

# Terms and Conditions

## Everyday Nutrition: TERMS OF USE

### 1. AGREEMENT

The following terms and conditions relate to the use of The Everyday Nutrition FODMAP Challenge Facebook group ([https://www.facebook.com/groups/183818145596227/learning\\_content/](https://www.facebook.com/groups/183818145596227/learning_content/)), together with the provision of any associated services or sale of products (including eBooks) (“**Site**”) (“**Services**”) (“**Terms of Use**”). These Terms of Use constitute an agreement between Joanna Baker APD ABN 23 597 598 532 trading as Everyday Nutrition (“**Everyday Nutrition**”, “**us**”, “**we**”, “**our**”), the owner and operator of our Site and any Services, and you (“**you**”, “**your**” or “**user(s)**”), a user of our Site and/or Services.

By using our Site or any Services, you agree to be bound by these Terms of Use and our [Privacy Policy](#). We may amend our Terms of Use or Privacy Policy at any time and will use reasonable endeavours to notify you if we do so. If you do not agree to these Terms of Use or the Privacy Policy (or any subsequent amendments) you must cease using our Site and/or our Services immediately.

Users of our Site or Services must be 18 years of age or older, and by using our Site or Services you warrant that you are at least 18 years of age and that the Services are being acquired for yourself, or on behalf of your child over the age of 13 years where you are that child’s parent or legal guardian. You agree that the Services are deemed to be provided in Australia and subject always to Australian Law.

### 2. REQUIREMENT TO OBTAIN PROFESSIONAL MEDICAL ADVICE

All content on our Site is for informational and educational purposes only. Any statements made on our Site or in our Services are not subject to evaluation by any other agencies. None of the content or products offered on our Site are meant to diagnose any medical or health conditions. The Services found on our Site are not intended as a substitute for the advice provided by your physician or other healthcare professional.

You should always speak with your physician or other healthcare professional before adopting any treatment for a health problem or before adopting any new fitness or dietary regime or using any of our Services. If you have or suspect that you have a medical problem, you should contact your health care provider.

Persons with pre-existing medical conditions, in poor health, or with any concerns as to commencement of new nutrition or fitness regime should consult with an appropriate healthcare professional before beginning any nutrition or fitness program. You should not disregard, avoid, or delay obtaining medical advice from your doctor or other qualified health care provider because of something you have read on our Site.

If at any time you notice any unanticipated changes to your health (physical, mental or emotional), you should seek medical attention immediately.

You are responsible for making your own inquiries and seeking independent advice from a healthcare professional before acting on any information or material made available to you through our Site. Our Services may not be suitable to your particular circumstances.

You acknowledge that our Services are provided on the basis of the accuracy and completeness of the information that you provide us, following our evaluation of that information. You further acknowledge that your failure to provide accurate or complete information may adversely affect the quality, efficacy or suitability of these Services.

You acknowledge that by participating in or otherwise obtaining our Services, you are doing so voluntarily and, depending on your particular circumstances, there may be risks to your health. You further

acknowledge that these risks may be caused by your own acts or omissions, or those of other users of our Site, or may be risks that are not known to you or are not readily foreseeable at the time of using our Services. 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.

### 3. **TESTIMONIALS**

Please be aware that any testimonials on the Site may not reflect the results that you may achieve. Results may vary and your experience may not be similar to the experience of the user testimonials

### 4. **NUTRITIONAL INFORMATION**

Nutritional information provided on our Site or in conjunction with our Services is based on research of current, peer-reviewed scientific literature. Before relying on any nutritional information on our Site or obtained through our Services, you should carefully evaluate the accuracy, completeness and relevance of this information to your purposes and health particularities, and obtain appropriate expert advice relevant to your circumstances where necessary. We do not give any warranty that the information is free from error or suitable for your purposes.

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**

We are required to collect information from you that identifies you ("**personal information**") as reasonably required to provide you with our Services. In some instances the personal information we collect from you will include health information (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.

### 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 and 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 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](mailto: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. 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 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](mailto: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](mailto:dietitian@everydaynutrition.com.au). eBooks are for personal use only and are not permitted to be used for commercial purposes and 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 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](mailto:dietitian@everydaynutrition.com.au)

## 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 may not re-sell our Services anywhere else or use 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. We may modify our Services for any security reason, in our 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

Unless otherwise indicated, copyright and other intellectual property rights in our Site (including text, graphics, photographs, logos, icons, domain names, service marks, information, design, sound recordings and software) is owned or licensed by us. Other than for the purposes of, and subject to the conditions prescribed.

The design of our Site and Service along with all created text, templates, scripts, graphics, interactive features and the trademarks, service marks and logos contained therein ("**Marks**"), are owned by or licensed to us, subject to copyright and other intellectual property rights as applicable under, the *Copyright Act 1968* and similar legislation which applies in your location, and except as expressly authorised by these Terms of Use, you may not in any form or by any means:

1. adapt, reproduce, store, distribute, print, display, perform, publish or create derivative works from any part of our Site; or
2. commercialise 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. By uploading, transmitting, posting or otherwise making available any material on a Site and any associated social media platforms, including providing us with any comments, feedback, ideas or suggestions, you 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

Unfortunately, no data transmission over the Internet can be guaranteed as totally secure. Whilst 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 which you transmit to us is transmitted at your own risk. Nevertheless, once we receive your transmission, we will take reasonable steps to preserve the security of such information.

## 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**

Other than to the extent prohibited by applicable law, we do not assume any responsibility or liability for any loss or damage suffered by you, 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**

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. **PRIVACY AND CHILD PROTECTION**

In addition to our obligations under the Privacy Act and HRIP Act, we also comply with all Australian Child Protection legislation to the extent applicable.

#### 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**

This privacy policy sets out how Everyday Nutrition uses and protects any information that you give while using [www.everydaynutrition.com.au](http://www.everydaynutrition.com.au)

As a healthcare professional, I am committed to maintaining your privacy. Should we ask you to provide certain information by which you can be identified when using this website, you can be assured that it will only be used in accordance with this privacy statement.

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 16th February 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 ensuring that your information is secure. In order to prevent unauthorised access or disclosure, we have put in place suitable physical, electronic and managerial procedures to safeguard



and secure the information we collect online.

### **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 use traffic log cookies to identify which pages are being used. This helps us analyse data about web page traffic and improve our website in order to tailor it to customer needs. 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@everydaynutriiton.com.au](mailto:dietitian@everydaynutriiton.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/sites/default/files/file\\_manager/FS-HPPs-for-agencies-May14-ACC\\_0.pdf](http://www.ipc.nsw.gov.au/sites/default/files/file_manager/FS-HPPs-for-agencies-May14-ACC_0.pdf)

