

Terms and Conditions

Everyday Nutrition: TERMS OF USE

1. AGREEMENT

These Terms and Conditions constitute an agreement between Everyday Nutrition, Joanna Baker APD ABN 23 597 598 532 trading as Everyday Nutrition ("**Everyday Nutrition**", "**us**", "**we**", "**our**"), the owner and operator of the Site, Products and Services, and you as the user of the Site, or Product or Service ("**you**", "**your**" or "**user(s)**").

By engaging in the use of the Site or any Product or Service, you agree to be strictly bound by these Terms and Conditions and our Privacy Policy. Should you not wish to be bound by these terms or the Privacy Policy, you must refrain from utilizing the Site, Products, or Services. You also agree that Australian Law applies at all times during the course of using the Site, Product or Service.

We reserve the right to amend our Terms and Conditions and Privacy Policy as we see fit from time to time. We will notify you of any changes.

You must be aged over 18 years to use our Site, Product or Services, and you warrant that you are at least 18 years of age, or have the necessary authority to do so should you be acting on behalf of someone else.

2. REQUIREMENT TO OBTAIN PROFESSIONAL MEDICAL ADVICE

You must always consult with your doctor or medical professional prior to commencing any new diet or health regime found on our Site, or through a Product or Services. Our Site, Service and Products are not designed or intended to replace or remove any treatment you may be receiving for any medical or health condition. You must always continue to follow the advice of your doctor or medical professional whilst using our Site, Product or Services. If you are feeling unwell at any time, you must seek prompt medical advice.

The information disseminated on our Site is not regulated or reviewed by independent entities or medical bodies. It is your responsibility to seek professional expert advice and conduct your own independent inquiries prior to acting upon any advice or information found on our Site, Product or Service.

You agree and warrant that you will at all times provide to us accurate and correct personal data and information about your health or any conditions, which will assist us to provide you with the most appropriate Product or Service.

You agree and acknowledge that there may be risks posed to your health when using our Service or Products. This is a risk warning pursuant to the Australian Consumer Law, as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ("**Australian Consumer Law**"). You assume all risks not excluded by law in connection with your participation in Services or use of our Site. To the extent permitted by law, we exclude any express or implied warranties of fitness for purpose or reasonable care and skill.

We do not give medical advice on our Site or in our Service, and the information contained on our Site or Service is not to be construed in any way as medical advice. All content on our Site is purely for general information and educational purposes about health and nutrition.

3. TESTIMONIALS

We provide testimonials on our Site. As everyone is different, please be advised that testimonials may not necessarily relate to your performance or response to our Service. Results may vary and your experience may not be similar to the experience of the user testimonials.

4. NUTRITIONAL INFORMATION

Whilst we are committed to providing you with the most up to date and succinct nutritional information on our Site and in our Service, we cannot guarantee that the information is complete, accurate, current or up to date. It is your responsibility to assess the information you receive and to seek professional expert advice about how it relates to your health and or medical conditions. We reserve the right to make alterations or deletions to the Information at any time without notice. We do not warrant that the information on our Site or given during our Service is suitable for you. If you have any questions about any medical matter, you should consult your doctor or other professional healthcare provider.

Nutrient data published on our Site or through our Services may represent an average of the nutrient content of a particular sample of foods and ingredients, determined at a particular time. The nutrient composition of foods and ingredients can vary substantially between batches and brands because of a number of factors. Some of the data may be borrowed from overseas food composition tables, supplied by the food industry, taken from food labels, imputed from similar foods, or calculated using a recipe approach.

5. PERSONAL INFORMATION

In order for us to provide you with our Service, we are required to collect information from you that identifies you ("**personal information**"), which will include health information such as name, age, email address, preferred username, mailing address, telephone number and other personal information or health information such as your height, weight, exercise levels, biochemistry, medical history, medication and supplement use, dietary and smoking habits (as defined in the *Health Records and Information Privacy Act 2002* (NSW)) ("**HRIP Act**") or such other State legislation as may apply in relation to health information at the time of collection ("**health information**"). We comply with the *Privacy Act 1988* (Cth) ("**Privacy Act**") and the HRIP Act in collection of your personal information and health information as set out in our Privacy Policy. This information may include your personal details such as your name, age, email address, preferred username, mailing address, telephone number and other personal information or health information such as your height, weight, exercise levels, biochemistry, medical history, medication and supplement use, dietary and smoking habits. We acknowledge and agree that this information is confidential and will be used for the purposes of the provision of our Services only, unless otherwise required by law as set out in our Privacy Policy.

