

Terms of Use

Piñata Farms

These Terms of Use are current on and from August 2020.

Except as otherwise provided in a written agreement signed by Piñata Farms Operations Pty Ltd (ACN 633 633 664), these Terms of Use represent the entire understanding between you and Piñata Farms Operations Pty Ltd and our related companies (collectively, " Piñata Farms, we, us, our") regarding your use of www.pinata.com.au (the "Site") and your submission of any materials to us.

By accessing the Site, you signify your acceptance of these Terms of Use and you accept that you have been informed of the information set out in the Privacy Policy.

These Terms of Use govern the supply of any produce ordered by you on the Site and your use of the Site.

Acceptance of Terms

We strongly recommend that you read all of the terms in these Terms of Use.

By browsing, accessing and using the Site, or ordering our produce, you agree to be bound by these Terms of Use.

If you do not agree, please do not use our Site or cease using our Site.

Use of our Site

As a condition of your use of our Site, you warrant that:

- (a) you must only use the Site in accordance with these Terms of Use and any applicable law;
- (b) you are at least 18 years of age and capable of entering into this agreement;
- (c) you must not:
 - (i) interfere with (or attempt to interfere) or disrupt (or attempt to disrupt) the Site or the servers or networks that host the Site;
 - (ii) use (or attempt to use) data mining, robots, screen scraping or similar data gathering and extraction tools on the Site;
 - (iii) interfere (or attempt to interfere) with security related or other features of the Site;
- (d) all information you may supply to us is true, accurate, current and complete;
- (e) you must not link to our Site or any part of our Site in a way that damages to takes advantage of our reputation, including but not limited to in a way to suggest or imply that you have any kind of association and affiliation with us, or approval and endorsement from us that you do not have.

You agree to comply with these Terms of Use and any particular obligations imposed on your use of the Site in these Terms of Use.

Change to Terms

Piñata Farms reserves the right and you agree, that at any time, Piñata Farms may to modify, alter, update, or remove portions of these Terms of Use or the Privacy Policy, so please check them from time to time as your continued use of the Site signifies your acceptance of any changed terms. If you are dissatisfied with these Terms of Use or the Privacy Policy, your sole and exclusive remedy is to discontinue your use of the Site.

Disclaimer as to availability

Piñata Farms provides the site and its services on an "as-is" basis. Piñata Farms makes no representations or warranties of any kind, express or implied, including without limitation those related to:

- (a) the operation of the Site;
- (b) the information, content, materials, or services included or described therein;
- (c) any application or information submitted to us through the Site; and
- (d) availability of Site.

To the fullest extent permitted by applicable law, Piñata Farms disclaims all warranties, express or implied (including but not limited to implied warranties of merchantability and fitness for a particular purpose), regarding the Site, including without limitation warranties related to the operation of the site, the information, content, materials, and services described therein, and any information or applications submitted through the site. Without limiting the foregoing, Piñata Farms does not warrant that the site or any of its functions will be uninterrupted or error-free, that defects will be corrected, or that the site is free of viruses or other harmful components. Piñata Farms does not warrant or make any representations regarding the use of the materials on the site or the services described therein.

You agree that:

- (a) the Site will not be available at all times and without disruption;
- (b) access to the Site may be occasionally limited due to scheduled maintenance;
- (c) access to the Site is reliant upon various factors outside our control, including without limitation events of Exceptional Circumstances, your internet service provider, telecommunications provider or equipment used to access the Site;
- (d) although we will use reasonable endeavours to ensure you have continuous access to the Site, we are not liable to you or any other persons for any Claim or to any other extent for Loss or damage caused by such factors; and
- (e) you will have no Claim against us in respect of loss of access or functionality to the Site as referred to here.

Suspension

We may suspend (in part or whole), and without prior notice to you, your access to the Site for any reason whatsoever, including without limitation, if:

- (a) there is a malfunction, fault or breakdown of any equipment we use, or any repairs, maintenance or services are required;
- (b) we are required to do so by law;
- (c) an event of Exceptional Circumstance occurs, which affects or may affect our ability to provide the Site and any related services;
- (d) if someone claims that our Site infringes their Intellectual Property Rights;
- (e) if someone makes a Claim that exposes us to Liability; or
- (f) if we determine or suspect that you have breached this agreement.

A suspension for any of these reasons will not affect any right which accrues prior to, or after suspension of our obligations under these Terms of Use.

Information on the Site

We retain ownership of the Site, the content on the Site and any copyright, trade marks and other Intellectual Property Rights that are created or subsist in the Site (other than that which is licensed to us).

