements of itemized transactions from a gift card account. You can check the balance of your gift card in store, online at our website and by calling 1-800-242-5353. The account balance for a gift card also will appear on your receipt from a point-of-sale register. When you use your gift card, you will be offered a receipt but will not be asked to sign the receipt. The receipt will indicate that the purchase was made using a gift card and will provide the remaining balance of your card. You should retain your receipts from each transaction in order to ensure that your account balance is correct. You will need to produce your receipt in the event of a balance dispute.

Billing Errors, Corrections

We reserve the right to correct the balance of your gift card account if we believe that a clerical, billing or accounting error occurred. We shall have no liability for any billing error unless you provide us notice within sixty (60) days of the date of the transaction in question. You should monitor your transactions and account balances closely.

Liability for Unauthorized Transactions

Because your gift card is used like cash for purchases from Eggsmart, you are responsible for all transactions associated with your gift card, including unauthorized transactions. However, if your registered gift card is lost, stolen, or destroyed, it can be replaced with the balance remaining on it, but only if you have registered with us. If your gift card becomes lost, stolen or damaged, you should contact us immediately. You must provide your card number and you will be asked certain questions concerning recent activity on your account. Registered card owners can access this information from our website. Your gift card balance is only protected from the point in time you notify us that your gift card is missing and we are able to verify ownership of the card. We will freeze the remaining balance on your gift card at the time you notify us and will load that remaining balance on a replacement card. Replacement cards will be mailed within 4-6 weeks.

PRIVACY STATEMENT

Eggsmart (2006) Ltd. has created this privacy statement to demonstrate our firm commitment to protecting your privacy. The following discloses our information-gathering and dissemination practices for our website www.eggsmart.com, all affiliated websites and contests. Eggsmart (2006) Ltd. commits to protecting your information from unauthorized access or disclosure.

At times we will ask you to provide information that will enable us to:

- complete a transaction;
- provide you with important production information;
- enhance your site visit;
- follow-up later;
- provide you with customer support services;
- seek your opinion from time to time;

compile marketing and other statistics for use by us.

Your participation is optional. We will not collect any personal information about you unless you provide it to us voluntarily. For example, and not by limitation, we may collect personal information when you make a purchase, participate in a contest or promotion; fill out a questionnaire; sign up for a survey or otherwise interact with us.

We may ask for your name, address, e-mail address, telephone number, information about a product you have purchased, or other information. We may also keep records of previous purchases made by you, information we have provided to you, and details of any enquiries, complaints or compliments made by you and our response, if any.

Demographic and profile data may be collected. In order to understand your preferences better. This information is used to help us provide you with better service, products and offers of interest to you from www.eggsmart.com and related businesses.

When you provide personal information to us, we may ask if you wish to receive future communication from us such as newsletters, emails or other information. You may choose not to receive this communication at the time we ask it; you may opt-out by clicking on the link at the bottom of any email you received from us or, if you would like your name removed from our database, you may do so by sending an email with "unsubscribe" in the subject line to offers@eggsmart.com.

We do not knowingly collect personal information for anyone under 18 years of age. If we learn you are under 18 years of age, we will not maintain or use your personal information. This may mean that you will be unable to participate in some activities offered by us.

We will not share your personal information with anyone outside of Eggsmart (2006) Ltd and its affiliated companies except to the extent necessary to fulfill the purposes described. When we employ other companies and individuals to perform functions on our behalf – such as delivering products, sending postal or electronic mail, analyzing data, taking product orders, providing marketing assistance, processing credit card payments and providing other forms of customer service – and where we collect personal information with third parties, we ensure by contractual means that these third parties may not use your personal information for any other purpose without your knowledge and consent.

We reserve the right at any time to collect, use or disclose any information:

To satisfy any law, regulation or government request;

If such disclosure is necessary or appropriate for site or system operation; or

To protect the rights, property or safety of Eggsmart (2006) Ltd, its customers, site visitors, or others.

By providing us with your personal information, you are accepting the practices described in this Privacy Statement. These terms and conditions are subject to change, so you may wish to review them periodically.

Amendments to this Agreement

We may amend the terms or conditions of this agreement at any time, including any rights or obligations you or we may have. We will post the terms and conditions of the amended agreement on our web site. As permitted by applicable law, any amendment will become effective at the time we post the amended agreement on our web site or as otherwise stated in our notice to you. Unless we state otherwise, the amendment will apply to your future and existing gift cards. You are deemed to accept the amendments if (1) you do not notify us to the contrary in writing within twenty (20) days of the date of our notice or such other time specified in the notice, or (2) you use your gift card after such notice period. If you do not accept the amendments, upon written request, your gift card will be cancelled and any amounts remaining on your gift card will be refunded to you.