We keep this information confidential and it will only be used for the purpose of providing our Service to you, unless otherwise permitted by law.

6. PURCHASE OF SERVICES

As part of your continued use of our Site or to purchase our Services, you warrant that any personal information you provide to us will always be accurate, correct and up to date.

You indemnify us and our officers, employees, agents, contractors and consultants and agree to keep us indemnified in the event any of the information you provide us is inaccurate, correct or not up to date, and we rely on this information to our o r y o u r detriment.

In order to purchase any of our Services, you will be required to select one of the payment methods available on our Site which may require you to provide us with your credit or debit card information. Please be aware that all credit or debit card information may be shared with our third-party payment processors such as PayPal/Stripe. By ordering a Service from us, you agree that we may charge you the price listed at

the checkout screen on our Site, and that any payments made via PayPal/Stripe may attract an additional percentage fee, as charged by PayPal/Stripe from time to time.

The prices for Services provided under these Terms of Use will be as set out on the relevant Site at the time you apply for the Services. All prices are in Australian Dollars unless otherwise stated, and inclusive of GST, and you agree that we may charge you GST as set out in the *A New Tax System (Goods and Services Tax) Act 1999 ("GST Act")*.

Any concerns regarding payment should be made to us at dietitian@everydaynutrition.com.au

7. DELIVERY OF

SERVICES Skype

Consultations

Skype consultations are offered at a mutually agreed upon time and date. Payment must be made via credit card at the time of the consultation or prior to the consultation as arranged via direct deposit.

Online FODMAP Challenge Club

This is a subscription based service that is delivered via a private Facebook group. Once you have signed up to the group via our website, you will be sent a link to join the private Facebook group. By ordering this Service from us, you agree that we may charge you the price listed at the checkout screen on our Site, including the joining fee and monthly fees thereafter, and that any payments made via PayPal/Stripe may attract an additional percentage fee, as charged by PayPal/Stripe from time to time. The joining fee is non-refundable. Cancellation of the subscription must be made in writing and provide 28 days' notice. Cancellations should be made to dietitian@everydaynutrition.com.au

eBooks

eBooks shall be delivered immediately by download. Once you have submitted and we have processed your payment information, you will be given a link to download your eBook. If you have any issues with downloading your eBook, please contact us at dietitian@everydaynutrition.com.au. eBooks are for personal use only and are not permitted to be used for commercial purposes and are subject to the Licence granted under these Terms of Use.

Reading Guides, Food Lists and Other Resources

We provide some information free of charge on our Site. If you have any issues with downloading or accessing information on our Site, please contact us via the contact tab. All our Reading Guides, Food Lists and Other Resources are for personal use only and are not permitted to be used for commercial purposes and are subject to the Licence granted under these Terms of Use.

8. REFUND POLICY

In the event of any defect with the Services that you have purchased on or through our Site, your remedies will be as prescribed under Australian Consumer Law, and our liability will be limited to replacement of the Services in question (where applicable), or refund to the value of those Services. If you believe any of the Services purchased on or through our Site contain a defect, you must notify us immediately by emailing us at dietitian@everydaynutrition.com.au

We are unable to refund you in relation to one of our eBooks or other e-resources, as they are considered to be used once opened or downloaded.

SECTION TWO - USE OF OUR SITE

9. USING THE WEBSITE: SPECIFIC WARNINGS

You must not access or use our Site:

- (a) in a way that violates these Terms of Use;
- (b) for unlawful activities or purposes;
- (c) in a way that is fraudulent, inaccurate, false, misleading or deceptive;
- (d) in a way that violates any applicable law (including, without limitation, applicable privacy laws); or
- (e) in a way that infringes the rights (including our intellectual property rights, as described below) of any other person.