Unless otherwise stated, we take all reasonable steps to ensure that the produce descriptions and other information, inclusions or exclusions, images and availability are correctly presented on our Site.

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Intellectual Property Rights

All Intellectual Property Rights in the Site are owned by, or licensed to us.

You must not reproduce, transmit, communicate, adapt, distribute, sell, modify or publish or otherwise use any of the material on the Site, including audio and video excerpts, except as permitted by statute or with our prior written consent.

Copyright

All site design, text, code, graphics, sound recordings, blogs, media releases, videos and interfaces, and the selection and arrangements thereof, on the Site are the property of (or licensed to) Piñata Farms, and are protected under the Copyright Act 1968 (Cth) and other international copyright laws governing the protection of Intellectual Property Rights. You must not in any for or by any means (except as expressly authorised by the Copyright Act 1968 (Cth) or these Terms of Use:

- (a) adapt, reproduce, store, distribute, display, perform, publish, create derivative works from, or reprint any photograph, illustration, artwork, or other material on the Site; or
- (b) Commercialise any works or other subject matter, information, products or services obtained from any part of this Site, without our prior written permission.

Any unauthorised use of the materials appearing on the Site is in violation of copyright, trade mark, and other applicable laws and could result in criminal or civil penalties.

Trademarks

The Piñata Farms logos, brand names and, trade marks (whether, registered, applications or under common law) are the trade marks of Piñata Farms and related companies, or third parties who have licensed us to use their trade marks. You may not use or reproduce any such trade mark in connection with any products or services other than those products or services offered by Piñata Farms or related companies, in any manner that is likely to cause confusion, or in any manner that disparages or discredits Piñata Farms or related companies. All other trademarks are the property of their respective owners.

You grant to us a perpetual, worldwide, royalty-free, transferable, licencesable and sub-licensable, irrevocable right to use, copy, modify, distribute, publish and process any content that you post in use of the Site.

You give us your complete and genuine consent to our use of all or any portion of any content that you post in use of the Site, even if such use by us would otherwise be an infringement of your moral rights (as that term is defined in the Copyright Act 1968 (Cth)).

Unless we agree otherwise in writing, you are provided with access to this Site only for your personal use. You are authorised to print a copy of any information contained on this Site for your personal use, unless such printing is expressly prohibited. Without limiting the foregoing, you may not without our written permission on-sell information obtained from the Site.

Links

For your convenience, the Site may contain links to other websites on the Internet that are owned and operated by someone other than Piñata Farms. Piñata Farms provides these links solely as a convenience. The appearance of a link does not imply Piñata Farms' endorsement, nor is Piñata Farms responsible or Liable for the content, accuracy, legality or any other aspect of the content of any linked site. You access linked sites at your own risk.

Cookies

If you use our Site, we may utilise "cookies" which enable us to monitor traffic patterns, trends and to serve you more efficiently if you revisit our Site. In most cases a cookie does not identify you personally but may identify you internet service provider or computer.

We may gather your IP address as part of our business activities and to assist with any operational difficulties or support issues with our services. This information does not identify you personally. However, in some cases cookies may enable us to aggregate certain information with other personal information we collect and hold about you.

By using our Site, you agree to us placing these sorts of cookies on your device and accessing them when you visit the Site in the future. You can modify the settings on your device to prevent cookie use. Please note by disabling cookies, your user experience may be affected and you might not be able to take advantage of certain functions of our Site.

Notwithstanding any other provision in these Terms of Use, we may also engage a third party service provider who may combine your information with information from other sources, and may place or recognise a unique cookie on your browser for the purpose of identifying users and delivering to them interest-based content and advertisements.

Privacy policy

We do not provide your personal information to third parties for their marketing purposes without your explicit consent.

We do not store your personal information at a destination outside of Australia, but our service providers do in places including, but not limited to, New Zealand. By accepting these Terms of Use you expressly acknowledge, consent and agree to the disclosure, transfer, storing or processing of any of your personal information outside of Australia.

The Privacy Act 1998 (Cth) requires us to take such steps as are reasonable in the circumstances to ensure that any recipients of personal information outside of Australia do not breach the privacy principles contained within Privacy Act.

We acknowledge the importance of protecting personal information and have taken reasonable steps, to ensure that any personal information is used by third parties securely and in accordance with the terms of these Terms of Use.

