

Farmmates iPhone/Android Application Service

Terms and Conditions

This Agreement sets out the Terms and Conditions that apply when you are using Farmmates Application Service. By using the Farmmates Application Service you acknowledge that you have read this Agreement and agree to be bound by these Terms and Conditions. If you do not agree to these Terms and Conditions, please do not use this Service. In this Agreement

‘Application’ means any Farmmates Application available from www.farmmates.com

‘Content’ means any and all content, data, graphics, photographs, images, software, trade marks, service marks, trade names and other information contained in the Site and the Service.

‘Customer’ and **‘You’** means the user of this Service.

‘GST’ means the goods and services tax chargeable under the Goods and Services Tax Act 1985 (NZ).

‘Material’ means all text (including contact and sender details), photographs and imagery submitted by the Customer to Farmmates in order to use the Farmmates Service.

‘NZDT’ means New Zealand Daylight Savings Time.

‘Farmmates’, ‘We’ and **‘Us’** mean GM & RA Barlow.

‘NZST’ means New Zealand Standard Time (GMT+12).

‘Personal information’ means information about an identifiable individual.

‘Service’, and ‘Farmmates Service’ means the use of the Site, the Application and Content in accordance with these Terms and Conditions, including software programmes being MixMate, GrassMate and CowMate and any other amendments we make from time to time.

‘Site’ means the website that this Service is available being <http://www.farmmates.com>

‘working day’ means a day (other than a Saturday, Sunday or a New Zealand Public Holiday) on which registered banks are open for business in Auckland and Wellington, New Zealand.

1. What you can use the Farmmates Service for

- 1.1 The Service provides an online service that enables people all around the world to record and report on dairy farm and related activities.

2. Use of SERVICE

- 2.1 The Application, Site and Content are owned by GM & RA Barlow and are protected by New Zealand and international copyright and trade mark laws.
- 2.2 As the Customer, you are responsible for ensuring that the data entered into a farmmates application is not unlawful, inappropriate or immoral. Your order shall constitute an offer to Farmmates to conclude a contract subject to these Terms and Conditions.
- 2.3 Farmmates is under no obligation to accept any order. A contract comes into being following the explicit acceptance of the order. Farmmates will send you an order confirmation by e-mail. In the event that email is unable to proceed with the order, we will try to notify you by phone, or post.
- 2.4 We may, at our sole discretion change or discontinue, temporarily or permanently, any element of the Farmmates Service at any time, including but not limited to introducing new Content, or changing or discontinuing any part of the current Content.

3. Your obligations

- 3.1 As the Customer you agree that:
 - (a) You are solely responsible for any use of the Service including the Material (which includes name and address details). Farmmates shall not be bound to check the provided Material.
 - (b) You will comply with all applicable laws, including applicable privacy, advertising, intellectual property and consumer protection laws;
 - (c) You are solely responsible for ensuring that your collection, use, uploading and disclosure of personal information through the Site fully complies with all applicable privacy laws, including obtaining all necessary consents;
 - (d) Farmmates does not accept liability for orders that are not accepted due to failure to meet these requirements.
 - (e) You will not use the Service to send any message or Material that:
 - Is unsolicited mail in violation of applicable laws;
 - Would violate the intellectual property rights of any party (including copyrighted imagery or text);
 - Would violate the privacy rights of any party;
 - Is harassing, abusive, libelous, threatening, fraudulent or misleading; Contains obscene, pornographic, profane or inappropriate messages or images;
 - Contains any information suggesting that Farmmates supports or endorses the performance of any product or service promoted by you;

- Contains any software viruses;
- May be misleading, offensive to any ethnic or religious group, contains any political message or could be associated with a current or former political cause or leader;
- Is for the purposes of political campaigning, commercial solicitation or chain letters; or
- Is otherwise unlawful, or would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offence, under any applicable laws or regulations.