You must take your own precautions to ensure that the process which you employ for accessing our Site does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your own computer system. For the removal of doubt, we do not accept responsibility for any interference or damage to your own computer system or any of your devices which arise in connection with your use of our Site or any linked website. Whilst we have no reason to believe that any information contained on the Site is inaccurate, we do not warrant the accuracy, adequacy or completeness of such information, nor do we undertake to keep our Site updated. Responsibility for the content of advertisements appearing on our Site (including hyperlinks to advertisers' own websites) rests solely with the advertisers. The placement of such advertisements does not constitute a recommendation or endorsement by us of the advertisers' products and each advertiser is solely responsible for any representations made in connection with its advertisement.

You also agree that your use of our Site and Services is for personal non-commercial use. You agree not to access, copy, or otherwise use our Site or Services, including our intellectual property and trademarks, except as permitted under these Terms of Use or as otherwise authorised in writing by us.

Licence

We make our Services available to you through our Site. When you use our Services (including the downloading of any eBook), we grant you a personal, non-exclusive, revocable, limited license to use the relevant Service and access our Site. This means you must not re-sell our Services anywhere else or use our Product or Service for any commercial purpose, share your license to use our Services with anyone else, reverse engineer, decompile, modify or otherwise attempt to copy our Service ("**Licence**").

This License may be terminated if you violate any of these Terms of Use or our Privacy Policy. Additionally, this License may be terminated if you engage in any activities that may reasonably cause loss or damage to us if your activities in connection with the use of our Site or Services are in violation of any applicable laws. If you do not agree to the terms of this Licence you must not use our Site or Services. You may terminate this Licence at any time by notifying us or ceasing to use our Services.

10. USER ACCOUNTS

We may assign you a username/password and/or account information in order to enable you to access and use certain areas of a Site, or require you to set up your own account access using a username/password chosen by you ("**Login**"). Each time you use your Login, you will be deemed to be authorized to access and use that Site in a manner consistent with these Terms of Use. We have no obligation to investigate the authorisation or source of any such access or use of our Site.

You are solely responsible for protecting the security and confidentiality of your Login. You must immediately notify us of any unauthorised use of your Login or any other breach or threatened breach of Site security you may be aware of. You will be solely responsible for all access to and use of a Site by anyone using your Login whether or not such access to and use of our Site is actually authorized by you.

11. SERVICE CHANGES AND AVAILABILITY

We reserve the right to alter, update, or remove any of our Services at any time without notice to you. We may modify our Services for any security reason, in our complete discretion. We do not guarantee that our Site will always be available, work, or be accessible at any particular time. Only users who are eligible to use our Site or Service may do so. We reserve the right to terminate access for anyone.

12. COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

You acknowledge that our Site and its contents are subject to all applicable Australian copyright laws. You acknowledge our exclusive right, title and interest in the intellectual property and you agree that you will not make any use of the intellectual property without our prior approval in writing. You further acknowledge that you will not in any manner represent that you possess any ownership of the intellectual property; including the design of the Site and any text, graphics, photographs, logos, icons, domain names, information, sound recordings or software.

You are prohibited from reproducing, storing, distributing, displaying, publishing or creating derivative works from any part of our Site. You are also prohibited from using our Site, Product or Service for any commercial purpose including re-selling any information, products or services obtained from any part of our Site, without our written permission.

We reserve all rights not expressly granted under these Terms of Use in and to our Site and Services.

We have the right to publish, edit or reject any content that you send us either via email, the site or in writing via Facebook post for any purpose whatsoever, commercial or otherwise, without payment to you unless we have specifically agreed otherwise in writing prior to submission. By uploading, transmitting, posting or otherwise making available any material on our Site and any associated social media platforms such as Facebook, including providing us with any comments, feedback, ideas or suggestions, you automatically grant us a non-exclusive, worldwide, royalty-free, perpetual license to use, reproduce, edit and exploit the material in any form and for any purpose, and unconditionally waive all moral rights as defined by the Commonwealth Copyright Act 1968.