Suspension or Termination of this Agreement

We may suspend or terminate this agreement in whole or in part at any time and for any reason without notice or liability to you, including in connection with the termination of the gift card program. If we terminate this agreement, we will refund or issue Eggsmart credits equal to the balance held in your gift card account.

Governing Law

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada, notwithstanding any conflict of law rules.

ARBITRATION

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF MOST DISPUTES THROUGH ARBITRATION INSTEAD OF COURT TRIALS AND CLASS ACTIONS. ARBITRATION IS FINAL AND BINDING AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT. THIS ARBITRATION CLAUSE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

Binding Arbitration

This provision is intended to be interpreted broadly to encompass all disputes or claims arising out of our relationship. Any dispute or claim made by you against us (or against any of our subsidiary, parent or affiliate companies) arising out of or relating to this agreement or your use of the gift card (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration except that (a) you may take claims to small claims court if they qualify for hearing by such a court, or (b) you or we may choose to pursue claims in court if the claims relate solely to the collection of any debts you owe to us. However, even for those claims that may be taken to court, you and we both waive any claims for punitive damages and any right to pursue claims on a class or representative basis.

Arbitration Procedures

You must first present any claim or dispute to us by contacting our Customer Service Department to allow us an opportunity to resolve the dispute. You may request arbitration if your claim or dispute cannot be resolved within sixty (60) days. The arbitration of any dispute or claim shall be conducted in accordance with the Arbitrations Act (Ontario) as modified by this agreement. Unless you and we agree otherwise, any arbitration will take place in Toronto, Ontario, and will be conducted in the English language. An arbitrator may not award relief in excess of or contrary to what this agreement provides, order consolidation or arbitration on a class wide or representative basis, or award punitive damages or any other damages aside from the prevailing party's actual damages, except that the arbitrator may award on an individual basis damages required by statute and may order injunctive or declaratory relief pursuant to an applicable consumer protection statute. Any arbitration shall be confidential, and neither you nor we may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. Judgment on any arbitration award may be entered in any court having proper jurisdiction. If any portion of this arbitration clause is determined by a court to be inapplicable or invalid, than the remainder shall still be given full force and effect.

Cost of Arbitration

All administrative fees and expenses of an arbitration will be divided equally between you and us. In all arbitrations, each party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration.

Waiver of Punitive Damage Claims and Class Actions

By entering into this agreement, both you and we are waiving certain rights to litigate disputes in court. If for any reason this arbitration clause is deemed inapplicable or invalid, you and we both waive, to the fullest extent allowed by law, any claims to recover punitive or exemplary damages and any right to pursue any claims on a class or consolidated basis or in a representative capacity.

Disclaimers and Limits of Liability

EGGSMART MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE GIFT CARD, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. SOME STATES / JURISDICTIONS DO NOT ALLOW THE LIMITATION OF IMPLIED WARRANTIES, SO THIS MAY NOT BE APPLICABLE TO YOU. EGGSMART DOES NOT REPRESENT OR WARRANT THAT YOUR GIFT CARD WILL ALWAYS BE ACCEPTED OR THE GIFT CARD PROGRAM WILL ALWAYS BE ACCESSIBLE.

IN THE EVENT THAT EGGSMART OR ITS AFFILIATES ARE FOUND LIABLE TO YOU, YOU SHALL ONLY BE ENTITLED TO RECOVER ACTUAL AND DIRECT DAMAGES AND SUCH DAMAGES SHALL NOT EXCEED THE LAST BALANCE HELD ON YOUR GIFT CARD PRIOR TO THE TIME AT WHICH SUCH DAMAGES AROSE. EGGSMART AND ITS AFFILIATES SHALL HAVE NO LIABILITY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE, USE OR DATA) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, WHETHER IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, EVEN IF WE OR OUR AUTHORIZED REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EGGSMART OR ITS AFFILIATES HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF A GIFT CARD THROUGH ACCIDENT, MISUSE, OR FRAUDULENT MEANS OR DEVICES BY YOU OR ANY THIRD PARTY, OR AS A RESULT OF ANY DELAY OR MISTAKE RESULTING FROM ANY CIRCUMSTANCES BEYOND OUR CONTROL. SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

Assignment

We may assign all or part of this agreement without notice to you. We are then released from all liability. The assignee shall have the same rights and obligations as the assignor and shall agree in writing to be bound by the terms and conditions of this agreement.

Entire Agreement

This agreement is the complete and exclusive statement of agreement between you and Eggsmart, and supersedes and merges all prior proposals and all other agreements. In the event that any provision of this agreement shall be determined to be illegal or unenforceable, that provision will be eliminated to the minimum extent necessary so that this agreement shall otherwise remain in full force and effect and enforceable. Headings herein are for convenience of reference only and shall in no way affect interpretation of this agreement.

Questions or Notices

If you have any questions or wish to send us any notice regarding this agreement or your gift card, please email us at giftcard@eggsmart.com