3.2 Although Farmmates is not responsible for any such communications, we may suspend any such communications of which we are made aware at any time, with or without prior notice to you.

3.3 Farmmates reserves the right to refuse the Services, delete offending emails, cancel orders and block users from accessing the Application and the Site without consultation in its sole discretion.

3.4 Farmmates reserves the right to reject ALL content that fails to meet our designated requirements and standards and to suspend any such communications of which we are made aware at any time, with or without prior notice to you.

3.5 If you choose to access this Site from outside New Zealand you accept that the Service may not be appropriate for use in your jurisdiction and you will be responsible for compliance with your local laws.

4. English Language

4.1 We currently only support English for the use of this Service. We do not guarantee support for languages other than English, although in future we may enhance the Service with additional language sets. This Service does not support macrons or Cyrillic scripts. If you use another language in the Material we reserve the right to reject it or require you to meet the costs of any translation that we may consider necessary to ensure that the Material complies with these Terms and Conditions.

5. Provision and use of information

5.1 You agree to provide your correct name, postal address and email address and contact information and confirm that this is current and true. Failure to enter these details correctly may result in your subscription not being completed.

5.2 Farmmates will have no liability to Customers who provide false name and contact details.

5.3 Farmmates collects and stores personal and non-personal information. Personal information is supplied voluntarily and includes, e.g. your contact details (name, address, email address). Non-personal information such as site statistical reports including browser types etc is collected on an anonymous basis and reported on in a collective manner.

- 5.4 All information provided will be stored by Farmmates and treated as confidential.
- 5.5 All data on the Site is stored securely to protect data against unauthorised processing or unauthorised access. No liability can be accepted for the security of data transmitted via the Internet.
- 5.6 In the event that Farmmates engages third-party services to provide the Service, it shall be authorised to make the data necessary for this purpose available to the third parties engaged.
- 5.7 Farmmates will not keep or reuse addresses for further communications. We will only keep your contact details if you have opted in to receiving further communications from us.
- 5.8 We do store all contact information for the purposes of ensuring your application is delivered correctly. Farmmates will store these details securely until we can be sure the application has been successfully delivered. Periodically we will securely remove data that has been stored for over 6 months, upon confirmation that it has served the intended purpose.

6. Transaction fees

- 6.1 The fees you pay for using the Service are as stated on the Application interface at the time of use.
- 6.2 Unless otherwise stated, all fees are quoted in New Zealand dollars with GST excluded.
- 6.3 You are responsible for paying all fees associated with using the Service and all applicable taxes.
- 6.4 We may increase our fees for the Service at any time - whether in association with the introduction of a new element or product or otherwise. New fees will be posted on the Application interface and will apply to any Services you use on a going forward basis.

7. When and how to pay

- 7.1 Payment can be made by direct credit or cheque by post.
- 7.2 Payment must be made on receipt of invoice.

8. Warranty of Title

- 8.1 The Customer further warrants that to the best of their knowledge use of the data for the intended purpose does not infringe the rights of any third parties or contravene any other legal provisions in New Zealand or abroad.
- 8.2 The Customer further affirms that at the time of concluding the contract they are not aware of any third-party rights in the Material and, in particular, that no copyrights will be infringed as a result of performance of the Service.

- 8.3 The Customer undertakes to fully indemnify Farmmates in respect of any claims by third parties relating thereto (infringement of copyrights, infringement of licence agreement terms) in the first instance. The Customer bears the sole and unrestricted responsibility for the Material submitted.
- 8.4 Farmmates takes no responsibility and assumes no liability for any Material posted by you or any third party. Farmmates expressly assumes no warranty of title for Material supplied by the Customer.