You agree that the copyright in all eBooks vests in us and that your use of any eBooks downloaded from our Site is subject to the Licence rights granted to you in these Terms of Use.

13. LINKING AND THIRD PARTY CONTENT

You must not frame, reformat, replicate or mirror any part of our Site or use any data mining robots or other extraction tools in relation to our Site, without our prior written authorisation. You may link to our Site without our consent. Any such linking will be entirely your responsibility and at your expense. By linking, you must not alter any of our Site contents, including any intellectual property notices. At our request, you must immediately remove any link to our Site.

Our Site may contain links to or display the content of third parties ("**Third Party Content**"), including links to websites operated by other organisations and individuals ("**Third Party Website**"). Third Party Content and Third Party Website are not under our control. We do not endorse, approve or make any warranty or claim regarding Third Party Content, Third Party Website or the products, services or information available on any Third Party Website, or in respect of the owner or operator of a Third Party Website or their conduct, including privacy compliance. If you use or rely upon Third Party Content or Third Party Website, you do so solely at your own risk.

14. SECURITY OF INFORMATION

We do not warrant and cannot ensure the security of any information which you transmit to us. Accordingly, any information which you transmit to us is transmitted at your own risk.

15. DISCLAIMERS

Your use of our Site and use or purchase of our Services is at your own risk. The information, materials, and Services provided on or through our Site are provided "as is" and to the fullest extent permissible by applicable law, we hereby disclaim all warranties of any kind, either express or implied, including any implied warranties with respect to the Services listed or purchased on or through our Site. Except for the purposes of any "consumer guarantees" as defined under Australian Consumer Law, we hereby expressly disclaim all liability for our Services, for product defects or failures, claims that are due to your use of our Services, product misuse, abuse, product modification, improper product selection, non-compliance with any codes, or misappropriation.

We cannot guarantee that any Services found on our Site will work as advertised, or that they will give you the desired results.

By accessing our Site or using our Services, you assume all risks associated with such use, including but not limited to the risk that your computer, software or data may be damaged by any virus, worm, Trojan horse and/or malware transmitted by this Site or by any Third Party Content or Third Party Website. To the extent permitted by law, all warranties, conditions and claims (whether express or implied) arising out of or in any way connected with our Site are hereby excluded. By accessing our Site or using our Services, you agree to indemnify and hold us harmless for any loss, damage, costs or expenses (including legal fees) whatsoever suffered by any person or entity arising out of or in any way connected with your access to this Site.

In regards to any breach or failure to comply with Australian Consumer Law, we may replace any goods or supply equivalent goods, repair such goods, or pay for the cost of repair. For any services, we may resupply the service or pay for the service to be supplied again.

16. LIMITATION OF LIABILITY

Except as otherwise expressly provided for in this agreement or as prohibited by law:

- (i) Everyday Nutrition will not be liable or responsible to you or any other person; and
- (ii) you indemnify and agree to indemnify and hold harmless Everyday Nutrition from and against;

all costs, expenses, damages, losses, claims and liabilities howsoever arising whether directly or indirectly as a result of your use of our Site or Services.

In no event will we, or any of our respective officers, directors, employees, agents, affiliates or assigns, nor any party involved in the creation, production or transmission of our Site or Services be liable to you or anyone else for any direct, indirect, special, punitive, incidental or consequential damages arising out of the use, inability to use, or the results of use of our Site or Services, any website linked to our Site or Services (including the materials, information or services contained on such Site) whether in contract or tort or regardless of being advised of the possibility of such damages.

In the event of any problem with our Site, Services or any content, you agree that your sole remedy is to cease using the relevant Site or Service. In the event of any problem with the Services or Services that you have purchased on or through our Site, your remedies will be as prescribed by Australian Consumer Law.