Disclaimer and Limitation of Liability

In no event shall Piñata Farms be liable for any liability to you or anyone else for Loss or damage of any kind, including but not limited to indirect, special, incidental, or consequential damages, including without limitation lost profits, loss of use, business interruption, or loss of data, (howsoever caused):

- (a) arising out of or relating to the Site;
- (b) the operation of the Site;
- (c) any application or information submitted to us through the Site
- (d) any errors, mistakes or inaccuracies on the Site;
- (e) any interruption or cessation of transmission to or from the Site;
- (f) any bugs, viruses, trojan horses or other harmful code or communications which may be transmitted or through the Site to any third party; and / or
- (g) the quality or fitness for purpose of any third party websites,

even if Piñata Farms is expressly advised of the possibility of such damages and you acknowledge that the existence of any of the above in this 'Disclaimer and Limitation of Liability' section will not be a breach of this agreement.

To the full extent permitted by law,

- (a) any term which would otherwise be implied into these Terms of Use is excluded, subject to clause (b);
- (b) notwithstanding section (a) above, nothing in these Terms of Use excludes liability for:
 - (i) a compulsory consumer guarantee which applies under the Competition and Consumer Act 2010 (Cth) and which cannot be excluded, restricted or modified and as applicable to any product;
 - (ii) any other term which cannot lawfully be excluded,

such terms will apply, save that our Liability for breach of any such term will be Piñata Farms' limited cumulatively in the aggregate (to the fullest extent permitted by law) to a maximum of AUD\$10 under these Terms of Use.

Compliance with Laws

You agree to comply with all applicable laws, statutes, ordinances, and regulations regarding your use of the Site and your use of the services described therein.

General Proprietary Rights

The Site is owned by Piñata Farms and contains material that is derived in whole or in part from Piñata Farms and other sources. The Site and their contents are protected by international copyright, trademark, and other intellectual property laws. You may not modify, copy, reproduce, republish, upload, post, transmit or distribute in any way any material from the Site, including without limitation code or software, without Piñata Farms' express written permission.

Notices

To notify Piñata Farms of any suspected infringement (including in relation to any Intellectual Property Rights), please contact us via the Enquiry form on our Contact page.

We can give you notice under these Terms of Use by uploading updates to our Site.

Applicable Law ; Jurisdiction

Piñata Farms operates the Site from Wamuran, Queensland, Australia. The laws applicable to the governing and interpretation of these Terms of Use shall be the laws of Queensland, Australia and the parties submit to the non-exclusive jurisdiction of the Court of Queensland, Australia. No action arising under or relating to these Terms of Use may be brought by either party more than one year after the cause of action has accrued.

Termination

These Terms of Use shall remain in force until terminated by Piñata Farms. Piñata Farms may terminate the Terms of Use, or suspend your access to all or part of the Site, without notice, for any conduct that Piñata Farms, in its sole discretion, believes is disruptive or is in violation of any applicable law or these Terms of Use. In the event of any such termination, the provisions regarding disclaimers, limitations of liabilities, intellectual property rights, choice of law, and venue set forth in these Terms of Use shall survive.

Miscellaneous

If any provision of these Terms of Use shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of any remaining provisions.

You must not assign, transfer or novate all or any part of your rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it. Piñata Farms may assign, transfer or novate all or any part of its rights or obligations under or relating to these terms and conditions in its sole discretion and without prior notice to you.

An amendment or variation to these Terms of Use is effective from the date it is published on the Site.

If we waive any rights available to us under these Terms of Use on one occasion, this does not mean that those rights will automatically be waived on any other occasion.

Definitions

“Claim” means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

- (a) it is present, unascertained, immediate, future or contingent;
- (b) it is based in contract, tort, statute or otherwise; or
- (c) it involves a third party or a party to this agreement.

“**Exceptional Circumstance**” means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this agreement. Such circumstances include:

- (a) adverse changes in government regulations;
- (b) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods,

- storms, explosions, fires and any natural disaster;
- (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber attacks, viruses or malware, data loss as a result of the actions of a third party;
- (d) strikes or industrial disputes;
- (e) materials or labour shortage; and
- (f) acts or omissions of any third party network providers (such as internet, telephony or power provider).

“Intellectual Property Rights” means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder’s rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

“Liability” means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person.

“Loss” means any loss (including Consequential Loss under section 12.3), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

Interpretation

- (a) Unless the contrary intention appears, a reference in this agreement to:
 - (i) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (ii) one gender includes the others;
 - (iii) the singular includes the plural and the plural includes the singular;
 - (iv) a person, partnership, corporation, trust, association, joint venture, unincorporated body, government body or other entity includes any other of them;
 - (v) an item, recital, section, sub-section, paragraph, schedule or attachment is to an item, recital, section, sub-section, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;
 - (vi) a party includes the party’s executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (vii) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (viii) money is Australian dollars, unless otherwise stated; and
 - (ix) a time is reference to Brisbane time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
- (e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.