9. Unauthorised access/breach of security measures

- 9.1 You must not use, or permit the use of the Service in any way (including, without limitation, transmission, distribution or storage) for any purpose that is, or is likely to be:
- (a) an unauthorised use access or monitoring of:
 - (i) Any host, the Site or other network; or
 - (ii) Any component, device, authentication system, data, website, password, account; or
 - (iii) Any other breach of any security measure.
- 9.2 You agree that you will not:
- (a) Use any robot, spider, scraper or other automated means to access the Service for any purpose without our express written permission; or
 - (b) Take any action that imposes, or may impose, an unreasonable or disproportionately large load on our infrastructure (as determined by us in our sole discretion); or
 - (c) Interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service;
 - (d) By-pass the measures we may use to prevent or restrict access to the Service.
- 9.3 Without limiting any of the above, undertaking or attempting to undertake any of the following is deemed to violate this Agreement:
- (a) Transmitting, distributing or storing any material protected by copyright, trade mark, trade secret or other intellectual property right without proper authorisation;
 - (b) Sending material that is obscene, defamatory, an invasion of privacy, or that constitutes an illegal threat, or that is otherwise illegal;

- (c) Uploading to the Service and/or using any personal information of any third party without that third party's consent or otherwise in breach of applicable privacy laws;
- (d) Altering the source of any data (causing origination of malformed data or network traffic);
- (e) Impersonating, relaying, spoofing, misrepresenting identity, or using a third party email server to relay without express authorisation;
- (f) Altering or forging electronic mail headers (including any portion of the IP packet header and/or electronic mail address) or any sender identity, posting or any other method used to forge, disguise, or conceal the user's identity or to cause disruption;
- (g) Hacking or scamming (or other unauthorised use of non-Customer accounts or resources, stealing passwords, etc);
- (h) Distributing harmful codes such as computer viruses, worms and trap doors;
- (i) Overloading any shared infrastructure;
- (j) Causing denial of service, SYN flood or other attacks by sending mass volumes of data or other abusive behaviour likely to disrupt or disable the recipient system; or
- (k) Creating liability for us or causing us to lose (in whole or in part) the services of our Apple iPhone App Store Account, ISPs or other suppliers.

10. Your liability to us

- 10.1 In this clause 'us' includes Farmmates, our subsidiaries, affiliates, and suppliers, and each of their officers, directors and employees.
- 10.2 You agree to fully indemnify us and hold us harmless from any claim or demand, including legal costs and fees, made by any third party due to, or arising out of:
- (a) Your use of the Service;
 - (b) Your breach of this Agreement (or any documents it incorporates by reference); or
 - (c) Your violation of any law or the rights of a third party.
- 10.3 You agree to cooperate as fully as reasonably required in defence of any such claim. Farmmates reserves the right, at its own expense, to assume the exclusive defence and control of any matter subject to indemnification by you.

11. Our liability to you

- 11.1 In this clause 'we' include our subsidiaries, affiliates, and suppliers, and each of their officers, directors, and employees.
- 11.2 This Service, including but not limited to any Content is provided on an 'as is' basis. To the maximum extent permitted by law:
- (a) We do not make any representation or offer any warranty (express, implied or statutory);
 - (b) We specifically disclaim any implied representation, warranties of title, merchantability, merchantable quality, fitness for a particular purpose and non-infringement, whether arising by law, or through a course of dealing or usage or trade.
 - (c) We do not guarantee continuous, uninterrupted or secure access to the Services. Operation of our Service may be interfered with by numerous factors outside of our control. In no event shall we be liable for any unavailability or inoperability of the Services, Apple iPhone App Store services, telecommunications systems or the internet, technical malfunction, computer error, or other corruption or loss of information, or other injury, damage or disruption of any kind that is beyond our control.