For Jurisdictions that do not allow us to limit our liability: Notwithstanding any provision of these Terms of

Use, if your jurisdiction has provisions specific to waiver or liability that conflict with the above then our liability is limited to the smallest extent possible by law. Specifically, in those jurisdictions where it is prohibited, we do not disclaim liability for: (a) death or personal injury caused by its negligence or that of any of its officers, employees or agents; or (b) fraudulent misrepresentation; or (c) any liability which it is not lawful to exclude either now or in the future.

If you are a resident of a jurisdiction that requires a specific statement regarding release then the following applies: "a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favour at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." You hereby waive any provision in law, regulation, or code that has the same intent or effect as the aforementioned release. Your ability to use our Site or Services are contingent on your agreement with this and all other sections of these Terms of Use. In the event that we may not limit our liability in your jurisdiction, you agree our total liability to you is not more than AUD\$100 or the total amount you spent while using our Site or Services within the last six months, whichever is greater.

17. INDEMNITY

You agree to indemnify Everyday Nutrition for any loss, damage, cost or expense that Everyday Nutrition may suffer or incur as a result of or in connection with your use of, or conduct in connection with the Site, Product or Service, including any breach by you of these Terms and Condition.

In addition to the other indemnities provided by you under these Terms of Use You agree to indemnify us and our officers, employees, agents, contractors and consultants from and against all actions, claims, proceedings or demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with you in respect of any loss, death, injury, illness, damages, costs or expenses (but excluding consequential financial loss) where caused by any unlawful or negligent act or omission by you, your officers, employees, agents, contractors or consultants arising under these Terms of Use or from any other loss which may arise from or as a result of any breach of these Terms of Use or use of our Site or Services by you or your officers, employees, agents, contractors or consultants.

18. Dispute Resolution

- (a) If a dispute arises, before any proceeding is commenced, the party claiming that a dispute has arisen must give 7 days' notice to the other party setting out the dispute and seeking discussion and compromise to resolve the dispute.
- (b) If after 7 days the dispute is not resolved then it must be referred to mediation where both parties must attend to attempt to resolve the dispute in good faith.
- (c) A party is not permitted to bring proceedings in an Australian court without first having recourse to these dispute resolutions clauses.
- (d) **Survival of this clause**

This clause survives termination of these terms and conditions.

19. MISCELLANEOUS

Variation and Waiver

A provision of or a right created by these Terms of Use cannot be waived except in writing signed by the party granting the waiver. No variation to or amendment of these Terms of Use can be made without the consent in writing of all of the parties.

Approvals and Consents

Where any provision of these Terms of Use provide for a party to provide its consent or approval then such party may conditionally or unconditionally in its absolute discretion give or withhold such consent or approval unless these Terms of Use expressly provide otherwise.

Entire Agreement

The agreement contained in these Terms of Use contains all of the terms, conditions, representations and warranties in connection with the agreement reached between the parties with respect to the subject

matter of these Terms of Use.

Relationship of Parties

Nothing in this these Terms of Use creates a partnership or joint venture between the parties, and no party can bind or pledge the credit of the other party.

Governing Law and Jurisdiction

The agreement contained in these Terms of Use is governed by and construed in all respects in accordance with the laws of the State of Victoria, Australia and the parties hereby submit to the exclusive jurisdiction of the courts of the said State of Victoria, Australia

Assignment

You must not novate, assign or subcontract the agreement contained in these Terms of Use or any of its obligations herein without our prior written consent.

Force Majeure

You agree that we are not responsible to you for anything that we may otherwise be responsible for, if it is the result of events beyond our control, including, but not limited to, acts of God, war, insurrection, riots, terrorism, crime, labour shortages (including lawful and unlawful strikes), embargoes, postal disruption, communication disruption, failure or shortage of infrastructure, shortage of materials, or any other event beyond our control.

Severability

In the event that a provision of these Terms of Use is found to be unlawful, conflicting with another provision, or otherwise unenforceable, the agreement contained in these Terms of Use will remain in force as though it had been entered into without that unenforceable provision being included in it.

20. LEGAL NOTICE AMENDMENTS

We reserve the right to make any changes and corrections to this notice. Please refer to this page from time to time to review these Terms of Use and new additional information.