12. Limitation of liability

- 12.1 Farmmates and its authorised agents shall be responsible only for direct loss or damage which they have caused intentionally or through their own gross negligence. In particular, any liability for consequential damages or lost profits is expressly ruled out.
- 12.2 You agree to report any defective application to Farmmates immediately. Your sole remedy, and Farmmates's sole liability, shall be the correction and replacement of the application free of charge.
- 12.3 If the replacement application is also defective, the Customer shall be able to withdraw from the contract or to demand compensation equivalent to the value of the defect. Farmmates shall have no liability to you if you fail to provide accurate information to Farmmates.
- 12.4 In no event shall we be liable for lost profits (or solicitors' fees) or any special, incidental, consequential, indirect or punitive damages arising out of or in connection with this Agreement or your use of the Service (however arising, including negligence).
- 12.5 Without limiting the generality of the foregoing, our maximum liability to you, whether in contract, tort (including negligence) or otherwise, shall be for direct, provable damages in an amount not greater than the fees actually paid by you in respect of the transaction that is the subject of the claim. In the instance of failed apps,

where no fees are paid, there will be no compensation to the sender. Our advertisers are covered in a separate agreement that makes allowances for failed delivery items.

- 12.6 Farmmates shall not be responsible for, or assume any liability for, any Material uploaded or otherwise transmitted by you or any third party. You agree to hold harmless Farmmates and any parties with whom Farmmates has contracted for the purposes of hosting or maintaining this Service from all claims based upon communications or Materials made available by you on this Service.

13. Consumer Guarantees Act 1993

- 13.1 Where you use the Service for a purpose other than for the purpose of a business, the Consumer Guarantees Act 1993 will apply.

14. Your privacy

- 14.1 We do not sell or rent your personal information to third parties for their marketing purposes without your explicit consent and we only use your personal information for invoicing and Farmmates related communication.
- 14.2 Farmmates may feature on its Site or in its e-mail communications to you links to third-party web sites. These may appear in the form of text links, advertisements, banners, buttons or otherwise. The goods and services available through these links are offered by independent companies, which are not affiliated in any way with Farmmates. We are not responsible for the privacy practices of other web sites.
- 14.3 There may be circumstances where access to this Service is provided by a link located at a third-party web site (e.g. an advertiser or sponsor of a free card). Farmmates does not give any representations or warranties with respect to any information contained in or at these other websites and Farmmates shall not be liable for any damages or injury arising from the content of these other websites.

15. Our right to amend this agreement

- 15.1 We may amend this Agreement at any time.
- 15.2 We will notify you of any change in writing or by email or by posting the amended terms on this Application interface within 30 working days before the amendments are made live.
- 15.3 If you do not agree to the amended terms, you will not be permitted to continue to use the Service.

16. No warranty

- 16.1 We make no representations and give no warranties that the applications will be capable of being processed on your iPhone, iPad, computer equipment and software.
- 16.2 We do not give any warranty that the Service will be free from technical glitches where data and images uploaded are lost or damaged. We do not give any warranty

that the Service will be free from any computer viruses, worms, software bombs, Trojan horses or similar items.

- 16.3 We will not be liable (whether in contract, tort including negligence, equity or any other basis) for loss or damage to data, or viruses or similar items that may infect your iPhone, iPad, computer equipment or software due to your use of the Service.

17. Miscellaneous

- 17.1 *Interpretation of Agreement:* Clause headings and examples are provided for reference purposes only to assist in navigating and understanding these Terms and Conditions. They are not intended to define, or limit the scope or extent of any clause.
- 17.2 *Governing law:* This Agreement shall be governed in all respects by the laws of New Zealand.
- 17.3 *Invalid provisions:* If any provision of this Agreement is held to be invalid or unenforceable, that provision shall be struck out and the remaining provisions shall be enforced.
- 17.4 *No waiver:* Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.
- 17.5 *Assignment:* We may assign our rights and obligations under this Agreement (including any incorporated Terms and Conditions. You may not assign your rights and obligations under this Agreement).
- 17.6 *Entire Agreement:* This Agreement sets out the entire understanding and agreement between us with respect to its subject matter.

18. Contact

- 18.1 Please use the address below if you wish to contact us about the Farmmates Service, needahandmate@farmmates.com