21. TERMINATION OF ACCESS

Access to our Site may be terminated at any time by us without notice. These Terms of Use will nevertheless survive any such termination.

Privacy Policy

Everyday Nutrition is committed to securing your privacy which we take seriously. We will not share your personal data or with third parties other than as set out in this Privacy Policy.

As a healthcare professional, I am committed to maintaining your privacy.

Everyday Nutrition may change this policy from time to time by updating this page. You should check this page from time to time to ensure that you are happy with any changes. This policy is effective from 27 November 2018.

WHAT WE COLLECT

We may collect the following information:

- contact information including email address
- demographic information such as zip code, preferences and interests
- other information relevant to customer surveys and/or offers

WHAT WE DO WITH THE INFORMATION WE GATHER

We require this information to understand your needs and provide you with a better service, and in particular for the following reasons:

We may use the information to improve our products and services.

We may periodically send promotional emails about new products, special offers or other information which we think you may find interesting using the email address which you have provided.

From time to time, we may also use your information to contact you for market research purposes. We may contact you by email, phone, fax or mail. We may use the information to customise the website according to your interests.

SECURITY

We are committed to protecting your information through standard procedures and safeguards.

HOW WE USE COOKIES

A cookie is a small file which asks permission to be placed on your computer's hard drive. Once you agree, the file is added and the cookie helps analyse web traffic or lets you know when you visit a particular site. Cookies allow web applications to respond to you as an individual. The web application can tailor its operations to your needs, likes and dislikes by gathering and remembering information about your preferences.

We only use this information for statistical analysis purposes and then the data is removed from the system.

Overall, cookies help us provide you with a better website, by enabling us to monitor which pages you find useful and which you do not. A cookie in no way gives us access to your computer or any information about you, other than the data you choose to share with us. You can choose to accept or decline cookies. Most web browsers automatically accept cookies, but you can usually modify your browser setting to decline cookies if you prefer. This may prevent you from taking full advantage of the website.

ADVERTISING

Some of our advertisers occasionally serve you cookies as well. We do not have control over cookies placed by advertisers. We may use advertising service vendors to help present advertisements on the website. These vendors may use cookies, web beacons, or similar technologies to serve you advertisements tailored to interests you have shown by browsing on this and other sites you have visited, to determine whether you have seen a particular advertisement before and to avoid sending you

duplicate advertisements. In doing so, these vendors may collect non-personal data such as your browser type, your operating system, Web pages visited, time of visits, content viewed, ads viewed, and other clickstream data. The use of cookies, web beacons, or similar technologies by these advertising service vendors is subject to their own privacy policies, not ours, and Service Provider disclaims all liability in connection therewith.

CONTROLLING YOUR PERSONAL INFORMATION

You may choose to restrict the collection or use of your personal information in the following ways: whenever you are asked to fill in a form on the website, look for the box that you can click to indicate that you do not want the information to be used by anybody for direct marketing purposes if you have previously agreed to us using your personal information for direct marketing purposes, you may change your mind at any time by contacting us.

We will not sell, distribute or lease your personal information to third parties unless we have your permission or are required by law to do so. We may use your personal information to send you promotional information about third parties which we think you may find interesting if you tell us that you wish this to happen.

OPT OUT

If you believe that any information we are holding on you is incorrect or incomplete, please contact us.

Contact us:

If you have any questions about this Privacy Policy, or if you wish to request access to your personal information, correct or update you details or raise any privacy concerns you may have, please contact us at: [**dietitian@everydaynutrition.com.au**](mailto:dietitian@everydaynutrition.com.au)

For further information on your privacy rights go to: [www .privacy .gov.au](http://www.privacy.gov.au)

For further information on the HRIP Act, go to:

[*http://www.ipc.nsw.gov.au/hrip-act*](http://www.ipc.nsw.gov.au/hrip-act)

[*http://www.ipc.nsw.gov.au/sites/default/files/manager/FS-HPPs-for-agencies-May14-ACC_O.pdf*](http://www.ipc.nsw.gov.au/sites/default/files/manager/FS-HPPs-for-agencies-May14-ACC_O.pdf)

